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THE EVOLUTION OF THE CONSTITUTIONAL ORGANISATION OF THE ROMANIAN STATE. - A SHORT VIEW

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Abstract: In this article the author presents a short and concise view of the Romanian constitutional development. The author points out that the constitutional organization of the two Principalities, Wallachia and Moldavia, has historical roots, beginning with the 14 th century. The modern constitutional development began with the 19 th century, the French influence having a great importance. The Constitution adopted in 1866 has inaugurated a new constitutional period in the political history of the Romanian people. Its main characteristics lies in the entire connecting of the Romanian structure of government to the West model of political leadership. Constitution from 1923 included some of the modern principles of parliamentary governance. The democratic government based on the 1923 Constitution was followed by two successive authoritarians regimes. The socialists Constitutuions of 1948, 1952 and 1965 created a constitutional framework characteristic of the totalitarian regimes. The Constitution adopted in 1991 inaugurates a democratic political regime based on the principles of Rule of Law.

Keywords: constitutional regime, constitutional history, parliamentary regime, parliamentary governance, Rule of Law, constitutional framework.

1. Historical roots of the modern constitutional regime in Wallachia and Moldavia (1831 - 1866)

The constitutional organisation of the two Romanian Principalities, established at the beginning of the 14th century, has historical roots even from that period and has been evolving incessantly since then. Obviously, one cannot endorse the idea that the constitutional organisation of the two feudal Romanian States met at the moment of their establishment the features of the modern concept of "constitutional organisation". First of all, in the 14th century, there was not a political-legal document under the form of a constitution having the meaning of a basic agreement between those who governed and those who were governed, which would have been adopted by a representative body and in which the way governing institutions were to be organised and to function, as well as the political-legal and social status of a person would have been accurately set down. Nevertheless, there was a set of customs, governing rules that settled, at least, the place and role of certain power structures within the management process, as well

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as certain of their relations with the governed people and, at the same time, certain social and political privileges granted by the State leader - Ruler, Voivode (*"Domnitor", "Voievod"*) - to certain representatives of the boyars, of the clergy, a.s.o

Such customs and practices of a constitutional nature regulated, for instance, the hereditary election of the Ruler and his legislative and executive powers, the regime of the nobles (*"boieri"* - boyars), the military or administrative obligations of certain subjects' categories, appointment to the military, administrative functions, etc.

Historians are in accord that the institutional structures of a constitutional nature, like ruling dignity, various functions or public dignities, as well as the relationships between the Ruler and the boyars reflected during the period we are dealing with features of some ruling principles of the Byzantine Empire[2].

Adopted since a relatively remote historical period, the principles of a constitutional essence that the Byzantine political organisation had – taken over in turn from the Western Roman Empire and adapted to new geographical, social – political, national, economic, religious and cultural realities – interweaved with autochthonous legal traditions and practices. The result of such a interweaving was a harmonious synthesis under the form of legal principles and constitutional customs applicable to the political organisation of the Romanian principalities (*"voievodate"*), to the relationships between the Ruler (*"Domnitor"* - supreme leader of the State) and the subjects, to the relationships among the two countries and the Sublime Porte and other States. Thus, like the autocratic Byzantine emperor, the Romanian Ruler had the life and death right with respect to his subjects, regardless of their social status, enjoyed *dominium eminens*, made appointments to public offices and revoked the appointed persons as he pleased. The Voivode had a supreme authority in military, judicial, administrative and legislative matters[3].

Taking over the idea of certain political institutions' establishment and governing models from the Byzantine Empire was due firstly to the influence of the orthodox Christianity the centre of which was Constantinople, the Empire capital. Thus, the Eastern Orthodox Church exerted not only a religious influence, but a political one too.

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[2] See in this sense V.Al. Georgescu *Bizanţul şi instituţiile româneşti până la mijlocul secolului al XVIII-lea (*Byzantium and the Romanian institutions until mid 18th century), Ed. Academiei, Bucureşti, 1980, p. 37-84, 126-153; Al.A. Buzescu, *Domnia în Ţările Române până la 1866* (Ruling in the Romanian Countries until 1866), Bucureşti, 1943, p. 143 and the following pages; Gh. Brătianu, *Sfatul domnesc şi Adunarea stărilor în Principatele Unite* (Ruling Council and the Assembly of estates in the United Principalities), Ed. Enciclopedică, Bucureşti, 1995, p. 13-33.

[3] See Treptow, Kurt W. , *A History of Romania,* The Center for Romanian Studies, Foundation for Romanian Culture and Studies, Iaşi, 1997, p. 83.

The two Romanian principalities' contact with the Western civilisation and Western political thinking was made especially by Moldavia through Poland's filter and the result was the inclusion of certain political conceptions of the Western Europe in the autochthonous idea system. Besides, it should be remarked that basic features of the Western feudalism, locally adapted, can be found within the political and social organisation of the Romanian principalities, too[4].

An important political – legal document reflecting the Western political thinking is "The Constitution" of the Phanariot Ruler Constantin Mavrocordato This document includes the social-economic and political reform programme initially contemplated by the Ruler for Wallachia. The procedure by means of which the reforms were submitted to debate within the Assemblies of estates from the two Romanian Countries shows their quasi-constitutional character. The Constitution was voted on February 7, 1741 and published under this title in the newspaper "Mercure de France" in July 1742[5]. The reform programme, contemplated by Constantin Mavrocordato within the Constitution – while he was ruling Wallachia – was implemented also in Moldavia whose Ruler he was between 1741 – 1743. In other words, Constantin Mavrocordato's Constitution was put into practice as a unitary conception in both Romanian States.

At the end of 18th century, the reformist current grew not only in Moldavia and Wallachia, but also in Transylvania. The social and political conception of Horea – the leader of a peasantry uprising against Transylvanian nobility - is noteworthy. This conception was included in the "Ultimatum" addressed to the noblemen in 1784 and comprised revolutionary social ideas (nobility's abolition) similar to those inspiring later the ideological programme of the 1789 French Revolution[6].

The generalised contact of the autochthonous constitutional customs with the constitutionalist current of the Western Europe, the modernisation of the constitutional organisation of Wallachia and Moldavia are connected at the end of 18th century to the involvement of these two countries in the frequent conflicts between Russia and Turkey – sometimes as a theatre of war. The option for

[4] Mention should be made here that the political document signed by the ruler of Wallachia, Leon Tomşa in 1631 [*Aşezământul lui Leon Tomşa (*The Leon Tomşa establishment"*)*] has similarities with *Magna Charta Libertatum* of 1215 and the *Golden Bull* of the Magyar King Andrew II and it was a real Chart of rights. The Romanian ruler, defeated by the local nobility and other social strata, bound himself through this document to recognize previous privileges that they had and he had violated, similarly to the English King John without Country who had proceeded the same way four centuries before.

[5] See I. Ceterchi (coordinator), *Istoria dreptului românesc (*History of the Romanian law*)*, 2nd volume, 1st Part, Ed. Academiei, Bucureşti, 1984, p. 23-24; C.G. Dissescu, *Dreptul constituţional* (Constitutional law), Ed. Librăriei Socec&Co, Bucureşti, 1915, p. 355-356; Al. Stourdza, *L'Europe Orientale et le rôle historique des Mavrocordato*, 1660-1830, Plon, Paris, 1913.

[6] D. Prodan, *Răscoala lui Horea* (Horea's uprising), 1st volume, Ed. Ştiinţifică şi Enciclopedică, Bucureşti, 1984, p. 440-443.

Western governing models becomes gradually stronger, leading even to the disregard of the Romanian constitutional customs, much more appropriate in certain situations than basic institutions of foreign inspiration. An important step in the constitutional evolution of the Romanian society at the beginning of 19th century is the adoption of the two Organic Regulations – real constitutional modern documents – that came into force the first one in 1831 in Wallachia, and the second one in 1832 in Moldavia. One of the basic constitutional principles embodied in those Regulations is the separation of the powers. The legislative power was entrusted to the National Assembly (*"Obşteasca Adunare"* – the parliament) and to the Ruler, the executive power was vested in the Ruler, while the judicial power was incumbent to the courts of justice, with the acknowledgment of certain prerogatives of the Ruler, whose relation with the judicial bodies was ensured by the ministry of justice. The Parliament (National Assembly) was unicameral. Its members were recruited among the landowners. The representative term of office of the two Assemblies was of five years. The Regulations provided the incompatibility of the office of minister (*"logofăt"* – the head of the Ruler's chancellery) and the one as Assembly member. Each Assembly was legally constituted in the presence of two thirds of its members' number. The President of each Assembly had a casting vote through which he solved parity cases. After their adoption, the laws were submitted to the Ruler in order to be sanctioned. Nevertheless, the latter had a veto right, hence he could refuse to sanction a law. At the same time, the Ruler had the right to dismiss the Assembly with the previous approval of the Protecting Power (Russia) and the Suzerain Power (Turkey). Besides the National Assembly, the two Organic Regulations provided for each principality the establishment of an Extraordinary National Assembly vested with the right to elect the Ruler.

The bourgeois-democratic revolution of 1848 gave a big boost to the autochthonous reformers aiming to assert before Russia and Turkey their political desiderata fufilment - first of all, the union of the two principalities, as well as social-economic emancipation of the population - and to impose modernization projects of the general law system, especially of the constitutional one. The political programme of the Moldavian revolutionaries, worked out at Braşov ("Our principles for the motherland reform") militated, among other ideas, in favour of the State organisation on the basis of the fundamental principles of the bourgeois-democratic Revolution from France. The Proclamation and the Programme of Wallachia's revolutionaries of 9/21 June 1948 were considered during that period as a Constitution. This is the way they were submitted to the approval of the Assembly from Islaz, and handed over to the Ruler Gheorghe Bibescu who signed them. Among other provisions, that constitutional document comprised the inclusion of the representative principle within the State organization, on the basis of which a General Assembly was to be constituted and

composed of representatives of all social strata, as well as the election of a Ruler for a five year term of office, whose candidacy was not restricted to an aristocratic social origin.

As a conclusion resulting from the constitutional evolution of the Romanian countries at the end of 18th century and in the first half of 19th century, mention should be made that, besides the presented acts of a constitutional nature, there was a big number of Constitution projects, programmes, memoranda for the reform of the State's organisation, petitions for rights. Those documents tended to inspire, facilitate or obtain the implementation of certain solutions for changing the social relations, and for the modern reorganisation of the State through the inclusion of political institutions legally consecrated, and resulted from the constitutional thinking and practice of the Western Europe of that time. This fact shows undoubtedly the openness of the Romanian nation even since then to the European civilisation[7].

Within the Romanian constitutional development, one can not neglect the 1858 Paris Convention according to which the established State organisation of the Principalities took into account powers' separation principle: the legislative power was entrusted to the Ruler, to an Elective Assembly and to the Central Commission from Focşani (common for both Principalities); the executive power was exercised by the Ruler (*"Domn"/„Hospodar*"); the judicial power was exercised on behalf of the Ruler by magistrates whom he appointed.

Article 37 of this Convention is particularly important since, in conformity with it, "the laws of a special interest for each principality shall not be enforced by the "*Hospodar*" (Ruler) until he has communicated them to the Central Commission that should assess their suitability to the constitutive provisions of the new organisation". In fact, a body dedicated to review law constitutionality, as well as the relevant mechanism for doing it, was established through this text. This is the first legal provision of the Romanian law history that refers to the political scrutiny of the laws' constitutionality.

In January 1859, both principalities elected Alexandru Ioan Cuza as Prince for lifetime. But, serious frictions between him and the conservative Elective Assembly, as well as between him and the Government appeared soon after his election because of the reform programme Alexandru Ioan Cuza had initiated following the advice given by the Prime Minister Mihail Kogălniceanu. This is why the prince dissolved the Elective Assembly on May 2nd, 1864, which is equivalent to a coup d'Etat. The same day, Cuza submits to a plebiscite the Developing Statute of the Paris Convention "*Statutul Dezvoltător la Convenţiei de*

[7] See Cristian Ionescu *Dezvoltarea constituţională a României. Acte şi documente 1741 – 1991* (Constitutional Development of Romania. Acts and documents 1741-1991), Ed. RAMO, Bucureşti, 2000.

la Paris". By means of this Statute an essential change within the content of the legislative power and within the way of its exercise is performed. For example, a bicameral system of the parliament organisation is decided and thus, a Senate (*"Adunarea Ponderatrice"* - Counterbalancing Assembly) is added to the Elective Assemby. According to Article 2 of the Statute, the legislative power is jointly exercised by the Prince, the Counterbalancing Assembly and the Elective Assembly.

2. The democratic Constitutions (1866 and 1923 Constitutions)

Following the abdication of the Prince Alexandru Ioan Cuza in 1866, the throne of the Romanian Principalities is offered to the German Prince Charles I, who will soon sanction the new Constitution of the country. The Constitution adopted in 1866 initiated a new constitutional period. Its most important feature is that the Romanian governing structures correlated entirely with the Western model of political management. Inclusion of the democratic parliamentary regime, consecration of a large series of public rights and freedoms, proclamation of the powers' separation principle, consecration of the hereditary monarchy, modernization of all the public administration, be it central or local, based on the constitutional principles, are defining features of that constitutional period.

The Romanian Constitutional system evolved up to the beginning of 20th century within the framework established by the 1866 Constitution. In 1881, Romania, which had got its independence in 1877, is declared Kingdom.

The last stage of the first world conflagration witnessed a strong movement of national and political emancipation of the European peoples. The documents of the referenda concerning the unification of the three historical Romanian provinces with the Kingdom of Romania were ratified by King Ferdinand through decrees[8]. The decisions of unification became by means of the ratification an integrated part of the Romanian public law. The union of the three historical provinces with Romania speeded up the adoption of a new fundamental law. The new Constitution of 28 March 1923 was sanctioned by the monarch and promulgated on March 28, 1923. Constitution included some of the modern principles of parliamentary governing, which were based on the neoliberal doctrine of that time, namely: intervention of the State power in the social life; limitation of the individual property in the society's interest; citizens' rights

[8] The decree of March 27, 1918, regarding the union of Bessarabia with Romania, published in Monitorul Oficial no. 8 of April 10, 1918; the Decree no. 3631 of December 11, 1918, concerning the Union of Transylvania and of the other counties from Hungary that were inhabited by Romanians with the Kingdom of Romania, published in Monitorul Oficial no. 212 of December 13, 1918; Decree no. 3744 of December 18, 1918, on the union of Bukovina with the Romanian Kingdom, published in Monitorul Oficial no. 217 of December 19, 1918.

conceived as social functions. Their inclusion in the Constitution was beneficial and, in fact, it represented the only viable alternative of the constitutional organisation of a State governed by the rule of law in a period and in a geo-political region affected by totalitarian options of a fascist and communist nature. The executive power was entrusted to the King, but exercised on his behalf by the government that held the real power of decision-making by means of the prime minister.

The Constitution preserved the extended prerogatives conferred on the head of State under the 1866 Constitution. The Court of Cassation in united divisions was vested with the judgment as to the law constitutionality.

3. The authoritarian regimes (1938 – 1944)

The democratic governance based on the 1923 Constitution was followed by two successive political regimes that had an authoritarian character from a formal viewpoint. Romania had to deal internally and externally with instability phenomena and the influence sphere change, hence it was obliged to adapt its constitutional framework and its mechanisms of political management to the new internal realities. The essential feature of this adaptation is the constitutional framework change in order to vest the head of the executive power – the monarch and, subsequently, General Antonescu – with very extensive prerogatives within the State management. On February 10, 1938, Charles II set up an authoritarian governance ("personal political regime"[9]). In the Proclamation of February 20, 1938, Charles II presents the "New Constitution" to the people. In this Proclamation, the main contemplated objectives were set forth: better establishment of citizens' duties and rights; increase of the government authority and independence; better representation of the peasants, workers and intellectuals within the parliament, a.s.o.[10]. The electorate was convoked to give their opinion through a plebiscite on a new Constitution[11]. The Constitution of 27 February 1938 has the features of a Constitution–Statutes. It sets down some substantial changes of certain constitutional principles out of which we mention the following:

a) increase of the individual factor's (citizen's) limitation in favour of the extension of the social community's factors (the State);

[9] On the same day, he informed all the political party leaders, except the ones of the Iron Guard and the National Christian Party, about this decision.

[10] See A. Rădulescu, *Noua Constituţie* (The New Constitution), Bucureşti, 1939, p. 17 and the following ones.

[11] See the High Royal Decree no. 902 of February 20, 1938, in Monitorul Oficial Part I, no. 42 of February 20, 1938.

b) concentration of the political power in King's hands (the monarch exercised the legislative power through the National Representation established on corporate, professional bases; the government was appointed and revoked by the King; the government was not accountable to the parliament[12].

The King was declared "the Head of State". The procedure of exercising the legislative power is changed in favour of the King. The executive power gets primacy over the legislative one[13]. The Government, appointed and revoked by the King, assumes political responsibility and is accountable to him. The monarch was vested with the right to issue decrees having the power of a law "in any respect" during the period when parliament was dismissed, as well as during the interval between parliamentary sessions. The decrees were to be submitted to the assemblies for ratification at their next session. In the 1940 summer Romania is compelled by Germany and Soviet Union to cede certain territories to other States.

Internally, the political regime of Charles II loses the support initially given by the political parties. The legionary movement becomes every day stronger and it is bitterly opposed to Charles II whom accuses of internal political chaos.

At the end of August 1940, Romania experienced a serious internal political crisis, aggravated by its isolation at the international level and the consequences of having ceded certain territories, which it was compelled to following the concerted pressures Germany, Soviet Union and Italy exerted over it. In autumn 1940, King Charles II is forced to abdicate in favour of his son, Michael. The 1938 Constitution is suspended and the legislative bodies are dissolved. General Ion Antonescu becomes Prime minister, is vested with full powers for the State management, and reduces the royal prerogatives to minimum decorative functions[14]. In his position of a real head of State, the prime minister concentrates in his hands the executive power and the legislative one as well. The authoritarian political regime of General Ion Antonescu was removed on 23rd August 1944 through the General's arrest on King Michael's order.

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[12] P. Negulescu, G. Alexianu, *Tratat de drept public* (Treatise of public law), *vol 1*, p. 230-231, Editura Casa Şcoalelor, Bucureşti, 1942.

[13] See also G. G. Mironescu, *Inovaţiile Constituţiei din 1938* (Innovations of the 1923 Constitution), p. 23-24, Analele Facultăţii de Drept din Bucureşti, nr. 2-3/ 1939.

[14] Royal Decree no. 3053 of September 5, 1940 on vesting the Prime Minister with full powers and on reducing royal prerogatives, published in Monitorul Oficial, Part I, no. 205 of September 5, 1940.

4. Failure of the attempts to return to the democratic political regime (1944 – 1947)

After removing the personal (authoritarian) regime of Antonescu through the coup d'etat of August 23, 1944, several political and legislative documents (some of them being of a constitutional nature) were adopted and created a new framework for the exercise of the political power.

Removal of Marshal Antonescu from the State management and implicit abandonment of the constitutional framework consecrated by the decrees of September 1940 raised the natural question of elaborating, at least as a transitory solution, a new constitutional framework, required in order to organize and exercise the power[15]. The day of the new government creation (August 23, 1944), the political parties represented in it agreed on the new constitutional framework[16] and at least on one of the embodied principles: the institution of a democratic regime "where public freedoms and citizens' rights shall be guaranteed and observed"[17].

But war continuation did not allow the legislative bodies to be convened (as a Constituent Assembly). Besides they had been dissolved by Charles II in 1940. Therefore, a novel solution is adopted: previous constitutional provisions, abrogated in February 1938, came again into force. Under those circumstances, King Michael signed the Decree-Law no. 1626 of August 31, 1944 by means of which the 1923 Constitution came again into force, but not in totality. According to the above-mentioned decree, the legislative power was exercised by the King upon the proposal of the Council of Ministers. This provision granted Government a significant power to regulate the social relations. Parliament was to be organized in the future with the aid of a decree issued on the grounds of a Government decision. The Royal Decree of August 31, 1944 legitimized from the legal (constitutional) point of view the coup d'état of King Michael[18] and made that a Constitution abrogated in 1938 by another basic law, that had been suspended in its turn in September 1940, comes again into force. The procedure used by the

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[15] See T. Broşteanu, *Actul de la 23 August 1944 şi urmările lui* (The Action of August 23, 1944 and its consequences), Bucureşti, 1944, p. 9 and the following ones.

[16] See the statement Lucreţiu Pătrăşcanu made about "the history of drawing up the Royal Decree no.1623 of August 31, 1944 that created the respective constitutional framework, as well as about the stand taken on this occasion by the representatives of the political parties of the Democratic National Bloc", in the newspaper "Libertatea" of November 24, 1946.

[17] Statement of the Government established on August 23, 1944 in the work *23 August 1944. Documente* (23rd August 1944. Documents), vol. II, Editura Ştiinţifică şi Enciclopedică, Bucureşti, 1984, p. 417.

[18] See in this sense G. Costi, *Necesitatea elaborării unei noi constituţii* (The necessity to draw up a new Constitution), Bucureşti, 1945.

Government and the constitutional actor - the King - for issuing the Decree of August 31, 1944, as well as its content obviously departed from the classic constitutional procedure: a Constitution is adopted, revised, abrogated by a body meeting the features of a constituent power, whereas neither the King nor the Government met such features. On September 13, 1944, an Armistice Agreement is concluded between Romania and the Allied Powers, but, in fact, it represents a capitulation through which drastic and unjust terms are imposed to Romania - former aggressor of these States. Mention should be made that, when assessing the Romanian constitutional life of that period, one should start firstly from the international status of Romania, as a former enemy of the United States of America, United Kingdom and Soviet Union. Such a country that signed the armistice accepting its clauses without conditions could not enjoy full sovereignty when adopting the constitutional legislation, when it came to the administrative field or to the political activity itself. In other words, Romania was obliged to obey the terms imposed through the Armistice Agreement, even if those ones contravened the Constitution[19]. All the political parties were aware of this obligation. Thus, in order to implement the Agreement, the Government appointed by the King on August 23, 1944 was constrained to adopt certain legislative measures contravening the Constitution that had come again into force. This way repressive measures the Soviet Union could have taken against the country subject to a military occupation regime were avoided. On March 6, 1945, Russia imposes Doctor Petru Groza's Government that continues the series of actions planned outside the country with the support of the Communist Party, and of some internal political and social powers manipulated by it for marginalizing the democratic political parties and the monarchy. Groza's Government was deemed by King Michael to be not representative and, consequently, illegitimate, although he had signed the Government vesting decree[20]. That's why the King

[19] Certain laws adopted after August 23, 1944 that observed the Armistice Agreement had constitutional provisions on the basis of which the courts of law passed sentences contested as unfounded and unconstitutional. See in this sense the unconstitutionality reasons submitted by Ion Antonescu in relation with his sentence to death in the work *Procesul mareşalului Antonescu. Documente* (Trial of Marshal Antonescu. Documents), vol. II, Editura Europa Nova, Bucureşti, 1995, p. 373-378.

[20] See the Government list in the work *23 August 1944 (Documente)* [23rd August, 1944 *(*Documents*)*], vol. IV, Editura ştiinţifică şi enciclopedică, Bucureşti, 1984., p. 249-250. The Communist Party held the leadership of four ministries; the Liberal Party (Tătărăscu) – three ministries and the Government vice-presidency; the Social-Democratic Party – three ministries; and the national peasant grouping (Anton Alexandrescu) – one ministry. Other ministries's leadership was divided between Ploughmens' Front and the Democratic Priests' Union.

refuses to co-operate with its ministers and does not sign the decrees prepared and approved by the Council of Ministers between 21st August and December 1945 [21].

On July 15, 1946, Decree no. 2219 on the elections for the Assembly of Deputies was adopted (Law no. 560/1946[22]).

On the grounds of Law no. 560/1946, in the autumn of the same year, general elections are organized and the winner, through electoral frauds, is the Democratic Parties' Bloc manipulated by P.C.R. (Romanian Communist Party). The two historical parties (National Peasant Party and National Liberal Party) got together 36 mandates; the Democratic Peasant Party (Dr. Lupu) obtained other two mandates. The falsified results of the elections strengthened very much the governmental positions of the Romanian Communist Party[23]. King Michael, ignoring the electoral frauds perpetrated by the parliamentary majority, opened the Parliament, thus legitimizing the fraudulent procedure of the elections.

Next summer, the National Peasant Party is dissolved by the Government. Shortly after, the National Liberal Party left the political life stage deeply affected by internal upheavals and, afterwards, it dissolved itself. At the beginning of November 1947, the Assembly of Deputies, which formally reflected the image of country's political forces, adopted a non-confidence motion against the Minister of Foreign Affairs, namely Gheorghe Tătărăscu, leader of a dissident wing of the National Liberal Party. As a result, the liberal ministers and undersecretaries quit the Government.

This way, the Romanian Communist Party, enjoying support of outside the country, took practically over the State power through frauds, abuses, judicial frame-ups, through the manipulation of the "public enthusiasm" of social categories not favoured from the economic point of view. By means of several measures of administrative and political nature, the Romanian Communist Party forces King Michael, including his family, to abdicate the Throne of Romania. Therefore, it becomes possible to change the governing form. On the abdication

[21] That refusal was characterized within the socialist historiography as "the royal strike". In fact, it was an attempt of the King to draw the attention of the three major powers on the regression of the Romanian parliamentary democracy, caused by the Romanian Communist Party. At the Moscow Conference held in December 1945, the three victorious powers decide the inclusion in Groza's Government of one representative of each historical party, as well as the general elections' organization. Under these circumstances, King Michael resumed his relationship with the government. See also Gh. Ionescu, *Comunismul în România* (Communism in Romania), Ed. Litera, Bucureşti, 1994, p. 145-152.

[22] See Monitorul Oficial al României, Part I, no. 161 of July 15, 1946.

[23] The number of the communist ministers rose from 6 to 8 and that of the undersecretaries of state – from 4 to 6. The National Liberal Party had 4 ministries and the government's vice-presidency, as well as 3 undersecretariats; the Social-Democratic Party held 4 ministries and 2 undersecretariats; the Ploughmens' Front had the government's presidency and 3 ministries, as well as one undersecretariat. See in this sense, the newspaper „Scânteia" of December 1st, 1946.

date (December 30, 1947), the Assembly of Deputies is convened and the Law on the creation of the People's Republic of Romania[24] is adopted. Through that law, the State's governing form was changed without observing the constitutional procedure for the Constitution revision. Decree no. 3 of January 8, 1948 is added to that Law in order to establish the prerogatives of the Presidium of the People's Republic of Romania[25].

The Decree of January 8, 1948 laid down a new constitutional procedure for exercising the prerogatives of the body fulfilling the functions of the head of State.

This way, the parliamentary democracy established in Romania almost a century before ended. Law no. 363/1947 for the creation of the People's Republic of Romania removed the principle of the power separation within the State, made possible that, in future, a political party subordinates not only the parliamentary life, but also the highest executive structures of the State. The same law consecrated the new governing form, abrogated the 1923 Constitution, laid down another procedure for the legislative power exercise (procedure specific to the republic); it instituted a body for exercising the executive power (the Presidium of the People's Republic of Romania, as a collegiate body – head of State -, to which the Government was subordinated[26]).

On the law adoption date, the transitory constitutional regime created on August 31, 1944 ceased its existence. Before the adoption of a new Constitution, the legislative power was to be exercised by the Assembly of Deputies until its dissolution and the establishment of a Constituent Assembly, while the executive power was to be exercised by the Presidium of the People's Republic of Romania

[24] Law no. 363/1947 on the creation of the People's Republic of Romania (published in Monitorul Oficial, , Part I, no. 300 bis of December 30,1947) was considered unconstitutional in the speciality literature since:

a) a simple ordinary law changed the governing form;

b) that law is the consequence of an abusive action against the King;

c) the law had been adopted without observing the usual legislative procedure for an ordinary law;

d) an ordinary law could not abrogate the 1923 Constitution;

e) the parliament was not constituted as a Constituent Assembly being able to adopt principles and norms of a constitutional content. (See E. Focşeneanu, *Istoria constituţională a României. 1859 – 1991* (Constitutional history of Romania. 1859 – 1991), p. 103-109, Editura Humanitas, Bucureşti, 1992)

[25] Monitorul Oficial, Part I, no.7 of January 9, 1948.

[26] Through the Decision of the Council of Ministers no. 3266 of May 22, 1948, on the grounds of Article 41, item 5 of the Law of January 19,1939 related to getting and loosing Romanian nationality, as well as on the grounds of Law of December 9, 1940 on the withdrawal of the Romanian nationality of the persons who are abroad and act contrary to the obligation of loyalty towards the country, the Romanian nationality (citizenship) of King Michael was withdrawn (Monitorul Oficial, Part I, no. 122 of May 28,1948).

that had the prerogatives of the head of State laid down under Decree no. 3 of January 8, 1948[27].

The socialist Constitutions of 1948, 1952 and 1965 created a constitutional framework characteristic of the totalitarian political regime.

5. The socialist political regime (1948 – 1989)

The Romanian socialist constitutional regime included all the features of the totalitarian governing systems of a Marxist nature, to which it gave a constitutional form adequate to the concrete –historical conditions and to the political realities existing in a certain stage of the State's evolution.

Among them, mention should be made of the following:

a) abandonment of the principle of the three power separation and its replacement with the principle of power uniqueness and comprehensiveness;

b) replacement of political pluralism with the monopoly of a sole party;

c) subordination of the entire State apparatus to the unique party;

d) concentration of the State's legislative and executive decision power into the hands of a limited elite and the exercise of its influence over the judicial power, which equated with the imposition of the proletariat's dictatorhsip;

e) restriction of certain rights and freedoms of the citizens and individual's subordination to the State;

f) presentation of group interests as social interests of all the society and orientation of all social forces' efforts towards their achievement, but for the profit of the minority political group.

g) institutionalization of the State's intervention and control over the whole economic, social-political life, and consolidation of its repressive characteristic feature during the first stages of the "socialist construction";

h) creation of a new kind of "democracy" considered in a demagogic way as being superior compared to the Western parliamentary democracy and attracting for the sake of appearances the citizens to the political management at central and local levels.

On April 13, 1948, Great National Assembly adopted the country's first socialist Constitution, which, from the legislative point of view, meant that a ruling elite, concentrated at the top of the communist party, held the reins of the political power. The 1952 Constitution subsequently consecrated from the normative perspective the almost entire removal of the contradiction between the economic base (a mixed one) and the authoritarian, even dictatorial characteristic feature of the political power's exercise.

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[27] Monitorul Oficial, Part I, no. 7 of January 9, 1948.

If the 1948 Constitution consecrated that the socialist governing forces held the entire political power, but, at the same time, it consecrated the private (capitalist) property of certain production means, the new fundamental law consecrated another economic reality: the State was the only owner of the main production means, which equated with the entire removal of the bourgeoisie representatives from the power. The act of dispossessing was accomplished based on Law no. 11/1948 on the nationalization of the main production means, as well as based on subsequent laws having the same purpose. It was practically an abusive, unjust nationalization with multiple social-human implications. The Constitution did not bring essential changes with respect to the content of the principles written down in the 1948 fundamental law. Nevertheless, it introduced a new principle, of a Soviet nature: the leading role of the unique party (Article 86). According to the conception of the Constituent Legislator, the basis of the people's power was the alliance of the working class with the peasantry.

Despite the fact that the 1952 Constitution, like the one of 1948, did not expressly refer to the institution of the proletariat's dictatorship, on the grounds of the constitutional provisions' analysis, of other normative acts, one could appreciate that it was indirectly reflected at the constitutional level. Article 11 paragraph 2 of the Constitution stipulated that "the democratic people's State shall perform constantly the policy of limiting and removing the capitalist elements". The 1965 Constitution represented a distinct stage within the constitutional organization of the socialist State. Compared to the two previous Constitutions, the 1965 Constitution instituted a change within the political strategy of the ruling force, namely it tried to liberalize the social life in a certain way. Its provisions are not as restrictive as the 1952 Constitution ones, the Romanian State being a State "of working people from towns and villages". The citizens' rights and freedoms get a liberal wording, their full exercise being guaranteed by the State. The equality of all the citizens' rights is instituted and guaranteed regardless of nationality, race, sex or religion. Title II of the Constitution stipulates, generally, the entire sphere of citizens' rights and freedoms acknowledged in the international documents, which gave the fundamental law the aspect of a so-called modern and democratic Constitution. As a matter of fact, the socialist political regime was incompatible with the real and actual exercise of the respective rights and freedoms. Since it kept the principle of the sole party's monopoly and further excluded democratic pluralism, since it confined the economic market to the framework of the centralism and did not allow ideological diversity, the 1965 Constitution kept the essential, fundamental characteristic features of a socialist constitution.

From the point of view of the relations among the bodies that the fundamental law vested with the exercise of the power, Romania was a parliamentary republic under the Constitution of August 1965. In 1974, the office of President of the

Republic is instituted, and the Great National Assembly elects Nicolae Ceauşescu to it. The President elected by the Great National Assembly exercised the prerogatives of the head of State and represented the State power within the country's internal and external relations. The proposal for the candidate to the presidential function was practically made by the supreme leading body of the communist party. The Government was politically accountable to the Parliament (Great National Assembly). The President of the Republic had a similar responsibility.

The powers of the Parliament were limited, the legislative body being allowed to vote the bills prepared and approved by the leading structures of the sole party.

6. Constitutional changes after the Revolution of December 1989

Victory of the spontaneous people uprising of December 1989 entailed the change of the socialist constitutional framework and the adoption of a new Constitution in 1991. The change of the political regime, of the ideological doctrine and of the institutional framework for the power exercise represented clear, fundamental goals of the revolutionaries from the very outset. An ad-hoc organisational nucleus – Council of the National Salvation Front – was created simultaneously with that change. That Front took upon itself tasks concerning the State management and the achievement of the respective goals. According to the Communiqué to the press, the Front set out within its political programme, among others, the following targets to meet:

a) to abandon the leading role of a sole party and to establish a democratic pluralist governing system;

b) to organize free elections;

c) to separate the three powers.

At the same time, the creation of a committee was provided for in order to draft a constitution. The same document changed the name of the country into Romania. As regards its nature, the Communiqué is exclusively political, since it was written down by a revolutionary body, created in an ad-hoc manner, without using a formal constitutional procedure. Firstly, that document meets the characteristic features of any communiqué: it announces certain general information (paragraphs 1 and 2). Secondly, it lets know the creation of the Council of the National Salvation Front – a revolutionary body having a social composition of broad range, relying on the Romanian army and gathering "all the healthy forces of the country, regardless of nationality, all the organizations and groupings that have bravely risen to defend freedom and dignity during the totalitarian tyranny years"[28].

[28] Monitorul Oficial al României, Part I, of December 22, 1989

The Communiqué specified at the end that "this is a first form of a platform-programme of the new body of the State power in Romania"[29].

This specification is very important in the sense that it excludes the legal characteristic of the said document. Consequently, its content has an exclusively political characteristic; as for the dissolution of the socialist power structures, that document limits itself to ascertain an existing situation: the new body (F.S.N. - National Salvation Front), which has the characteristic features of a political body that are not denied, enjoys a large social basis. Therefore, the Front's political legitimacy cannot be contested. Nevertheless, that body had not the right to make decisions related to changes in the State apparatus, in the mechanism of the State's management that could affect not only the 1965 Constitution content, but also its essence. Instead, the Front's Council had the competence to make such changes.

The political changes enunciated through the Communiqué were legally confirmed by the Decree-Law no. 2/1989 on the establishment, organization and functioning of the Council of the National Salvation Front[30]. The above-mentioned Decree-Law repeats a series of political enunciations from within the Communiqué and gives them a legal form of a quasi-constitutional value: establishment of the country's new name (article 1); establishment of the Front's local councils as local bodies of the power, hierarchically subordinated to the F.S.N. Council (article 6); dissolution of the former political regime's power structures (article 10). Through this provision, the model consecrated within the socialist constitutions in relation to the State power structure at the highest (central) level and at the local level is maintained. Furthermore, Decree-Law no.2/1989 established the country's governing form – the republic – (article 1, paragraph 2), as well as the national flag (the traditional three-colour flag without coat of arms (article 1, paragraph 3). The same normative act provided also for the prerogatives of the Front's Council (article 2), its organisation (article 3) and its working way – in sessions and with the aid of 11 speciality committees (article 4), as well as for the prerogatives of the President of the Front's Council. The Council of the National Salvation Front had the right to issue decrees having the

[29] Ditto.

[30] Decree-Law no. 2/1989 contains a series of oversights, which proves – like in the case of the Royal Decree of August 31, 1944 – that, during revolutionary periods, when fundamental changes in the State's life are brought forth, people work under the pressure of the historical moment and neglect the scientific rigour of the legally right wording. Professor Tudor Drăganu appreciates that, during the first 5 days since the Revolution beginning, the Council took "governing measures by means of several Communiqués, and only later it begun to use for this purpose the legal way of decrees, appropriate to its State activity." [Tudor Drăganu, *Dreptul constituţional şi instituţii politice* (Constitutional Law and political institutions), Ist volume, p.314-315, Editura Lumina Lex, Bucureşti, 1998]

power of a law and decrees, to appoint and revoke the prime minister, to approve the State budget. The Council's President had, among others, the prerogative to represent Romania in the international relations, to conclude international treaties, to grant Romanian citizenship. None of the prerogatives conferred on the president of the Council of the National Salvation Front gave him the possibility of involving himself in the country's internal management. The first wide-reaching Communiqué of the Front's Council specified that its goal was to set up democracy, freedom and dignity of the Romanian people[31]. The power structures of the socialist State (Great National Assembly, State Council, President of the Republic) were dissolved. All the power was taken over by the Council of the National Salvation Front.

It results out of the Decree-Law that the new body, Council of the National Salvation Front, was vested with the Parliament's prerogatives, while the Council's President was vested with the prerogatives of the head of State.

Among its prerogatives, the Council had to:

a) issue decrees having the power of a law and decrees;

b) appoint and revoke the Prime minister, and approve Government's composition on the Prime minister's proposal;

c) appoint and revoke the president of the Supreme Court of Justice, as well as the Republic's attorney general;

d) regulate the electoral system;

e) appoint the commission for drawing up the draft of the new Constitution;

f) approve the State budget;

g) make promotions to the ranks of general, admiral, marshal, as well as put them in reserve and recall them to active duty;

h) ratify and denounce international treaties:

i) declare state of emergency, general or partial mobilization and state of war;

The prerogatives exercised by the President of the Front's Council were the following:

a) to represent the country in the international relations, to conclude international treaties;

b) to appoint and recall ambassadors;

c) to accredit diplomatic envoys of other States;

d) to grant Romanian citizenship, to accept renouncement of citizenship and to withdraw Romanian citizenship;

e) to approve the establishment of the domicile of other States' citizens in Romania;

f) to grant asylum;

[31] Communiqué addressed to the country by the National Salvation Front, in Monitorul Oficial al României, Part I, no. 1, of December 22 , 1989.

g) to approve adoption of minors, foreign citizens by Romanian citizens, as well as adoption of minors, Romanian citizens by foreigners.

In practice, no one of the mentioned prerogatives allowed the head of State to involve himself in the country's management.

The legal framework for putting into practice the principle of political pluralism, set forth in the Communiqué of the Council of the National Salvation Front of December 22, 1989, is created through the Decree-Law no.8/1989 on the registration and functioning of political parties and public organizations[32]. The new power took over a part of the central State apparatus with strict functions within the management of the social-economic activity. A new legal framework for the Government's constitution, organization and functioning was adopted[33]. According to the new regulation, the Government's composition was approved by the Council of the National Salvation Front on the proposal of the Prime minister who in his/her turn was appointed by the same body. The entire Government and each one of its members were accountable to the Council of the National Salvation Front, which had at the same time the right to cancel Government's decisions when it considered that those ones contravened the laws and decrees in force or people's interests.

Following the decision of the National Salvation Front to turn into a political structure, the organization way and composition of the Council of the National Salvation Front is changed according to the parity principle (half of the number of the Council's members of that date, to which representatives of the political structures and of the national minorities' organizations co-opted by the Council are added in the same proportion). At the same time, the name of the Council of the National Salvation Front was changed into Provisional Council of National Union (CPUN). The new body took over the functions and prerogatives of the former Council as such[34].

7. Stages of the preparation and adoption of the 1991 Constitution

The need to adopt a new Constitution in Romania was engendered first of all by the character of the fundamental changes produced within the country's political life in December 1989. These changes concerned not only the political regime reflected in the 1965 Constitution, but also the political institutions

[32] Monitorul Oficial al României, Part I, no. 9 of December 31, 1989. Certain parties (for instance UDMR – Magyar Democratic Union of Romania) were established as associations on the grounds of Law no. 21/1924.

[33] Decree-Law no. 10/1989 on the constitution, organization and functioning of Romania's Government, in Monitorul Oficial al României, no.9 of December 31, 1989.

[34] Decree-Law no.81/1990 on the Provisional Council of National Union, in Monitorul Oficial al României no. 27 of February 10, 1990.

through which governance had been accomplished, namely the Parliament, the President of the Republic, the State Council and the Government, as well as the local public bodies of the administration.

The revolutionary action aimed at removing all the power structures was very profound and involved not only the cessation of the respective authorities' activity, but also the removal of the related infrastructures and of the respective personnel, since rebuilding the State apparatus on the basis of a new philosophical and political conception, and of a new popular legitimacy was not possible within the constitutional framework adopted in 1965, even if it had been revised. Furthermore, Romanian nation, the entire Romanian people, all the social classes and categories, which were hostile to the political marxist governing conception and to the communist ideology, were in favour of a new fundamental law adoption and not of the revision of the one existing when the revolution was triggered off.

In March 1990, the Provisional Council of National Union adopted the Decree-Law no.92/1990 on the election of the Parliament and of the President of Romania[35]. Article 8 of that normative act – considered as a "mini-Constitution" – provided that the Assembly of Deputies and the Senate - the two Houses of the new Parliament resulted from the elections of May 20, 1990 - were to constitute by right, in a joint meeting, the Constituent Assembly with a view to drawing up and adopting the new Constitution of Romania. At the same time, Decree-Law no. 92/1990 provided under Article 82, paragraph 1, letter d) that the President of Romania – institution re-established through the same normative act – would have the right to dismiss the Constituent Assembly with the consent of the Prime minister and of the presidents of the two Houses, in case the Assembly had not adopted the Constitution within 9 months. The said Decree-Law provided also that the Constituent Assembly should be by right dismissed if it had not adopted the country's new fundamental law within 18 months at the most since its establishment date.

In order to fulfil its Constituent role, the Assembly elected a new Commission for drawing up the Constitution draft. That Commission was composed of deputies, senators and experts in constitutional law and in other social-humanistic sciences. Designation of the Constituent Assembly's members for that Commission observed as much as possible the political structure of the two Houses of the legislative body. During a first stage, the task of the Commission for drawing up the future Constitution draft was to word its principles, to determine its chapters' structure and to submit the entire draft to the Constituent Assembly for its approval. During a second stage, after getting the approval of the draft, the Commission had to write out the entire text of each chapter that was

[35] Monitorul Oficial al României, Part I, no. 35 of March 18, 1990.

going to be submitted afterwards to the Constituent Assembly with the aim of being debated and approved. In the first stage, the Commission prepared the Constitution's theses that, in fact, were "a kind of preliminary constitutional draft". Those theses were not limited to the preparation of the draft's "principles and structure by chapters", but included even its quasi-finished texts. Such a solution exceeding the mandate of the Commission entailed, among others, the reduction of the term scheduled for drawing up the draft, because the preparation of the theses, and, respectively, their debate and approval within the Constituent Assembly lasted very long. Consequently, the period for writing out the draft itself shortened too much.

The Constitution draft itself, grafted, in fact, onto the theses debated and approved by the Constituent Assembly, was submitted to the approval of the latter by means of a roll call voting. For its adoption, a qualified majority of two thirds out of the total number of deputies and senators was necessary. The Constitution was adopted on November 21, 1991. After its adoption, it was submitted to the people's approval through national referendum. It came into force on the date of its approval through a national referendum. On the same date, the socialist Constitution of August 21, 1965 was formally abrogated.

A wide range of internal realities and requirements of the transition process into a democratic political regime is reflected within that Constitution. Among them, we mention as examples the following: restructuring the whole State apparatus on the grounds of the power separation principle and of the balance among them; connection of the State policy and activity to the accomplishment of society's general interests conceived as interests of the entire people; renouncement to the principle of a sole party's monopoly and institutionalization of political pluralism; consecration of the principle according to which "no group and no individual may exercise sovereignty in own name"; renovation of the governing institutions in conformity with universal democratic standards (realities and political requirements); removal of centralism from the economic life and introduction of the mechanisms and principles of the market economy; connection of the legal regime of the property to the market economy; ensuring the social protection of the citizens, particularly of certain disadvantaged categories (realities and economic and social requirements); defence of the value of the national culture; guarantee of the national minorities' cultural identity (realities and cultural requirements); State's national character; existence of national minorities on the country's territory (national realities); overwhelming majority of orthodox Christian believers within the whole population of the country; cults' autonomy in relation with the State; religious cults' equality (religious realities).

Amongst the international relations reflected in the Constitution, we mention the following: the obligations taken over by Romania through international treaties, the requirement of observing the universal standards on human rights.

The Constitution of Romania is a rigid fundamental law, its revision implying formal procedures difficult to realize without reaching a qualified majority out of the number of deputies and senators. The Constitution was revised in 2003.