

CONSTITUTIONAL EVOLUTION OF ROMANIA

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The historic path of a state is reflected in the legal evolution of its Fundamental Law. Since the establishment of a set of principles of organization and functioning and from a wide range of institutions, mechanisms, instruments for regulating the exercise of state power and guaranteeing citizens' rights and obligations, the Constitution is a reference in explaining the level of modernity of a state. Moreover, the state existence of a society implies the existence of an authority above social existence. This authority comes from the authority he is leading. Historical experiences have given birth to empires, dictatorships, and autocracies that raised an obstacle to human freedom. Given these historical trials, the Constitution has become an element of regulating the relations between the political leaders and the citizens, establishing the necessary rules in order to make a certain order in the society.

In doctrine, establishing a Constitution is assimilated to an event of the society, usually a victory, a revolution, a change, an adaptation to new political realities [1].

In order to understand the concept of the Constitution, we must consider the existing relationship between the idea of the social contract and the principle of the separation and balance of powers in the state. On the one hand, by virtue of the social contract, the people, based on the principle of sovereignty, have the right to be the one who designates the state authorities, but also the one who can denounce the social contract, on the basis of which he has invested the political power. On the other hand, the principle of separation and balance of power in the state certifies that the political power must not be held by the same authority, but must be distributed among state bodies.

Any modern state has a Constitution reflecting the organization of public authority which manages the relations of authority,, who is involved in the society management. In other words, the institutionalization of state power is analyzed from the point of view of the form of government, the state structure and the political regime established by the Constitution of the respective state. In a narrow sense, the Constitution of a State hierarchies the powers and attributions of state

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institutions as a guarantee of good governance and the fundamental values of society, at the core of which are human rights and freedoms [2].

The delimitation of the old-style political regimes has been explicitly enshrined in the fundamental laws of the states. Thus, in the preamble of the United States Constitution (1787) the fundamental principles are laid down under which the American state was to develop: the establishment of justice, the assurance of inner peace, the provision of common defense, the development of general well-being and ensuring the benefits of freedom [3].

On the European continent, the Declaration of the Rights of Man and the Citizen of the French Revolution of 1789 stated that "A society in which the observance of the law is not assured, nor the separation of powers defined, has no constitution at all." Indeed, any state is governed by a set of rules, but only democratic principles and values can be codified in a single document, as a Fundamental Law, which achieves a rational, equal and non-discriminatory balance between individual interests and public interest.

Therefore, the Constitution, in its universal form, limits the concentration of the public power and combats the misuse of power, protecting the fundamental rights and freedoms of man and citizen. In doctrine, it was appreciated that the Fundamental Law represents the next natural course of the "exercise of sovereignty"[4] embodied in a "norm that includes the principles relating to the organization of the state and the balance between the different powers of the state as well as human rights" [5].

As a rule of conduct, the Constitution requires that "a fundamental political and legal foundation which, reflecting and consolidating the conquests of the people, designing the defining directions of the future evolution of society, perpetuates the acquisition and exercise of state power, the new social-economic and political structures, as well as the fundamental rights and duties of citizens [6]. According to this interpretation, the Constitution has rather a political, dynamic character, keeping pace with economic, political, social and legal changes in a state. The Constitution is an event whose birth coincides with the creation of a state's history based on social realities. The Fundamental Law is not an indication or a guideline, but rather a mandatory, legal commandment that springs from the public authority invested with legislative power and punishable by public enforcement.

The current and dynamic character of the Constitution lies in its primordial role of producing in social life the effects for which it has been adopted and it has to be effectively enforced. On the other hand, the concrete character of the Constitution lies in the fact that it cannot ignore the space-temporal determinations in which people, objects and phenomena exist and manifest themselves, which is why it is analyzed according to the factors involved in the process of its creation. Last but not least, the Fundamental Law has a purely social aspect in regulating

social relations, in their historical and social dynamics. Socially, in social relations, truth as value remains universal through structure, being understood in its historical and social dynamics.

In this regard, the Constitution is the expression of a triple connection, determined by the eternity of the social order through the intervention of the public power. First of all, the establishment of social order is a popular imperative, ensuring its realization being related to the establishment and organization of public power. The Constitution aims to regulate, in a democratic state, the relations between the people and the public authorities, stating the limits of state authority.

The political nature of the Constitution lies in the will of the people, and its legal nature in its inner force, namely in the constitutional rules stating "the authorities that will achieve the governance and the relations between them" [7]. Moreover, constitutional supremacy reflects the values of a state, the political regime, the form of government, and the principles guiding the overall legal system. In a general context, the Constitution is not only political commitments, but also but materialized criteria for determining national legal order.. The Constitution implies a causal relationship between democracy, fundamental rights and the rule of law. As explained further below we will discover that the Fundamental Law is the sum of the historical events and desiderata of a people.

The first Romanian Constitution [8] was adopted as a result of the creation of the Romanian state. The favorable context was created as a result of the removal of the prince Alexandru Ioan Cuza from the throne and bringing a foreign prince - Carol de Hohenzolern - to govern, and the transformation of the Legislative Assembly into a Constituent Assembly, with the aim of debating and adopting a Constitution.

The 1866 Constitution was inspired by the Belgian Constitution, considered at that time a modern constitution with a very democratic character. Thus, the first Fundamental Law of the Romanian state was inspired by the liberal model of the times, which became the product of "the spiritual troubles of Western Europe, the internal tensions that marked its evolution, closely related to the social-political - real dynamism , with the evolution of the facts that led, on the background of a certain continuity, to the discontinuity of the modern age" [9].

Article 1 of the 1866 Constitution enshrines the following: "The United-Romanian Principalities constitute a single State indivisible under the name of Romania." In the historical context of that time, the express statute of indivisibility and the use of the term "Romania" was a courageous act of the Constituent Assembly before the Guaranteed Powers and the signatories of the Paris Convention. The 1866 Constitution responded to the need for unity of the Romanian people, for development [10] by recognizing the national sovereignty of the people by establishing representative government and the separation of powers in the state, as well as the hereditary monarchy which is considered the premise of the constitutional monarchy [11].

Also, at the constitutional level it was established that "the territory of Romania is inalienable" (Article 2) and that "Romania's territory cannot be colonized with populations of foreign gin" (Article 3). From the organizational point of view, "The territory is divided into counties, the counties in the **parish*, the in *villagecommunes*" (art.4). The rights recognized at constitutional level are freedom of conscience, freedom of education, freedom of the press, freedom of assembly (Article 5). The Constitution enshrined the principle of non-discrimination: "There is no distinction in social class in the State. All Romanians are equal before the law and ought to contribute without a doubt to public tasks and duties. They alone are admissible in public, civil and military functions "(Article 10). Private property is enshrined as sacred and inviolable.

The Fundamental Law recognizes that state power "emanates from the nation" and is exercised only "by delegation and by the principles and rules laid down in the Constitution" (Article 31). Thus, the legislative power is exercised "collectively by the Lord and the national representation. The National Representation is divided into two Assemblies: the Senate and the Assembly of Deputies "(Article 32). The executive power" is entrusted to the Lord, who exercises it in a regular way through the Constitution. " (Article 35) The legislative power "is exercised by the Courts and Tribunals. Their judgments and decisions are pronounced by virtue of the law and are executed in the name on behalf of the Lord (Article 36).

We note that constitutional principles have been enshrined during this period that laid to the foundation of modern Romania in the 19th century and that institutions were established to manage and administer the public power, valid over time. In the period that followed, due to the transformation of Romania into Kingdom, the Constitution of 1866 underwent several changes, some of which stemmed from the need to adapt the constitutional provisions to the new economic and social realities.

The Constitution of 1866 was abrogated by the adoption of the Constitution of 1923[12], which is the sum of some outstanding historical events for the Romanian people: the transformation of Romania into Kingdom in 1881, the proclamation of Romania's state independence in 1877 and the formation of Great Romania in 1918. The fundamental law of 1923 was adopted in an inter-war Europe in which Romania embodied a democratic regime of development in order to synchronize with the demands of the time.

I.C Brătianu, R. Boila, C. Stere and C. Berariu contributed to the completion of the draft constitution. The draft constitutions proposed were based on the Fundamental Law of 1866. The final draft, which became the Constitution of 1923, assumed the modification of 20 articles, rephrasing or completing of 25 articles, introduction of 7 new articles and keeping of 76 articles of the old constitutional act.

In relation to the other revisions of the Romanian Constitutions, the amendments to the 1866 Constitution would not justify in legal terms the definition of the new constitutional act as a new Fundamental Law.

The emergence of a **new Constitution in 1923** is the result of the legal cover of new historical realities. The Constitution of 1866 was consecrated to the "Little Romania", while the Constitution of 1923 was consecrated to "Great Romania", to a state territory that included a much larger population, to an ancestral land, far more extensive territories on which they were born, living and will live Romanians.

Article 1 of the 1923 Constitution enshrined the legal character of the Romanian State, "national, unitary and indivisible", as well as the firm separation of powers in the state. The constitutional provisions have recognized the historical event of the union of the Romanian provinces - Basarabia, Bucovina and Transylvania - with Romania since 1918. as regard to the territory, it is kept its "inalienable" character (Article 2) and the prohibition to be colonized with "population of foreign gens "(Article 3).

Also, the universal, equal, directly binding and secret vote was established, the censorship vote was abolished, but the time restriction was maintained, according to which women, magistrates and soldiers did not have the right to vote. The executive power was bicephal, being shared by the King and the Government, and the legislative power remained to the Assembly of Deputies and the Senate. In addition, the Legislative Council is established, whose role was advisory in the elaboration and coordination of the adoption of laws.

Last but not least, the first constitutional control of that time made by the Court of Cassation in united sections (the "Bucharest Trams Business"), according to the US model of constitutional law control. Trams business is a European premiere in the matter of constitutional control, opening this road at national level, including the abandonment of the American model and the transition to the European model of control of the constitutionality of laws.

The 1923 Constitution functioned until February 1938, when King Carol II initiated an authoritative Constitution that strengthened the royal power and limited democratic freedoms.

In the Constitution of Carol II, the king represents the state (Article 30), exercising the legislative power through the National Representation, consisting of the Senate and the Assembly of Deputies (Article 31). According to the Constitution, the King's person was inviolable. Also, the state acts of the king were to be countersigned by a minister who became accountable to them. The king had the absolute right to *veto* he could dissolve Parliament without having to convoke him within a certain time and could legislate by decrees-laws.

The constitution expressly distinguishes between "the Romanians' duties" and the "Romanians rights". Thus, the Romanians had the duty to "regard the Patria as

the most important part of their life, to sacrifice themselves for her integrity, independence and dignity; to contribute through their work to its moral and economic development; to carry out faithfully the public tasks imposed on them by law and to voluntarily contribute to the fulfillment of the public tasks, without which the being of the state cannot live "(Article 4), must obey the law and respect it (art. 5). Among the rights recognized are included freedom of conscience, freedom of work, freedom of education, freedom of the press, freedom of assembly, freedom of association and all freedoms deriving under the conditions laid down by the law (Article 10).

The 1938 Constitution was suspended by Royal Decree no. 3052 of 5 September 1940. In 1940, Romania lost Basarabia, Northern Bucovina, Herta Land and North Transylvania, and the Cadrilater. Tumultuous context of the authoritarian measures of Carol II as well as the international movements have created a good environment for changing the political regime. According to the decree-law, the President of the Council of Ministers was invested with full powers to run the Romanian State. According to art. 2 of the Decree-Law, the King's prerogatives were to lead the "host", to coin money, to confer "Romanian decorations", to pardon, to amnesty and to reduce punishments, to receive and accredit ambassadors and the plenipotentiary ministers, to conclude treaties, to amend organic laws, to appoint ministers and sub-secretaries by royal decrees countersigned by the president of the Council of Ministers. According to art. 3 "All the other powers of the State were exercised by the President of the Council of Ministers". Thereafter, the Legionary National State was proclaimed, Carol II abdicated and Mihai I became King of Romania.

Practically, between 1940 and 1948, Romania did not have a Constitution, because the tumultuous times of the war did not allow a return to constitutional government. The essence of government was dictated by administrative acts, stemming from the will of some people, and not from the constitutional fore.

A step back, in terms of constitutional statutory of human rights protection and democratic form of government, was also made with the adoption of the communist constitutions between 1948-1989.

The constitution adopted on April 13, 1948 [13] established the Romanian People's Republic and the republican rule of law, which led to the forced abdication of King Mihai (December 30, 1947).

The 1948 constitution had a provisional character, in which the economic provisions prevailed over the political ones, and represented the legal instrument that was about passing the entire economy under state control. The constitutional act was inspired by Marxist-Leninist ideology and promoted principles such as democratic centralism, nationalization of means of production, local collectivization, national economy planning. In the Romanian People's Republic, the supreme body of power was the Great National Assembly (MNA), the

legislative body. The Presidium of M.A.N. was accountable to M.A.N. The government was the executive and administrative body that was aware of M.A.N. and the M.A.N Presidium during the sessions. The courts were the Supreme Court, the tribunals and the popular courts. The immovability of judges was suppressed, its place being taken by hierarchical subordination, including the communist party authorities. The Constitution could be changed at any time on the proposal of the Government or a third of the deputies by the Grand National Assembly.

The transition from monarchy to popular democracy has not been simple, but a syncope in historical perfection, a catastrophic step towards perishing. In the years that followed, there were born the protest movements of Romanians, confrontations with the army, loyal national responses to Moscow's calls, abduction of private property, nationalization and collectivization, enriching and destruction of villages.

The 1952 Constitution is characterized by a strong subordination and dependence of the constitutional spirit and the Romanian nation towards the USSR, by adopting the organization models of the institutions in the territory and of the society as a whole. Thus, private property was restricted and abolished, the Hungarian Autonomous Region (Articles 19, 20, 21) was established and the territory divided into regions. The state power imposed the dictatorship of the proletariat, and the state regime of Romania was the regime of popular democracy, which represented the interests of those who work.

The supreme executive body of the R.P.R. was the Council of Ministers. Justice was conducted by the Supreme Court of the RSR, regional courts and popular tribunals, as well as by legislative tribunals established by law. The only law-making body was the Great National Assembly (MAN), elected for a four-year term. M.A.N. elected the Supreme Court for a period of five years. Among the fundamental rights and duties of the citizens were the right to work and education, the right to survive (rest, retirement), the freedom of speech, the press, meetings and rallies (novelty item), the freedom of mass demonstrations that were exercised " in accordance with the interests of those who work and in order to strengthen the regime of popular democracy. " The Constitution established the socialist property ownership and "the leading role of the party ".

The constitution adopted on 21 August 1965 coincided with the moment of concluding the transformation of the Romanian state into a fully socialist one. Thus, art. 1-16 set the characters of the Socialist Republic of Romania. Under the new Fundamental Law, the territorial-administrative organization was established in: communes, towns, municipalities, county-based municipalities and counties. In 1974, a new supreme body of state power was established - the President - and dual party and state organs were created. Also, three structural levels have been established: party, state and party and state. Article 3 enshrines: "In R.S.R, the governing political force of the whole society is P.C.R. The party imparts a

dynamic character to the state; the party defines objectives in areas of interest to society, and the State is legislating. "

There is practically no difference between the party and the state.

The 1991 Constitution was established after the revolution in December 1989, which led to a sudden change of the political regime in our country and the transition from the communist regime to a democratic regime. The National Salvation Front (FSSN) was constituted Ad-hoc , and through its Communiqué of December 22, 1989, announced the dissolution of previous power structures and launched several guidelines with constitutional valences:

"1. Abandoning the leading role of a single party and establishing a pluralistic democratic ruling system;

2. Organizing Free Elections in April:

The Council of the National Salvation Front proposes that the country shall be called Romania in the future "

The process of democratization was mostly legislative, by repealing the normative acts that have not coincided with the perspectives of the moment, and constitutional principles, such as "pluripartidism" more parties, have been enshrined. The newly acquired freedom was redeemed by the National Salvation Front and the opposition parties.

The process of recreation of the free right, with democratic values and principles, was achieved within CPUN, the NSF successor, who promoted the political decision-making mechanisms specific to the political struggle, the dialogue between the majority and the minority, based on the doctrines of the historical political parties: The National Liberal Party, The National Peasant Party, etc.

Among the reference measures taken by C.P.U.N. is Decree-Law no. 92 of March 14, 1990 for the election of the Parliament and of the President of Romania, through which the Republican government was elected, the bicephal structure of the executive was established, consisting of the President of Romania, directly elected by the citizens, and the Government, legitimized by Parliament vote. At the same time, it was specified that the Parliament, which was to be elected, would fulfill both the Constitutional and the Ordinary Assembly and provisionally settled the disputes on the structure of the legislature, by ensuring the equal political legitimacy of the Chamber of Deputies and the Senate. The Parliament elected on 20 May 1990 had a dual function, fulfilling the role of legislative assembly and Constituent Assembly. The Parliament constituted following the elections on 20 May 1990 numbered 510 deputies and senators who, in carrying out the Constitutional Assembly attributions, formed a commission for drafting the draft Constitution of Romania, composed of deputies and senators and 5 experts in the field of constitutional law.

The Romanian Revolution began in Timisoara, with a mass movement, on December 16, 1989. From there, it expanded into the major cities of Romania and

Bucharest. The Romanian Revolution had, in essence, an urban character. It ended with the dead and wounded people, with the dismissal of the Communist state authorities and the creation of provisional authorities meant to open Romania's road to democracy. Among the first acts of these provisional authorities are the Decree - Law no. 8 of 31 December 1989 on the Registration and Functioning of Political Parties and Public Organizations in Romania, by virtue of which the political parties of the old social order were re-established. They also participated in the drafting of Decree no. 92/1991, by virtue of which the rules of the future elections were to be held on 20 May 1991. In this context it was established that the future Parliament would have a dual mission: 1. the Constituent Assembly; 2. Ordinary Parliament.

The first mission was fulfilled on December 8, 1991, the people voted the Constitution of Romania by referendum.

The drafting of the Constitution has taken two phases. In the first phase, the Theses of the future Constitution were drafted, which were subject to international consultations, public debates and parliamentary scrutiny. After the decisions taken in the Constitutional Assembly on theses, the second phase was taken when the draft Constitution of Romania was drafted. 1019 amendments were made to this draft, of which 634 by the USSR, 115 by UD.MR, 114 by P.N.L., 32 by P.N.T. - c.d., 22 by P.U.R., 3 by M.E.R. + P.E.R., 4 by F.S.N. and U.D.M.R., 8th by P.N.L. and P.N.T.-c.d., 5 by F.S.N. and P.N.T.-c.d., and the rest by other political parties or their combinations. These amendments were presented to the Expert Group of the Draft Constitution Commission, which, after examining it, proposed to the Commission, arguably, the solution to be adopted by the Commission and, finally, by the Assembly Constituent. Of the 1019 amendments examined, 68 were admitted and 951 were rejected. On November 21, 1991, the Constituent Assembly adopted the draft Constitution with 414 votes in favor and 95 votes against, which represented more than two-thirds of the total number of members of this constituent forum. After the Constitution passed the Constitution, it was subject to a referendum, attended by 10,948,468 voters, of which 77.3% voted for the constitution, 20.4% voted against, and the number of void votes was 2.3%.

The 1991 Constitution was revised in 2003. **Revision of the 2003 Constitution** allowed the transformation of a fundamental duty of Romanian citizens into a genuine general principle of all constitutional regulation. Thus, the normative and therefore binding nature of the Constitution and the laws adopted on its basis, as well as the supremacy of the Constitution as the fundamental value of any state of law, were added in the final paragraph of Art. 1. Moreover, the Constitutional Court ensures the supremacy of the constitution, as it is stated in article 142 paragraph 1, which was also added to the 2003 revision.

Over time, there have been several revision proposals that have failed to be finalized, whether they have received a negative opinion from the Constitutional

Court or because the necessary quorum for validating the referendum has not been met.

Romania's constitutional evolution represents a political resonance to the changes that took place in the social, economic, political and legal environment of the country. Constitutional changes have not only been completed in the emergence of new constitutions but also in their many revisions, many of which stem from purely political or even personal interests.

The first Constitution of Romania has stated that we are a European, democratic and sovereign state.

A memorable example is provided by the Constitution of 1923, its definition as a fundamental constitutional act being indestructibly linked to the act of the Romanians' reunion in 1918. In this case, the political event decided the extension of the provisions of the Fundamental Law to a new state reality, that of the reunification of Romania.

Romania's constitutional perspectives are dependent on two determining factors: 1. Romania's economic, social and political evolution; 2. the relations of the Romanian state with the European Union.

The **revision of the 2003** Constitution was determined, first of all, by the agreement of its provisions with the European treaties and with European Union law, by virtue of the vocation to join this European forum.

The first argument is historically demonstrated. Since the first Constitution of Romania in 1866 and so far we have had 7 constitutions, which in turn have been reviewed several times.

The second perspective is dependent on the trend that European Union evolves. Keeping the current level between the Member States and the European Union does not require revision of the Constitution. In the event of a change in these relations, a constitutional adaptation to these changes will be necessary.

In conclusion, we appreciate that constitutional changes are dependent on the extent to which national sovereignty is stable or vulnerable.

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