PROGRESSIVE TRADITIONS OF ROMANIAN CONSTITUTIONALISM

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Rezumat: *Articolul analizează critic tradiţiile constituţionalismului românesc, de la începutul secolului XIX şi până în 1923, pe baza memoriilor boiereşti, documentelor şi planurile de reorganizare juridică, proiectelor constituţionale şi constituţiile elaborate în acest timp în Moldova şi Ţara Românească şi, ulterior, România.*

În principal, sunt analizate mai amănunţit „Constituţia Cărvunarilor" (1822), Regulamentele Organice (1831-1832), Constituţia de la 1866 şi Constituţia de la 1923

The approaching of Romanian constitutional evolution has been made till now by taking into account each constitution or fundamental act, or by reporting this ones at the "constitutional cycles"[1] – constitutional concept relatively recent that we appreciate in a particular way – it has been succeeded in the **political-etatic organization** of the country in a certain limit of time.

We haven't meet till now, in the studied documents, an approaching of the Romanian constitutional evolution from the point of view of his progressive traditions, though of his continuity by imposing and maintaining some progressive constitutional concepts specifics, of course, to the modern constitutionalism. The relative paradox determined by the two benchmarks (marks) fixed to our analysis has animated us in searching some adequate responses.

The end of Euro-Atlantic XVIII-th century dominated by the fight against monarchic absolutism and of feudal privileges has designated in the judicial-politic literature of that time through the notion of constitution only the laws with three-dimensional valences that have contained norms referring to the organization and functioning of the state, limitation of the monarch power and guaranteeing some rights and fundamental individual freedoms[2].

Corresponding to the liberal philosophies ideals and to the dominant individualist ones in the period of the bourgeois revolutions, the judicial norms referring to the organization and the functionality of the state didn't achieve constitutional character but in the extent in which they had as aim the achievement of a political program clearly defined[3].

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In the same time, in the Romanian space, the Romanian writers are very well informed on the ideological removal and on the events from Europe, the writings of the most important naturalists having a large circulation in Moldavia and in Walachia[4]. More than this, the revolutionary writings appear very early in the Romanian countries (they read books like ”De la souvairenete du peuple ”, Paris, 1790, ”Le manuel du citoyen”, Paris, 1971 etc.) and the ideas of the Revolution are disseminated thanks to republican agents like: the Jacobin merchant Hortolan, the Jacobin consul Emil Gaudin and his successor, Charles Fleury[5]. Specific to the historical development of the Romanian countries was the focusing of the political-judicial thoughts and of the ideas emitted by the previous generations and of the sovereignty issue in the detriment of reforming social programs[6].

Applying the thought paradigm of the XVIII-th century upon the Constitutional notion, it follows to see in what extent the big philosophical and political themes have preoccupied the progressive Romanian spirits and have reflected in this ones writings that have come before and influenced the Romanian constitutionalism.

Fighting against the monarchic absolutism, they designated through the notion of “constitution” only that laws which, settling the organization and the functioning of the state, limited the monarch power and established warranties for some rights and liberties of the person[7]. The quintessence of this conception is reflected by the “French declaration of human rights and of the citizen” by 1789, in which it is shown that: “any society in which the warranty of the rights is not assured, not even the separation of established powers, has no constitution”[8].

Gradually, from the absolutisation of some philosophical principles, the systematization efforts of fundamental laws have aimed other social, political, judicial and economical problems, as it’s judicial supremacy[9] in report with other normative acts, rules referring at the state structure, at the elements of the state, at the form of government, at the main state organs and the relations between them, at rights and fundamental duties of citizen, at the territory, sovereignty, etc[10].

All this problems that have transformed in time in constitutional norms, are founded again in political-judicial literature comprised between the middle of the XVIII-th and the year when it has been adopted the Organic Regulation (1831).

The idea that only through “Enlightenment” the people can become conscious of his rights and can affirm themselves in the political life is spread through D. Philippide and D. Catardzi writings becoming a real ”political school” based on rationalism and having as point of departure ”the study of human beings”.

On this judicial basis, the scholars and the politicians articulate in time a real Romanian *Habeas Corpus Act*, destined to guarantee the safety of the person, his rights and liberty. This theory was included in "Criminal Register" (1820), "Anaforaua pentru pronomiile Moldovei" (1827) and in "Organic Regulation" (1831)[11]. The equality principle in front of law is enunciated by D. Sturdza, undertaken by the Calimach Code (1818) and reaffirmed, a few years later, by the "Constituția Cărvunarilor": *in front of the law to be all considered without differences, having the one and the same law for all*[12]. Later, the writings of V. Pogor and S. Marcovici are contributing at the generalization of the idea and it's inclusion in "Organic Regulation". The liberty, another basis concept of the Enlightenment philosophy, was considered a normal right of the human being with universal value[13]. Between the diverse forms of the liberty, a different importance is given to the religious liberties and the liberty of living and activating in the society.

At the universal rights and liberties of the citizen that Simion Bărnuțiu included in *ius substantiae personalis* and *ius aequitatis personalis*, the Romanian revolutionaries from Transylvania added also the right of free using of the language, in which they saw the preservation warranty of national human beings.

"The equality of rights - correctly and practically conceived – shows Al. Papiu Ilarian – can not be other than equality of rights of state language of citizens, in the sense that everyone can speak its language around his home and it can express his ideas"[14].

In this period is outlined even the correlatives sanctions of the human rights non-observance and of his political liberties. This is why they go till the legitimating of insurrection right against the internal and external aggressors that derives, according with J. Locke principles, from natural right, from the judicial justice, fact for which- said Nicolae Bălcescu- "the power doesn't do the law anymore and a human being can not stand up in front of the world as usurper of people sovereignty". The old resistance right allowed by nobles feudal charters against the enemies, is recognized now to the entire people, as titular of the national sovereignty, because, as George Barițiu showed, "the state has national sovereignty when he can catch and use the resources through which will arrive at the scope of the state, meaning loneliness"[15].

The idea of the inexorable revolt in case of a corrupt and incapable administration appears also to Naum Râmniceanu who considers that the people has "natural public rights, that no government can't ignore" and this conviction takes him at the assertion of people's rights referring at the army force when they are violated: "Neither the divine or normal rule can not sentence a nation – He

writes this, referring to the 1821 revolution – because it demands the normal rights". His contemporary, Simion Marcovici, shares the same ideas, observing that" the rule forces the people through its oppression to hate him", "the social contract it's breaking down", and the people has the right to overturn the ruler[16]

We find in these ideas the enouncement of a sanction of constitutional order, as long as the rights and the fundamental individual liberties represent one of the obligatory dimensions of the documents with constitutional character at the XVIII-th century. "In case of violation of the fundamental pact - it has written later the big constitutionalist Constantin Dissescu – it is born even the right to a revolution". Because the sending to the extreme mean of the revolution to be legitimacy it is necessary that the violation of the constitutional law" to be made "so that through no other means the harm can be remedied"[17].

The problem of the sovereignty, very delicate from the political point of view, is present in the political-judicial thought from the Enlightenment era under diverse forms.

In the writings from the beginning of the XIX-th century (Naum Râmniceanu, Zilot Românul, etc) the idea that the national liberty is an indispensable prolusion condition of realizing any other liberty that without her cannot be warranted the liberty under different aspects of the human being is more and more clear. Also, it is outlined more precisely the idea of national unit as a fundamental achievement and life condition for any nation[18].

The nation thesis – sovereign was one of the force – ideas of the revolution from 1848, finding it's objectification in defining the notion of Nicolae Bălcescu as being " put in light everyone's power surrounded by the justice frontier" and in which "the people is his own master". In this sense, the sovereignty does not appear anymore as a simple attribute of public power, but as an affirmation of national sovereignty, itself being an expression of nation's sovereignty that is manifesting both on internal and external plan, fact **that gums up** the reject of any touch came from outside, even when it is about the sovereign power, because the payment of a tribute – affirmed Nicolae Bălcescu, recommencing a well-known thesis of Vattel – is not touching with nothing the sovereignty of Romanian nation". A normal consequence of this thesis is the declarative effect and not constitutive of rights, produced by the assertion of state sovereignty, in this sense the revolutionaries from the mountains demanded in 1848 that the "political existence of Walachia to be recognized insomuch as his right, by the European cabinets", which the French revolutionary government – following the same principles – quickened to do it[19].

To the systematization and capitalization through a critical application of this idea has contributed also the organization of a judicial education of a higher level, combined with the sending of a few young students to judicial studies abroad, where these ones had a contact with European ideas. Selecting from different resources what was adaptable to the place and time, Romanian jurists have founded a veritable Romanian judicial doctrine with a Roman-Byzantine character, with a pronounced addition of judicial native habits, under the influence of philosophical concepts and of European judicial principles[20].

Normally, the necessity of systematization of this philosophical concepts and principles of judicial and administrative organization in a fundamental act of the society has preoccupied the political-judicial Romanian thinking in Enlightenment era and evolved in the sense of founding a new modern constitution.

It follows to comply to the three-dimensional criteria of the constitution at the level of Enlightenment era the main documents, memoirs and Romanian projects of the constitution for establishing which one of them are circumscribing to the modern constitutionalism.

It prevails in this era the ideas upon the political structure, matter that clings to the efforts of transformation of the Principalities society. In this manner, most of the government forms are considered by some people as being naturals and corresponding to the options more or less free of the people. They are admitting instead, that, because of some unfavorable conjunctures can appear also constrained forms of government, harmful to the normal development of the society[21].

It is only when it is stipulated that the ruler should rule by respecting a constitution, which is due to guarantee the fundamental human rights, should be introduced the principle of separating the powers in a state and limiting the ruler's power, organizing a meeting formed after elections, with deputies elected from all the social classes, in the position of establishing the lows, then we can speak about progress in way of conceiving the organization of the state.

Since the beginning of the XIX-th century the theory of constitutional way of ruling, with its different nuances got a big importance, being acknowledged and made popular by a lot of famous scholars as Iordache and Nicolae Rosetti Rosnovanu, Ion Tăutu, Naum Râmniceanu, Simion Marcovici.

The first speech for a constitutional way of ruling appears in a Moldavian document handed in to Napoleon in 1807[22]. The whole memorial emphasizes the

idea that the new ruler must rule on the basis of the lows, by respecting the citizens' rights and liberties and by bringing prosperity to the country.

In Iordache Rosetti Rosnovanu's opinion the power of the low was about to be taken by The National Assembly/The Estates-General, the ruler (Phanariot) was only due "to straighten the rules of the land and not to change or remake them". In another petition he pleads for refraining the ruler's (i.e. "domn") judging power by transferring it to a "General Council" (i.e. "D ivanul general") and he established the principle of responsibilities of administration (especially for the treasurer, i.e. "vistiernic").

All these preoccupations bring many new elements for the Romanian society of that time, as limiting the ruler's power, the existence of a fundamental low, the extension of The National Assembly/The Estates-General (i.e. "Adunarea Obştească") and enunciation the principle of separating the powers in state[23].

The best-formed political system of the epoch is met in Ioan Tăutu's writings, who was practically considered the person who introduced the theory of constitutional monarchy. This conception is structured in "Constituția cărvunarilor" from 1822, which modifies the mechanisms of power by transferring it from the ruler to a certain The National Assembly/The Estates-General, that had many responsibilities and in fact it became the main organization in leading the state[24]. A process of evolved ideas can be also identified in the way of forming the representative powers, in enlarging the election basis and in the same time of the social levels and classes among which the electors and the elected ones were due to be selected[25].

Many of these crystallized in memorials, petitions and revolutionary programs, constitution projects[26] and met their climax in adopting the first Constitution of the Romanian state in 1866.

Regarded as a whole, the sum of requests, programs and constitution projects was made into a real "Romanian general fighting program", and the ides formulated in these documents represent a "common ideological thesaurus of ideology"[27]. More than this it is found a special ability to formulate judicial constructions[28] capable to substantiate and explain the organization and functioning of the state and its relations with the law.

The project called "Plan or a form of ruling aristo-democratic" elaborated by Dimitrie Sturdza is the first to be analyzed taking into consideration because of its length and complexity[29]. The author doesn't debate all the matters referring to Moldavian reform of the state structures on which he intends to debate later on. His plan takes into consideration only the matter of the government structure and

of the manner of functioning of the main institutions, avoiding mentioning the suggested solutions for the detailed matters[30].

This project is influenced by the English political organization, fact underlined not only by the author's reference to "England, a free country, provides a good model to be followed by us" and also of some fundamental features of political organization, as **"Lower Council"** (i.e. "Divanul de Jos") with its way of being and its attributions corresponding to "The House of Commons"[31]. Though the project of the "aristo-democratic republic" establishes some fundamental rights and liberties as: forbidding peoples' arresting without having been searched and judged, electing the deputies for **"Lower Council"** among people who are not nobles, the proposal that girls should benefit of the same form of education as boys do[32] etc. Also, he not explains the way by which the mechanism of the executive power is supposed to work and not discuss constitutional issues[33].

Constitutional preoccupations can be also found in Tudor Vladimirescu's proclamations. In the most elaborated of his programs "Romanian People's Requests" he states some important politico-organizing stipulations like limiting the ruler's power through constitution, reorganizing the courts and diminishing the judging fees, free education for children of any social category etc[34]. This is not a constitutional settlement, but the allusions made to the meant to be constitution as a guarantee of the ruler obeying the low is good to be taken into account.

The revolutionary year 1821 marks the beginning of a new era for the Principalities characterized by constitutional attempts, which had as major purpose "the limitation of the ruler's power"[35]. The first of a set is considered "Constituția" (i.e. Constitution) or "Memoriul Cărvunarilor", "a real political document influenced by French Revolution"[36].

Among the new introduced general stipulations it is to be noticed, first of all, the distinction made between the legislative and executive power, which the text names the former "the power of decision"(is shared between the ruler and the People's Council) and the latter "the power of ruling and accomplishment" (attributed to the ruler). There's nothing mentioned about the judicial power, but it is closely settled the organization and activity of the judging system[37].

In what concerns the elements of political freedom, according to Constantin Dissescu's perception, in "Constituția Carvunarilor" there are satisfied the following:

a) The right to elect which has to be given to as large as possible number of citizens... Cărvunarii give this right to the whole conscious nation", as it results from articles 20, 48, 51 and 60.

b) The right to have a public position must be more accessible to "the free citizens, after merit. In this case, "some insignificant jobs and even the throne can be taken by people who are not nobles and everyone can become a noble".

c) A national representative deliberative assembly with prerogatives of making lows and, to control the government and to lay "taxes". This element appears in articles 20, 21, 38, 40, 45 and 54. It is not explained very well the control exerted by "Council" over the government, because even the issue of the latter one is not sufficient explained.

d) The independence of the magistrateship is a principle to which it was given a great deal of attention (14 texts) although the authors of the petition admitted the system of those three separate powers.

From the content of the document, from its structure and from results that it has a project of constitution corresponds to its definition as a fundamental law[38]. The "sanction" of document by the ruler (i.e. "domnitor"), followed by its sending to an Assembly, means introduction of new constitutional mechanisms[39]. The constitution project from September 13th 1822 is "a reply to the Great French Revolution that has as its progress element the nucleus of a constitutional organization, the principle of separating the powers, equality in front of the law and a relative authority[40].

The political fight and the ideological debate that followed during the third decade of the XIX-th century in the meaning of modifying something and, then of changing the way of organizing the state reached a crossroads, an ascending step through establishing and applying the Organic Regulation.

There were controversies regarding their role in historical development and constitutional in Romania and also the political background when they were adopted[41]. The Organic Regulation forms, in the part regarding to general principles of organization functioning of the state, the first Romanian fundamental law[42]. Both Nicolae Iorga and D. V. Barnoschi consider that Organic Regulation "is not a document imposed by the Russians"[43], but they represent an elaborated sequel of the Constitution from 1822[44].

The difference that the Organic Regulation makes is that although they put the basis of the fundamental principles of the state organizing and functioning, they didn't correspond to the level of Occidental constitutions of the end of the XVIII- th century and the beginning of the XIX-th. Weather they had as main purpose limiting monarch's power and establishing some economic, social and political principles, the Organic Regulation were due "to stop the administrative abuses"[45].

Although they didn't replace an old form of government with a new one[46], being the creation and expression of the way of evolving of the Romanian society[47], in other words, "a law of that time", The Organic Regulation weren't devoid of progressive stipulations. In this respect can be mentioned: the principle of minister's responsibilities, introducing the general accountancy of the state, introducing the right of controlling for Justice's Office (through public prosecutors) over the legality of the judges' verdicts, stating the ruler's civil list, reorganizing the counties and their territorial-administrative sub-divisions, organizing the city meetings, introducing the judged work authority, introducing the state budget discussed and wrote down yearly by the National Assembly, decreeing free intern commerce, establishment of special (judicial) instances for commercial issues etc[48].

The National Assembly/The Estates-General was settled as a representative institution (chose by boyars and only from them, the metropolitan bishop and the bishops being automatically members). The ruler and the ministries were having executive power, and some of them were included in the Administrative Council, whose decisions had to be ratified by the ruler, the judicial instances became autonomous, being separated by the National Assembly and by the administrative organs, but incomplete because of the ruler's duties to participate in the trials at the Crown Council (only in Moldova). This way it was shaped the principle of separation of powers in state, but in an imperfect form[49]. According to the material and formal criteria of defining a constitution, "The Organic Regulation" was a constitution not only a material one but also a formal one.

The adoption in 1837, by The Ordinary National Assemblies, under the pressure of the protecting Court (Russia) and the suzerain Court (Turkey), of an additional article to the initial texts of "The Organic Regulation", according to which, in the future no changes of the established fundamental principles could occur without special authorization, creating this way a mechanism of revision more complicated and, therefore, getting a superior judicial power reported to other settlements[50].

Constitutionalizing the political-judging Romanian thinking as a historical process is from now on more visible through all actions and progressive movements of that time of elaborating a fundamental law.

The corpus of those three acts having a constitutional character elaborated by Ion Câmpineanu and The National Party in 1838 – "An act of unity and independence" –, – "An act of naming the Romanians' Sovereign –, and "The Romanian Constitution" – has a special value from this point of view.

"The Constitution" starts with some things related to the territory, proclaiming its integrity, the historic right of the Romanians over it and forbidding any territorial rapture by other states using force[51].

Following points of the Constitution Project are about the rights of man and the citizen, proclaiming everybody's equality in front of the law. There are furthermore established the guarantees regarding individual liberties in their different forms of expression: personal liberty, liberty of the press, liberty of the expression. The personal liberty is given by proclaiming the right of a judgment according to the law and the correlative principle (from penal code) - "nullum crimen sine lege". Another application of the principle of personal liberty is the foreseeing about the abolition of personal servitude (for socmen)[52].

Then it is dealt with the fundamental lines of organizing the state by being invoked the principle of separating the powers in state. The ruler has the executive power and he was also the supreme chief of the state, the commander of the army, he could make war and peace, he could sign the treaties, he elaborated the regulations and orders for executing the laws, sanctioned and promulgated the laws. The legislative power is both shared by the Sovereign and the National Representatives. The judicial power comes from the sovereign and it is foresaw the principle of irremovability of magistrates, but also their responsibilities for their decisions.

The governing form of the state is constitutional monarchy; the chief of the state has the obligation to make an oath when he takes the throne that he strictly respects the constitution.

Very important is the statement (declaration) rose up at the rank of fundamental principle of the state organization, main duties of a nation to itself: to preserve itself and to improve itself[53]. It is about an idea that sets the basis of modern constitutionalism and reflects with accuracy E. Vattel's conception "The constitution and the fundamental laws are the plan after which the Nation decided to work in its purpose"[54].

Defining to establish the scientific character of constitution, after the criteria enunciated in the preamble of the paper, are the observation that Organic Regulation being elaborated during a military occupation and having a representative character limited, represents a "transient"[55] and, on the other side, the establishment of a mechanism and the reviewing limits.

The first one represents the reflection of the constitutional law principles according with any settlement of constitutional order made in conditions of incapacity of the national sovereignty exercise is absolutely null[56]. Through

establishment of the obligation for the sovereign of publishing once a six months after the recognition of the independency of a complete corpus of public laws, civil and penal laws that follow to enter in rights through promulgation only by the chief of the state and revised once a ten years with the consent of National Assembly[57] have been created the mechanism premises and revision rules of the fundamental laws, which we can say it was a rigid type constitution. In all the three Romanian countries year 1848 is the main moment of claiming activity of the entire studied period. The Proclamation from Islaz, from 9/21 June 1848, was considered during three months, while the revolutionary government resisted, as being the basis of the future Constitution of the country, and other times as a real Constitution[58]. We already meet in this sense the appeal at the democratic traditions of Romanian nation.

The National Assembly (i.e. "Adunanța generală") replaced The Ordinary National Assemblies, settled up by the Organic Regulation, composed only by boyars, having a larger representation. With all this, the Proclamation doesn't consider this central organ to be a qualitative new institution, but as the restoration of a right and of an old liberty: "The Romanian people gives back at all estates the old right of having members in The National Assemblies, establishing from today the extended (large) election, free, right and where all of the Romanians has the right to be invited and where only the capacity, the acting, the virtues and the public trust to give him the right to be selected"[59].

And in what concerns the other supreme organ of the state, the hospodar, The proclamation makes appeal at the idea of tradition: "The Romanian nation, after its old rights, wants that ruler, in whom is personified the sovereignty of this nation, to be strong (…) decrees, after its old rights, to search for him in all the estates of the society, and not in a finite number of people"[60].

In what concerns the title of the state chief the Proclamation decides that this one consists exclusively in the name of "ruler", eliminating the titles introduced "from the foreigners against the old customs", like for example, the one of "prince", taken from European languages" or that ones of "Mighty", coming from the Phanariots that loved titles"[61].

The claim coming from the old Romanian law and from the customs of that place appears clearly expressed in the demand of the Temporary Government addressed to the ruler Gheorghe Bibescu for sanctioning the new Constitution: "In the name of the Romanian people, they have the honor to communicate to your Highness the national desire and the Constitution, which is based on **our old laws and customs (…)**"[62].

The Proclamation contains also settlements concerning the administrative organs, anticipating "the ministerial responsibility and of all the clerks in the function they occupied", concerning the filling of the existent system of the regular army with the setting up of a national guard; referring to the financial organization in which it introduces as a fundamental principle the general contribution after each ones income", and in what concerns the church's organization it is proclaimed the old desideratum of the monasteries emancipation[63].

In what concerns the judicial power, criticizing the judges because of the "old system", "The proclamation anticipates, under the influence of beccarian Enlightenment, Abolition of Death Penalty (capital punishment) and of the beating one, and also the founding of prisons in the interest of re-education of the convicted"[64]. The most important Constitutional project from this period belongs to Mihail Kogălniceanu.

The main sources of the Constitutional project from August 1848 of Mihail Kogălniceanu were: the program from "The desires of the national party in Moldavia", "The petition" from March 28/ April 9, Vasile Alecsandri's booklet "In the name of Moldavia, mankind and of God", "Principles" from Braşov, "The National Petition" from Blaj, The Islaz "Proclamation" and the Belgian Constitution[65].

The first principle that the project consecrates is constitutionalism, proclaiming even in his first article Moldavia as a "constitutional state". This is the first wording of the constitutionalism principles, that brings in the general European trend[66], but which represents the fructification of the entire tradition of the main reform projects and the Romanian political programs from the first half of XIX-th century that "shows the Constitutional cult and the tendency of creation of an constitutional state, of a constitutional regime"[67].

The next principle that proclaims the constitution project is of the internal sovereignty, recommencing, because of political reasons, the limited sovereignty thesis consecrated by "Constituția Cărvunarilor" Constitution and the Islaz Proclamation.

In what concerns the organization and functioning of the system organs of state the project embraces the principle of separation of powers, as it was developed by Montesquieu, following the restrain of one power by the others, through the attribution of each one to different organs, working independently and mutually controlling[68].

In this way the legislative power is entrusted to the National Assemblies, representative chosen organ, which members are considered representing of the

country and not of the region in which they were chosen, which produced the consequence of the impossibility of dismissal by the electors from that region[69].

The executive power "is entrusted by the nation to the ruler". Inspiring himself from the stipulations of Islaz Proclamation removes the restriction of class affiliation, the hospodar being chosen "from all countries, for a period of five years". He is not elected by the nation but, indirectly through the elected representatives, being proclaimed by National Assemblies with an absolute majority[70].

Searching for a mechanism to restrict the monarch's power, as one of the most important desiderate of the modern constitutionalism, it is stipulated that he can not alienate a part of the country and even though the army power belongs to him, he can not exercise personally this ones command[71].

Integrating the items 12 and 23 of March Petition and item 7 of The Islaz Proclamation, the project anticipates the ministers responsibilities and of all clerks for the filled papers in the function exercise, the action being started by National Assemblies the and judged by the High Court of Justice. These stipulations, together with the ruler's obligation of taking care and assuring the execution of the laws (art. 38) and the interdiction directed to him "of stopping and changing the Constitution and laws way" (art. 40) give importance to another fundamental principle of modern constitutionalism, of the legality one, observance and law supremacy[72].

"The Ministers' Council", founded under the minister of internal affairs presidency has important attributions: makes law projects, studies law projects of parliamentary initiative, makes public administration rules, controls the functioning of local administration organs, proposes to the ruler the designations of the clerks, being not aloud to have judicial attributions, as a warranty of observing the principle of separation of powers[73].

The third power in the state, the judicial power, is minutely settled, having at the base the most progressive principles of that time. We mention: the law's gratuitousness, publicity of debates, the simplifying and acceleration of the procedurals forms, the defense liberty, the independence from the ruler in his activity through the interdiction of this one in the judicial decisions, foundation of the public ministry near the country's courts, foundation of a jury system in the political causes, criminal and press ones, the interdiction of founding any exceptional law courts[74]. In the chapter with the greatest weight from the content of the project, Kogălniceanu proclaims and settles the rights and citizen's duties.

Taking over and bringing in the project stipulations, memoirs and previous proclamations, which, beginning with the Cărvunarilor's project and ending with the National Petition from Blaj, The Islaz Proclamation and The National Party desires from 1848 assimilated the French Revolution's principles (from 1789) wrote down in The Declaration of the Rights of Man and of the Citizen, Kogălniceanu, remains faithful to the threefold desideratum: liberty, equality, fraternity[75].

In the first place, there are proclaimed the civil and political rights equality. In the application of this principle it is stipulated the abolition for future of all nobiliary titles and birth and personal privileges, but also the abolition of tithes and taxes towards the landowners, the establishments in the fiscal matter of a general contribution, commensurate with the wealth and these ones incomes, the abolition of the personal servitude, the gradual emancipation of the Jews, the liberty, equality and the gratuitousness of the education for all citizens of both sexes[76].

The liberty principle is reflected in the dispositions that proclaims the individual liberty, inviolability of the residence, the investigation of the prisoners causes (in 24 hours by a judge), the liberty of printing, the petition rights and the liberty of conscience[77]. This project represents the last expression in the domain of political-judicial revolutionary thoughts of year 1848, continuing under this report "the national line"[78].

Under the pressure of the political events none of this constitutional project wasn't put in practice exception making only The Islaz Proclamation that had the function of the fundamental law during the administration of the country by the Temporary Government. From chronological point of view the following fundamental act with constitutional value for the United Principalities was the Paris Convention from 1858.

Although the value of a fundamental law conceded, as a result of an international peace treaty (**Treaty of Paris of 1856**, glued together between Austria, France, Great Britain, Prussia, Russia, Sardinia and The Ottoman Gate on March 30, 1856 after the ending of Crimea war). The Paris Convention was opening a new way in international practice through creation of new consultative organisms (the Ad-hoc Gatherings – i.e. "divanele Ad-hoc), having the role to assure the most precise representation of all social estates interests[79].

After receiving the complaints the two Ad-hoc Gatherings, the guaranteed powers have elaborated a fundamental act for the political organization of Romanian countries, named "The convention for the definitive organization of Danubian Principalities of Moldavia and Walachia".

On external plan, the Convention declares that Moldavia and Valahia remained under the sovereignty of Ottoman Empire, preserving its intern autonomy and their old privileges and immunities. On internal plan, the Convention consecrated the beginning of the union by making up some common organs: Central Commission and Court of Cassation, both having the center at Focşani[80].

The Convention put at the basis of the organization of United Principality the principle of separation of powers in state (art. 3), entrusting the executive power to the ruler (art. 4), and the legislative power, in collective manner, to the ruler/hospodar and to an Elective Assemblies (for each Principality) and Central Commission (art. 5). The judicial power is entrusted to the magistrates (art. 7) but the irrevocability of judges is scheduled only for the magistrates of High Court of Cassation, which is common to both Principalities[81].

The executive power was entrusted to the ruler/hospodar, elected through life by the Elective Assemblies of each country. It was eligible any male citizen, having the age of at least 35 years old and an landed income of about 5.000 ducats, with the condition to have occupied a public function during 10 years or that he was a member of the National Assemblies. The ruler /The Hospodar should have led with the support of the ministers. (art. 14)[82]. The Elective Gatherings were elected for a period of seven years (16), which was also the period of the mandate of Central Commission members. (art. 29)

There were anticipated the equality of citizens in front of the law and were warranted the individual liberty, the property, the civil and political rights, were abolished the privileges. As form of government there was the elective monarchy, and the state form of the United Principalities was the personal union[83].

The putting in practice of the new fundamental law of the United Principalities created a unique phenomenon in the constitutional law meaning, the transformation of the form of the constitution from a conceded Charta (monocratic form) in a fundamental pact (democratic form)[84]. The adaptation of the Convention to the national needs, it's transformation in a document of internal law[85], leaded also to the transformation of some stipulation meanings in the purpose of realizing the most important desideratum of the moment: the union of the principalities[86].

The Convention was fined through the double election as a ruler/ hospodar of Alexandru Ioan Cuza and this one practical revises it, through the adoption of the "Developing Statute of the Paris Convention", as it was an internal law, although this one doesn't anticipate any method of revision[87]. In this sense is concludent the Turkish government statement that protested against the document

from 2 May 1864, telling the ruler/hospodar that "it wasn't recognized any right of changing or modifying the fundamental laws of the country, established by virtue of the treatises"[88].

The most important modification brought to the Paris Convention through "Cuza' s Statute" was the creation of the Senate, named "Corpul Ponderator", which opened the way of the bicameral parliamentary system in Romania. As a sequel of the Senate creation, the legislator power followed to be exercised in a collective way by the ruler/hospodar, Corpul Ponderator and Elective Gathering (art. 2) being eliminated the legislative attributions of Central Commission[89].

The Statute defined in categorical terms the principle of legislative autonomy of United Principalities, marking a new step till the affirming of their whole independency: The United Principalities can in the future to modify and to change the laws that concern their inside administration with the legal support of all established powers and without any intervention[90]. In the same time, he replaces the old name of "United Principalities" with "Romania", sanctioning, practical, the making of national unitary Romanian state[91].

Some authors consider Cuza's Statute "the first constitution of the national state Romania"[92] but also the last one from a "succession of historical constitutions, experimented almost half a century"[93].

In his lecture "The Romanian Constitution History" N. Iorga sustained that "the Statute", imitated after the Italian model, (…) is a borrowed establishment" and the Constitution from 1866 "never represented any accepted reality by the national conscience"[94]. The same thesis is sustained also by D. V. Barnoschi who affirms that this constitution "was not for us, like it is for Belgium", where it has been taken from, a fundamental pact, because it doesn't have its fundament in our past"[95].

Both theses were revised by the doctrine and constitutional historiography. Total emancipation of United Principalities was a process and not a historical moment and the elaboration of our own constitution represents the rejection of political organization conceded by the warranted powers, having the value of a fundamental pact that represented the nations' volition[96]. The "Developing Statute of the Paris Convention" needed for its recognition of the approval of the Ottoman Empire, being, therefore, a fundamental law that treated gently the ottoman suzerainty. The National Constituent Assembly from 1866 is decided not to take into account these antecedents, excluding any foreign mixture in the elaboration of Romanian fundamental law[97].

More than that, it is observed that the fundamental principles of our political organization, namely: the national state, fixing of the nation in the well defined limits and, the ruler/hospodar, as a principal titular of the power, are included in the Constitution from 1866[98].

Is important to remark that the Belgian model became its basis of inspiration, and not a reproduced source without discernment and without contact with the national realities[99]. We can talk about a synchronism of political-judicial thoughts when referring to the constitutional sources even from 1848, even earlier from 1822 (**Constituția Cărvunarilor**) and the forwarding doctrines of debates from Constituent Assembly are relevant in this case[100].

A remarkable fact is that, although the country is still under Ottoman Empire suzerainty, and pays tribute to this one, none of the Constitution's stipulations does refer to dependency estate. As a response at the insistence of the warranted powers regarding the separation of the Principalities by choosing a new ruler/hospodar, art.1 of the Constitution establishes the oneness of Romanian state composed from the two Principalities, under the name of Romania[101]. It was also stipulated that the Romanian territory is inalienable what conferred to the Romanian state the sovereignty attributes[102].

The second title "About Romanian rights" gave, at least declarative, the most widen liberties of that time: the conscience liberty, the liberty of the press, education liberty and that of the meetings. There were warranted the person and residence inviolability. It is assured the mail privacy also and it was forbidden the death penalty and the wealth confiscation[103].

It was proclaimed the principle of equality before the law, as this one expression, were abolished the privileges, the dispensation, the class monopolies and the foreign nobility titles[104].

The electoral system was based on wealth, the constituencies being divided in four electoral colleges depending on income, profession and official positions owned. The constitution enounced the national sovereignty principle and of a representative government: "All the state powers emanate from the nation that cannot practice only by mission and through the principles and rules stipulated in the named Constitution. (art. 31)[105].

As an organizing and functioning of the state fundamental principle, the Constitution consecrated the principle of separation of powers in state. In this way, the legislative power is exercised "collective by the ruler/hospodar and "National Assembly", the executive power being entrusted to the ruler/hospodar who

exercises according with the Constitution, and the judicial power to the instances and law-courts[106].

The Parliament, "The National Assembly", was composed from the Senate and the Deputies Gathering, replacing for the last one the name from the Belgian Constitution ("Chambre des Representants"), for keeping the traditional name[107]. It is adopted in this manner the bicameral system introduced by the Cuza's Statute.

As a government form, Romania is becoming from elective monarchy into an hereditary monarchy of constitutional type, the ruler/hospodar being obliged to testify in front of the Parliament the following oath: "I swear to be loyal to the country laws, to watch over the Romanians religion and the integrity of the territory, and to reign as **Constitutional Hospodar**"[108]. The property of any nature is declared sacred and inviolable (art. 19) as an expression of the development of liberalism[109].

The ideas of equality settled down, the political representation and the bicameral parliamentary system, the assertion of the rights and of individual liberties and the proclamation of the absolute right over the property, are the main principles of this fundamental law[110].

The union of the three Romanian historical provinces with Romania imposed the adoption of new fundamental laws. In law books was emitted the opinion that, from a formal point of view, "the constitution from 1923 was a new constitution, but in reality was the old one but very much revised"[111].

The 1923 Constitution introduced new principles in keeping with the evolution of the constitutional doctrine and the parliamentary governing practice, from which we mention: - the recognition of the unitary national state (art. 1); the registration of the universal vote (art. 64); the state engagement for the social protection (art. 21)[112]; the attempt of transforming the Senate in a technical institution, through creation the institution of the senators (art. 61); the transformation of the sacred and inviolable property idea in social function (art. 17)[113]; the legality principle and the law reign as fundament of the state.

Historical considerations and constitutional tradition have imposed as the first title of the Constitution to be named "About Romanian Territory"[114]. The first article of the Constitution anticipated that: "The Romanian kingdom is a national state, unitary and indivisible". If in 1866 the indivisible character of the Romanian state was stressing, because the warranted powers insisted on the division maintenance to the two Principalities, now was necessary to insist upon the national character, in contrast with plurinational and unitary, in contrast with the federative state[115].

In what concerns the rights and the civic liberties the new Constitution has taken over the stipulations of the Constitution from 1866 but brought substantial improvements. In this manner, art. 5 added on public liberties sphere, the right to freedom association. More than this, it was anticipated that the liberties were enjoyed by all citizens "without any discrimination of any kind as their ethnic origin, language and religion"[116].

The principle of separation of powers in state is consecrated through separate titular as it follows: according with art. 34, the legislative power is exercised by King and the National Assembly formed by Senate and Deputies Gathering; executive power is entrusted to the king (art. 39) and the judicial power to its organs (item 40). In Constitution's system from 1923 the state chief (the king) "is an organ who represents and achieves the power collaboration system, for it holds attributions through it collaborates with the three powers, exercises a power upon them, having the role of equilibrium, arbitration"[117]. The executive power is entrusted to the king that exercises it through the government. This one is settled in the executive power like a distinctive corpus. (art. 92-93), unlike the old constitutional text that treated the ministers separately[118].

The revision mechanism of the Constitution, keeping the principle of double legislature is improved and extended, dividing in two articles, one referring to the preliminary ordinary legislator gatherings (art. 129), and another one concerning the revision procedure of constituent gatherings (art. 130).

In the same time, the Constitution from 1923 introduced modern principles of parliamentary government, namely: the intervention of the state in the social life, the limitation of the individual property in general interest, the control of the laws constitutionalists. The inclusion of these ones in the fundamental law represents, without any doubt, a progress in the constitutional development of Romania and represented "the only viable alternative of constitutional organization of a state in an era and geo-political region affected by totalitarian options as fascism and Marxism. The 1923 Constitution ends a constitutional cycle, of democratic constitutions, and the Romanian Constitution from 1991 inaugurates a new one.

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[1] Cristian Ionescu, *Tratat de drept constituțional contemporan*, Bucureşti, Ed. All Beck, 2003, p. 476.

[2] Tudor Drăganu, *Drept constituțional şi instituții politice. Tratat elementar,* vol. I, Bucureşti, Ed. Lumina Lex, 2000, p. 8.

[3] *Ibidem*.

[4] Vlad Georgescu, *Ideile politice şi iluminismul în Principatele Române, 1975-1831*, Bucureşti, Ed. Academiei, 1972, p. 63.
[5] *Ibidem*, p. 68.
[6] *Ibidem*, p. 69.
[7] Tudor Drăganu, *op. cit.*, p. 8.
[8] *Ibidem*.
[9] *Ibidem*.
[10] Genoveva Vrabie, *Drept constituţional şi instituţii politice*, vol. I, ediţia a V-a, Iaşi, Editura Cugetarea, 1999, p. 234.
[11] *Ibidem*, p. 133.
[12] *Ibidem*, p. 134.
[13] *Istoria dreptului românesc*, vol. II, partea I, Bucureşti, Editura Academiei, 1980, p. 365.
[14] *Ibidem*, p. 366.
[15] *Ibidem*, p. 363.
[16] Vlad Georgescu, *op. cit.*, p. 137.
[17] Constantin Dissescu, *Dreptul constituţional*, Bucureşti, Ed. Socec, 1915, p. 307.
[18] Valeriu Şotropa, *Proiectele de constituţie, programele de reformă şi petiţiile de drepturi din ţările române în secolul al XVIII-lea şi prima jumătate a secolului al XIX-lea*, Bucureşti, Editura Academiei, p. 264.
[19] *Istoria dreptului românesc*, vol. II, partea I, Bucureşti, Editura Academiei, 1980, p. 363.
[20] Valeriu Şotropa, *op. cit.*, p. 268.
[21] Vlad Georgescu, *op. cit.*, p. 99.
[22] *Ibidem*, p. 109.
[23] *Ibidem*.
[24] *Ibidem*.
[25] Valeriu Şotropa, *op. cit.*, p. 263.
[26] Vlad Georgescu, *Memoires et projets de reforme dans le principautes roumaines (1769-1830)*, Bucureşti, Editura Academiei, 1970, *passim*.
[27] Valeriu Şotropa, *op. cit.*, p. 230, *apud* Dan Berindei, *Revoluţia de la 1848 în ţările române*, Bucureşti, 1974, p. 41.
[28] *Ibidem.*, p. 263.
[29] *Ibidem.*, p. 41.
[30] Vlad Georgescu, *Ideile politice şi iluminismul în Principatele Române, 1975-1831*, Bucureşti, Editura Academiei, 1972, p. 115.
[31] *Ibidem.*, p. 43.
[32] *Ibidem*.
[33] *Ibidem*, p. 116.
[34] Valeriu Şotropa, *op. cit.*, p. 55.
[35] Eugen Lovinescu, *Istoria civilizaţiei române moderne*, vol. 1, Bucureşti, Ed. Minerva, 1992, p. 45.
[36] *Ibidemi*.
[37] Valeriu Şotropa, *op. cit.*, p. 75.
[38] *Ibidem*, p. 77.
[39] Eugen Lovinescu, *op. cit.*, p. 46.
[40] *Ibidem*, p. 49.
[41] Valeriu Şotropa, *op. cit.*, p. 88; Gheorghe Platon, *Geneza Revoluţiei Române de la 1848. Introducere în istoria modernă a României*, Iaşi, Ed. Junimea, 1980, p. 79.
[42] Tudor Drăganu, *Începuturile şi dezvoltarea regimului parlamentar în România până în 1916*, Cluj, Editura Dacia, 1991, p. 39.
[43] Nicolae Iorga, *Istoricul Constituţiilor Române*, în *Constituţia din 1923 în dezbaterea contemporanilor*, Bucureşti, Editura Humanitas, 1990, p. 51.

[44] D. Barnoschi, *op. cit.,* p. 312.
[45] Tudor Drăganu, *op. cit.,* p. 39.
[46] *Ibidem,* p. 40.
[47] Gheorghe Platon, *op. cit.,* p. 81.
[48] Valeriu Şotropa, *op. cit.,* p. 90.
[49] *Ibidem,* pp. 89-90.
[50] Tudor Drăganu, *op. cit.* p. 40.
[51] Valeriu Şotropa, *op. cit.,* p. 101.
[52] *Ibidem,* p. 102.
[53] Valeriu Şotropa, *Proiectul de constituţie al lui Ion Cîmpineanu în conexiune cu acţiunea sa pentru unitatea naţională şi cu ideologia social-politică a epocii sale* , în „Revista de Istorie" nr. 2/1972, tom 25, p. 273.
[54] Tudor Drăganu, *op. cit,* p. 10.
[55] *Ibidem,* p. 274.
[56] Ioan Muraru , Simina Tănăsescu, *Drept constituţional şi instituţii politice,* vol. 1, ediţia a noua, Bucureşti, Editura All Beck, 2003, p. 54.
[57] Valeriu Şotropa, *Proiectele de constituţie, programele de reformă şi petiţiile de drepturi din ţările române în secolul al XVIII-lea şi prima jumătate a secolului al XIX-lea,* Bucureşti, Editura Academiei, p. 105.
[58] Tudor Drăganu , *op. cit.,* p. 81; Valeriu Şotropa, *op. cit.,* pp. 175 and the following. These works describe the juridical form of the Proclamation from Islaz .
[59] Valeriu Şotropa, *op. cit.,* p. 180.
[60] The full text of this Proclamation in Cornelia Bodea, *1848 la Români. O istorie în date şi mărturii,* Bucureşti, Editura Ştiinţifică şi Enciclopedică, 1982, p. 535.
[61] Valeriu Şotropa, *op. cit.,* p. 181.
[62] Cornelia Bodea, *op. cit.,* p.. 542.
[63] Valeriu Şotropa, *op. cit.,* p. 182.
[64] *Ibidem,* p. 183.
[65] *Ibidem,* p. 211.
[66] Florin Bucur Vasilescu, *Constituţionalitate şi constituţionalism,* Bucureşti, Editura Naţional, 1998, p. 16.
[67] Valeriu Şotropa, *op. cit.,* p. 212.
[68] Valeriu Şotropa, *Proiectul de constituţie al lui M. Kogălniceanu din anul 1848 în contextul ideologiei revoluţionarilor din Ţările Române,* în Anuarul Institutului de Istorie şi Arheolgoie „A.D. Xenopol", Iaşi, tom. X, 1973, p. 236.
[69] *Ibidem,* p. 236.
[70] *Ibidem,* p. 238.
[71] *Ibidem,* p. 239.
[72] *Ibidem*.
[73] *Ibidem*.
[74] *Ibidem,* p. 240.
[75] *Ibidem,* p. 241.
[76] *Ibidem,* p. 242.
[77] *Ibidem*.
[78] *Ibidem,* p. 244.
[79] Tudor Drăganu, *op. cit.,* p. 86.
[80] *Ibidem,* p. 97.

[81] Eleodor Focşeneanu, *op. cit.*, p. 19.
[82] Tudor Drăganu, *op. cit.*, p. 98.
[83] Eleodor Focşeneanu, *op. cit.*, p. 20.
[84] *Ibidem*, p. 31; for a classification of this Constitutions, depending on how they were adopted, see Ion Deleanu, *Instituţii şi proceduri constituţionale*, Arad, Ed. Servo-Sat, 1999, p. 197 and Tudor Drăganu, *Drept constituţional şi instituţii politice. Tratat elementar*, vol. 1, Bucureşti, Editura Lumina Lex, 2000, p. 75.
[85] *Ibidem*, p. 31.
[86] Tudor Drăganu, *Începuturile şi dezvoltarea regimului parlamentar în România până în 1916*, Cluj, Editura Dacia, 1991, p. 88.
[87] Eleodor Focşeneanu, *op. cit.*, p. 31.
[88] I. Vîntu, G.G. Florescu, *Unirea principatelor în lumina actelor fundamentale şi constituţionale*, Bucureşti, Editura Ştiinţifică, 1965, p. 271.
[89] Tudor Drăganu, *op. cit.*, p. 157.
[90] *Ibidem*, p. 158
[91] I. Vîntu, G.G. Florescu, *op. cit.*, p. 303.
[92] *Ibidem*, p. 311.
[93] D.V. Barnoschi, *op. cit.*, p. 324.
[94] Nicolae Iorga, *op. cit.*, p. 53.
[95] D.V. Barnoschi, *op. cit.*, p. 327.
[96] Eleodor Focşeneanu, *op. cit.*, p. 32.
[97] Apostol Stan, *Putere politică şi democraţie în România, 1859-1918*, Bucureşti, Editura Albatros, 1995, p. 42.
[98] Eugen Lovinescu, *op. cit.*, p. 165.
[99] Apostol Stan, *op. cit.*, p. 231.
[100] *Ibidem*, pp. 230-231.
[101] Eleodor Focşeneanu, *op. cit.*, p. 28.
[102] Cristian Ionescu, *op.cit.*, p. 494.
[103] Eleodor Focşeneanu, *op. cit.*, p. 29.
[104] Cristian Ionescu, *op.cit.*, p. 494.
[105] *Ibidem*, p. 495.
[106] *Ibidem*.
[107] Eleodor Focşeneanu, *op. cit.*, p. 29.
[108] *Ibidem*, pp. 27-28.
[109] Mihai T. Oroveanu, *op. cit.*, p. 265.
[110] *Ibidem*.
[111] Cristian Ionescu, *op. cit.*, p. 507.
[112] *Ibidem*, p. 508.
[113] Mihai T. Oroveanu, *op. cit.*, p. 273.
[114] *Ibidem*.
[115] Eleodor Focşeneanu, *op. cit.*, p. 62.
[116] Cristian Ionescu, *op. cit.*, p. 508.
[117] Mihai T. Oroveanu, *op. cit.*, p. 281; See also Paul Negulescu, *Curs de drept constituţional român*, Bucureşti, 1927, p. 324.
[118] Eleodor Focşeneanu, *op. cit.*, p. 64.