

CONSIDERATIONS REGARDING IONICA TAUTU'S DRAFT CONSTITUTION

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ABSTRACT

THE MOST IMPORTANT CREATION OF POLITICAL THINKING IN THE DECADE FOLLOWING THE REVOLT LED BY TUDOR VLADIMIRESCU WAS THE ONE THAT REMAINED KNOWN IN ROMANIAN HISTORIOGRAPHY AS THE "CONSTITUTION OF THE CARBONARS". THIS NAME IS DUE TO THE FACT THAT THE IDEAS UNDERLYING THIS PROJECT OF MOLDOVA'S POLITICAL REORGANIZATION WERE SHARED AT THE BEGINNING OF THE NINETEENTH CENTURY, FIRST OF ALL BY THE REPRESENTATIVES OF THE SMALL AND MEDIUM-SIZED BOYARS WHO, ONCE THEY CAME INTO CONTACT WITH THE IDEAS THAT HAD BEEN PUT INTO CIRCULATION DURING THE FRENCH REVOLUTION OF 1789, TRIED AND LARGELY SUCCEEDED IN POPULARIZING AND TRANSFORMING THEM IN LAWS THAT CONTRIBUTE TO THE BUILDING OF A MODERN SOCIETY FROM A SOCIAL, ECONOMIC, BUT ESPECIALLY POLITICAL POINT OF VIEW, BY IMPOSING WESTERN PRINCIPLES OF GOVERNMENT, BUT ESPECIALLY BY SETTING UP INSTITUTIONS THAT WILL SIMPLIFY THE LIFE OF THE MOLDAVIAN PEOPLE.

KEY WORDS: TĂUTU, CONSTITUTION, ARTICLE, PRIVILEGE, LIBERALISM, LAW

Although this document remained known in history as the "constitution of the carbonars" after the pejorative qualifier that the representatives of the great boyars used to label an increasingly popular movement among the representatives of the other boyars. "Carbonars" fought for equality, but for political equality for all boyars, regardless of rank. They benefited not only from Vladimirescu's movement in Wallachia, but also from the fact that, after the restoration of the earthly rulers, Ionita Sandu Sturdza was the first indigenous prince of Moldavia, who was also a representative of the carbonarism. He had agreed to "adopt" the constitution of the carbonars and to govern according to his prescriptions, until the election of new administrative assemblies of the country to adopt a new constitution that would have completed the reformatory program of the carbonars.

The constitution project was, as I have already said, the fruit of collaboration in ideas, some of the representatives of the small and medium-sized boyars, and of some mazili (former dignitaries removed from office) boyars. Adopting this project would have resulted in an increase in the number of people enjoying political rights from a few hundred to a few thousand. Among those who have inspired this constitutional project, first of all Ionica Tăutu, descended from one of the oldest families in Moldova, but who had fallen quite a long time, an engineer, a

very important job in those times. An important influence on the way in which the text of this draft constitution was completed, however, seemed to have had other contemporaries among whom, we mention Alecu Russo, the one that he appreciated that by his style and by his insistence proof of promoting new governing principles would have played a role very similar to that which Tudor Vladimirescu, who had acted with the rifle.¹ Equally important was also the influence of the great windmill Iordache Drăghici, the great vornic Ion Tăutu, the grandfather of the "carbonars", as well as that of the jurist Andronache Donici.²

The Constitution of the carbonars is a moment of great importance in political history both in Moldova and in Wallachia, both through what it represented in itself and through the reactions it produced in the ranks of the great boyars, this being the moment when the romanian political society, mostly reunified in what was called the national party, irreversibly split into two distinct orientations that would define the romanian political life throughout the nineteenth century, until the very first years of the twentieth century, regardless of the social and political changes that would take place. The coordinators of the Romanian political life would change only after the end of the First World War when, following the disappearance of the Conservative Party, the romanian political scene, which was dominated by almost a century of struggle between conservatives and liberals, changed during the interwar period to the place of the conservatives being taken by the National Peasant Party.³

Representative of early liberalism, as described by Emanuel Turczynski, Ionică Tăutu, studied mathematics and natural sciences and, due to the fact that he had family ties with people who lived in Bucovina, was also aware of the spirit of the teresiano-iosefin reforms implemented there.⁴

The education that Ionica Tăutu had learned and the principles on which he considered that the Moldavian society had to be reformed led Paul Cornea to catalog Tăutu as the first modern romanian,⁵ proof of this being, beyond the ideas he put forward in his reform project, but especially in a language that was not at all common for that time,⁶ even if there were still enough legal terms that would become vetoes shortly thereafter, to be replaced by those we use today.

The text of the first article of the "constitution" of the carbonars is a veritable declaration of autonomy of Moldova, stipulating that "the people of Moldova, as a people from ancient times to hitherto had and holy the privilege of freedom and that of the will to endure with the ruler and with the rulers of the earth under the shadowing of the too strong kingdom to which he is subjected, asks to have the use of this privilege for full law, the fallen ones of righteousness, and the keeping of his duty of obedience, and of his faith to the too great Devleat".⁷

¹ *Istoria Parlamentului și a vieții parlamentare din România până la 1918*, Publishing House of the Academy of Socialist Republic of Romania, Bucharest, 1983, p. 19.

² Ibidem.

³ ³ Apostol Stan, Mircea Iosa, *Liberalismul politic în România de la origini până la 1918*, Encyclopaedic Publishing House, Bucharest, 1996, p. 31.

⁴ Emanuel Turczynski, *De la iluminism la liberalismul timpuriu*, The Romanian Cultural Foundation Publishing House, Bucharest, 2000, p. 103.

⁵ Paul Cornea, *Originile romantismului românesc. Spiritul public, mișcarea ideilor și literatura între 1780-1840*, Bucharest, 1972, p. 241.

⁶ Radu Carp, Ioan Stanomir, Laurențiu Vlad, *De la "pravilă" la "constituție". O istorie a începuturilor constituționale românești*, Nemira Publishing House, Bucharest, 2002, p. 19.

⁷ A. D. Xenopol, *Istoria partidelor politice în România, volumul I, De la origini până la 1866*, Albert Baer, Bucharest, 1910, p. 573.

Although the project invokes the privileges of the "freedom" and "will" of the moldavians to choose their own rulers and to "rule" themselves after laws to formulate themselves by asking for the exercise of these rights "of old", this first article does not forget to speak of the "too strong kingdom" to which he was subjected.

The second article, while stating that the orthodox religion became an "official religion" of Moldova, imposed a high level of religious tolerance, appreciable at least for those times, once again appealing to the old romanian traditions.

Article four was, in fact, a take over of a simplistic definition of liberalism, specifying that every citizen could do absolutely anything, as long as that action had not been forbidden by any law.

Another text with an extremely modern content is that of the fifth article, which came to protect private property, imposing the principle that no one "can not be deprived of any part of his own free will, except for his own any casualty when a legitimate legitimate need will necessitate it "; but then "after a right compensation is made to the thing to ask for it".¹

This is the first time that a reform project provided protection for property rights, and for the first time when it was specified that if public utility was needed, the ownership of an immovable property could be transferred to state ownership, but only after he had given the owner of that property a sum of money to cover the value of that property. Thus, in the Romanian constitutional tradition, the idea of transferring the right of ownership from the private sphere to the public was born after a "prior and just compensation". It should not be forgotten that the text of this document was heavily influenced by the echoes of the french revolution and especially by the text of the Declaration of Rights proclaimed in postrevolutionary France.²

The next article was also to impose a principle that would impose on the romanian constitutional law, according to which no one can be "accused, putt in jail or punished only in the cases decided by rule and by the forms of the rule".³

Article seven expresses a "delicate controversy," as D. V. Barnoschi said, in a work published on the occasion of the 100th anniversary of the drafting of the constitution. The article states that "all that calls upon you, or strives for the commandment, according to the decree of the laws and its forms, to succumb immediately; and opposition to be known for guilt and to obey the righteous judgment"⁴ and determined the author to wonder whether the quoted text might legitimate the resistance to the illegitimate arrest and if the provisions of this article would "establish" in Moldova the "revolutionary" principle of resistance to oppression.⁵ Valeriu Șotropa noted that this article was not able to fully reproduce the state created in France after the adoption of the Declaration of Rights because the "constitution of the carbonars" did not include, as the text of the french document, the right to resist "oppression" between those rights declared as natural and imprecise rights.⁶

¹ Ibidem, p. 574.

² Valeriu Șotropa, *Proiectele de constituție, programele de reforme și petițiile de drepturi din Țările Române în secolul al XVIII-lea și prima jumătate a secolului al XIX-lea*, Publishing House of the Academy of the Socialist Republic of Romania, Bucharest, 1976, p. 68.

³ A. D. Xenopol, *op. cit.*, p. 574.

⁴ Ibidem.

⁵ D.V. Barnoschi, *Originile democrației române. "Cărvunarii". Constituția Moldovei dela 1822*, Viața Românească Publishing House, Iași, 1922, p. 141.

⁶ Valeriu Șotropa, *op. cit.*, p. 69.

The text of the new article introduces in our literature and political thought another principle that has an innovative character in terms of the rights and freedoms of the individual, proclaiming the presumption of innocence. The text showed that "for everything that will be blamed for any deed, and before the act of guilt is proved, the necessity would necessarily require to imprison, all the harshness over the need for safety about his person to be stopped and unchecked".¹ Once again, the text was not an original one, being only a reproduction of article 9 of the Declaration of Rights, which states that "all man being presumed innocent, while not yet declared guilty, if his arrest is deemed indispensable, the law must repress severely any rigor that would not be required by the person's".² It should be noted that the variant of the carbonars constitution is much less "severe" to use a term in the Declaration of Rights than the variant in France. It is worth considering the inclusion of such a normative provision aimed at strengthening the position and the status of the citizen in society, in a society which, in the field of rights and freedoms, and especially in the field of justice, was still dominated by practices approaching Moldova rather than the medieval period rather than modernity. However, over time, a custom would be created, that of "importing" provisions from the legislation of other states, but the validity of these prescriptions was lost in their translation into Romanian, and the effectiveness of these provisions suffered, not having the same effectiveness.

One of the most prominent demands in the early nineteenth-century political memoirs and programs was put into practice by article 12, which stated that "no public service, neither court nor government, nor any other need not to reckon with inheritance or saving, nor ever to subdue this kind of consideration".³

Also in the category of rights and freedoms are the provisions of Article 18, which states that "before the right to be counted all unopposed and without distinction, having to be one and the same for all, or to protect, or to punish. In the right can only be decided what is right and useful and can only stop what is unjust and corrupt".⁴

The next article, 19th, is an unrefined form of edifying the principle of the separation of powers in the state, which gave the ruler the "power of leadership", while the power of "decision" was exercised by the ruler together with the public council. These powers were obviously exercised for the benefit of the moldavian people, as the article cited stated that "the people, in order to protect their inner affairs in the proper way, in order to be able to use the righteousness of their old privileges, requires that they and the laws of the city council have been strengthened, and this land has been renewed since ancient times".⁵

According to the provisions of article 20 of the Municipal Council, the representative body of the country was to be made up of the Metropolitan of Moldova, the two bishops, the Roman and the Huși, and one representative of each country (the equivalent of the counties of Walachia), from among the ranks of the boyars, so they were not excluded from the right to be elected as representatives of the nation, those who belonged to the category of lower-ranking boyars. The thing is no wonder, given that the author of this legislative project was representative of the little boyars.

¹ A. D. Xenopol, *op. cit.*, p. 575.

² D. V. Barnoschi, *op. cit.*, p. 146.

³ A. D. Xenopol, *op. cit.*, p. 575.

⁴ *Ibidem*, p. 576.

⁵ *Ibidem*, p. 577.

Article 21 of the Constitution established which were to be the powers of the public council. Thus, this article stated that "the gathering of the public council should depend on all the rules of those communities, such as the correction of righteousness according to what it is, or the advent or decline, or the renewal, the quorum commands of any demand or duty of hawleliles, straightening the birch, improving the economy of the field, establishing trade, making morals, setting up schools and other public settlements, the good order of the churches and monasteries of the land, law enforcement and other upheavals for the poor , public need to hang public good".¹

The draft of the carbonars provided, among other things, that the appointment in public positions was to be done by the ruler, with the approval of the public council, the occupation of these positions being to be done taking into account not only the professional criteria but also the moral criteria as it is clear from the requirements of article 45, who stated that one of the criteria was that of the merits of "good deeds," to be considered also "the power of the worthiness to which it is to be entrusted".² Another extremely important provision, which is also present in most of the previously drafted reform projects and programs, namely that public functions in the state were to be occupied exclusively by moldavian citizens, excluding all foreign citizens from occupying one functions in the administrative device.

The following article included other regulations on public functions, stating that "in order to lack the intrigues and persecutions and to be able to find among all the earthly people according to their merit in the service of the earth, the people find it fitting that all the persons shown in paragraph sixty- , from one to small to change at the end of each year, doing well and on the contrary, legally found guilty, to change even before the end of the year".³

A separate chapter is entitled "the face of the right to ask for the meaning of those below."

Article 53 attempted to put another barrier to the abuse of which the company in the principalities was marked, trying to provide a guarantee of equality before the law. The text of the article stipulated that "neither the owners of the estates will be harmed from the right that their land is giving them to the inhabitants to feed themselves, but the inhabitants will not be afflicted".⁴

Article 65 institutes "the freedom of education", as Valeriu Sotropa appreciated.⁵ The text of the article stated that "for the public benefit and for the advancement of the education of the moldavian people, public schools in Iași and in all the fairs in the country should be organized in the best and most orderly way, so as to be able to learn anyone in our language".⁶

The stipulations of the "constitution" of the carbonars represented, in this respect, more a statement of intent, the tone promoted by the text of the article not being very determined. It is quite obvious that, although referring to the moldavian people, article 65 provided for the establishment of schools only in the capital and in the moldavian cities, or the moldavian population, mostly the rural localities. The urban population, especially in the fairs that appeared

¹ Ibidem.

² Ibidem.

³ bidem, p. 585.

⁴ Ibidem, p. 586-587.

⁵ Valeriu Șotropa, *op. cit.*, p. 70.

⁶ A. D. Xenopol, *op. cit.*, p. 591

more and more often at the beginning of the nineteenth century, was largely made up of Jewish inhabitants. In fact, the issue of education in both principalities was rather complicated, primarily due to the lack of a proper budget for the idea of establishing a modern educational system. Even the law adopted during the reign of Alexandru Ioan Cuza, which stated that education became compulsory and free, could not solve this problem very quickly, although it represented a huge impetus for this domain, proof being the establishment in 1860 of the University of Iasi and in 1864 of the University of Bucharest.

Also in Ionica Tăutu's "constitution" it was stipulated that foreign citizens would not have the right to purchase land in Moldova. Aliens did not, however, have any kind of ban on trade.

One of the most important articles is the number 72, which contains regulations on the choice of the ruler. In the first part of this article was regulated the most important of the claims of the movement led by Tudor Vladimirescu. Thus, it was stated that "remaining after merciful mercy for our strong kingdom", the most important of the conditions to be fulfilled by the candidates to the reign, namely to be an earthly citizen of Moldova, because the institution of citizenship was also regulated by the text of this constitutional project.

Regarding the procedure of the election of the ruler, it was to be done by the Assembly of the People, composed of the Metropolitan, the two bishops, but also "all the boyars, from the great logger to the landlord", to be chosen among the candidates "Will be more full of temptation, known and severed for his good deeds, for the patriotic zeal, for the worthy of a Lord, and for his faith for the mighty kingdom".¹ The winner would have been the one who would have obtained the highest number of votes. The results of the vote were to be brought to the attention of "the strong kingdom", from which it would also receive the strengthening of this election.

The text of the article should be interpreted in close connection with those of the first "tip" of this project that talked about the use of the priory to self-govern, accepting that this process would be achieved under the "shadow of the mighty kingdom".

At the end of the novel draft Constitution, his author formula included a definition of this kind of document. According to Tăutu's opinion expressed in point 75 of his draft, "the rule is the basis in which all the liberties stand, the boundary of the power of those who engage in public affairs, the righteous right to the protection of this, of the wealth and of the public rights or in the part of each, and ultimately the basis of the power that fulfills all these solemn ties, the request of the public is that, on the basis of its demands, these and the following ones, as well as those that are more appropriate than these, a rule of the fullness of the land, and of the political and criminal rulers, as well as all the ordinances of the holy ones of the earth, which, in our own language, are to be strengthened and made known to the public, he had any one to rule over righteousness and duty its sale; but as the land's rules will be formed and established in the way shown, it will follow in the face of political grievances after the royal empires and in the cases of criminal gossip until the rule of the land".²

And this article was formulated in a language that contained the fundamentals of liberalism, which was highlighted by the very first words of this article, which considered that the law (still used to be the rule of law) was the only real foundation of freedom, a text that followed a other provisions contained in this document, which "translates" the term of liberty by

¹ Ibidem, p. 593

² Ibidem, p. 593-594.

the right of every member of the society to do everything he wants, without in this way damaging the rights of others to do in their turn what they want.

In the penultimate article of this document it was appreciated that the public council, Moldova's future representative body, was the "most demanding" claim that had been imposed in this bill by the "land of the earth", first of all because, together with the ruler, the institution of the public council would have an extremely important role for Moldova's political future, for the fact that these institutions would depend on how they would carry out those reforms that would have changed the fate of the Principality.

Regarding the use of the term "communion" to determine the entire community of citizens living in Moldova at that time, we must point out that its use is obviously forced by the number of those who were interested in the political realities of Moldova and who were able at the same time to understand these realities was extremely low.

A last statement should be made about the "constitutional" nature of the carbonars project.

Among the older authors who have spoken about this reform project, we mention here D. V. Barnoschi, who publishes a copy of the text of the Constitution of the carbonars accompanied by brief comments on the articles of this project included in a published work on the occasion of the 100th anniversary of the drafting of this project, the date from which it has passed until now for another 100 years. In the introduction to the work entitled "The origins of romanian democracy" the author was rather concerned with the identification of those who participated, together with Ionică Tăutu, in basically outlining the text of this reform project, as well as the way in which the conservative ideas were intertwined with the innovative ones in the process of making of the body of this reform project.¹ By using the term of constitution without quotation marks (hence perceiving it as a genuine draft constitution, the author did not pronounce on the provisions of the project that would justify such a conclusion).

Ioan Stanomir appreciated the carbonars project as a "recapitulative summary", a sort of breaking with the past, a moment that marked the distance from everything that meant the old regime represented by the phanariot reigns.²

Analyzing the text of the Constitution of the carbonars, we note that there are too few benchmarks to qualify this document as a true Constitution. It is true that the text deals with the right to property, education or free speech. Indeed, the regulation of property rights, especially private property, was a first step towards modernizing society, primarily at the economic level. Economic growth would only have beneficial influences on the state of Romanian society and on other points of view. Equally important was the regulation of the state's right to use the right of expropriation for public utility purposes for the construction of buildings that would have been a benefit to the entire society without being prevented from such initiatives by the owners buildings that would not have been willing to give up. Also, education in romanian language would have contributed, as it would have done, to strengthening national conscience.

¹ D. V. Barnoschi, *op. cit.*, pp. 110-125.

² Ioan Stanomir, *Nașterea Constituției. Limbaj și drept în Principate până la 1866*, Nemira Publishing House, Bucharest, 2004, p. 79.