

# **A PROJECT FOR THE ORGANISATION OF POWERS IN A STATE OF GREAT EUROPEAN POWERS PROPOSED FOR THE TWO PRINCIPALITIES. THE PARIS CONVENTION(1858)**

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## **ABSTRACT**

IN THIS ARTICLE I BRIEFLY PRESENTED A DRAFT OF THE REGULATIONS, THE ORGANIZATION OF POWERS PROPOSED BY THE MAJOR POWERS FOR THE ROMANIAN PRINCIPALITIES, NAMELY THE PARIS CONVENTION. IN THE 7/19 AUGUST 1858, REPRESENTATIVES OF MAJOR EUROPEAN POWERS HAVE SIGNED THE "CONVENTION FOR ORGANIZING THE FINAL ROMANIAN PRINCIPALITIES", CONSIDERED BY HISTORIAN NICOLAE IORGA AS "THE FIRST ACT ONLY COMES OUT DETERMINED BY EUROPEAN PHILANTHROPY PLACED BY OUR PRIBEGILOR APPLICATIONS". THIS CONVENTION HAS NOT FULLY ACCEPTED THE UNION OF WALLACHIA. EACH OF THESE PRINCIPALITIES HAD ITS OWN RULER, ITS OWN LEGISLATIVE ASSEMBLY NAMED ITS OWN ELECTIVE ASSEMBLY AND COURTS.

THE CONVENTION CREATED COMMON INSTITUTIONS AND THE TWO PRINCIPALITIES: THE HIGH COURT OF CASSATION AND JUDICIAL AND CENTRAL COMMISSION IN FOCȘANI. IT WAS ALSO ENVISAGED THAT THE ORGANIZATION OF THE STATE TO BE BASED ON THE PRINCIPLE OF SEPARATION OF POWERS.

**KEY-WORDS:** SEPARATION OF POWERS, THE PARIS CONVENTION, THE LEGISLATIVE ASSEMBLY, THE COURT.

## **I. Organization of powers under the regulations of the Paris Convention from 1858**

On 7/19 August 1858 representatives of the major European powers signed the "Convention for the definitive organization of the Romanian Principalities,"[1] according to historian Nicolae Iorga as "the first act that comes only out of philanthropy prompted European demands driven by our wandering"[2] . This convention has not admitted the full union of Moldova and the Romanian Country. Each of these principalities had its own ruler, its own legislative assembly called the Elective Assembly and its own courts.

The Convention created some joint institutions of the two principalities: High Court of Cassation and Judicial and Central Commission at Focsani[3]. It was also envisaged that the state organization to be based on the modern principle of separation of powers.

**Executive power** was exercised by rulers (art. 4)[4] elected for life by legislative assemblies. Those who wanted to occupy the thrones must meet the following conditions: be a

Romanian citizen, you have aged 35 years, a Fortune 3,000 ducats or have performed public office for 10 years (art. 13)[5]. After choosing the two heads of state had to go to Constantinople to obtain investiture Sultan. If the throne remained vacant, that meeting must within eight days to choose other rulers. In order to make these choices need to be present was three-quarters of registered members. If the eight days would not have been elected the two rulers, the ninth day at noon, notwithstanding Assemblies of the members present recourse to the appointment of two heads of state. If the two were not in session Assembly convened as soon as they had remained vacant throne and were to meet in ten days. If the Assembly were dissolved or abolished it was necessary to conduct elections for the establishment of new ones that were required to meet within ten days. During the throne was vacant, the management of State affairs was entrusted to the Council of Ministers did not, however, have the right to dismiss officials existent except those indicted or appoint new ones only for a limited period (art. 11, 12) .

The exercise of executive power two ministers appointed rulers were helped by them. They were required to countersign documents issued by the leaders of the two countries, being responsible for violations of the laws and "especially any waste of public money"[6] (art. 14 and 15). Ministers could be indicted by the rulers and the two legislative assemblies, in this case being tried by the High Court of Cassation and Judicial. Impeachment could not decide unless he was voted by two thirds of the members present Assemblies.

**Legislative power** was exercised by reigning Elective Assembly and the Central Commission at Focsani (art. 27-36).[7]

Elective Assembly were elected for a period of seven years. They were made up of members of law (metropolitans and bishops who were presidents and diocesan) and elected members. The rulers were compelled to convene the first Sunday in December. Last session, usually three months but can be extended if necessary. These legislative bodies could be dissolved by the leaders of the two principalities before the expiry of seven years (art. 16 of the Treaty)[8]. In this case they were bound to convene the electorate for elections to take place so that within no more than three months to meet the new Assembly. These legislators were supposed to discuss the budget, projects sent by Mr and laws except those of common interest and the prosecution of ministers incorrect. At their meetings they attend and ministers who could only engage in the debate and vote not their laws.[9]

1858 Paris Convention devote some features of the parliamentary regime. For example, Mr., elected for life, had, according to art. 17, the right to dissolve the Elective Assembly. However, the Paris Convention was possible specific institutions functioning parliamentary system, because some principles of this regime were ignored. The political responsibility of ministers was not provided, although any act of the ruler had countersigned by the competent ministers, and they were declared responsible for the violation of laws. However ministers criminal liability is first recognized by the convention Romanian public law because, according to art. 15 ministers could be tried by the High Court of Justice and Cassation, the supreme court, has jurisdiction to resolve appeals against the judgments of courts and judgments handed down by the courts. The action could be driven by the Elective Assembly with a two-thirds majority or the "hospodăr" (Sir).[10]

Therefore, the state organization of the Principalities was established according to the principle of separation of powers: legislative power was entrusted to Lord, an Elective Assembly and the Central Commission at Focsani (common to the two main); Executive power is exercised

by Sir / *hospodâr*; Judicial power was exercised in the name of God by magistrates appointed by it.

Projects of common interest laws were prepared by the Central Commission at Focsani Elective Assembly voted by two. Preparation of special interest laws were prepared by the Lord every principality and Elective Assembly that voted. Of particular importance is the art. 37 of the Convention which provides that "the laws of particular interest for each Principal will be strengthened by **hospodar** (or *gospodar* is a term of Slavonic origin, meaning "lord" or "master".) until he shall be communicated by the Central Commission, which will have a price suitable provisions constituting November du organization". Practically, this text establishes a mechanism for such verification body and the constitutionality of laws. It is the first legal provision in the history of Romanian law on political control of the constitutionality of laws.

Central Committee, exercising legislative power with *The Hospodar* and Elective Assembly, not only have the power to prepare "statutes of mutual interest of both principalities", as these are to be rated assemblies (art. 6, para. 2). Another similarity between the Central Commission and the Constitutional Court's the current method of selecting its members.[11]

Paris Convention "is an international act by which, taking into account only partially Romanian people's will expressed through resolutions Ad-hoc couches were set basic standards relating to the socio-legal principalities and their reorganization." On the basis of the Paris Convention, which is actually a constitution from abroad, translates for the first time in our practice the constitutional principle of separation of powers, they will be exercised, in each mainly by gentleman and Elective Assembly, both working in cases established by the Convention and with the help of a common organ of the Central Commission at Focsani.[12]

#### *Central Commission from Focsani*

Signed in August 7/19, the Paris Convention was implemented after the exchange of ratifications took place and was invested Caimacams new Moldovan and Romanian Land.

On 19 October 1858 Alif Bei Commissioner Gate, Iasi took part in the establishment of the interim committee, composed of Stefan Catargiu Vasile Sturdza and Anastasius Panu that would exercise powers until the election of the future president gentleman. The same day, another commissioner of the gate Chimail Bei, attended the installation of the interim committee of the Romanian Country, made up of Ion Manu, John. Filipescu and Emanoil Băleanu.[13]

Since, according to the Paris Convention, the Central Commission at Focsani to be constituted of members appointed by the Elective Assembly of the two principalities and the members appointed by the rulers it could not come into being until after the election Assemblies and after the start of the new rulers[14] . Formation of the Central Commission at Focsani has been postponed due to the refusal to recognize Porte Alexandru Ioan Cuza as ruler of both principalities. Postponing the creation of this committee was supported by France who consider appointments in March 1859 seemed inappropriate. Speeding up the establishment of the Central Commission at Focsani has been requested by many politicians among which the Romanian Vasile Boerescu.

Since the entry into force of the Paris Convention and until May 10, 1859 were placed numerous problems for absolution which the intervention of the legislature was required: a tax "extraordinary and temporary" 5 million for real estate urban and rural (Moldova), regulating the compacts between villagers and estates owner or lessee, a loan of 200,000 ducats (Romanian Country).[15]

The discussions were held on draft laws sanctioning Elective Assembly adopted before the establishment of the Central Committee, led by Alexandru Ioan Cuza to take the new institution to function. On 14 March 1859 addressed a letter of Iasi Elective Assembly stated that without competition the Central Commission could not be forged reforms Convention August 7/19 foreseen and that without such committees were paralyzed. Therefore, the Chamber invited her to exercise her right as soon as four members of the body choose the legislature in Focsani. The same message was sent and the Elective Assembly in Bucharest on March 17, 1859.

Elective Assembly of Iasi after receiving the message passed on 14 March ruler to designate four members of the Central Commission. They were selected after two ballots, Lascăr Catargiu replaced on April 27, 1859 when he became interior minister in the government presided over by Manolache Costache Epureanu with Grigore M.Sturdza ,Mihail Kogalniceanu , Răducanu Rosetti and P.Rosetti Bălănescu.[16]

Elective Assembly of Romanian Country chose at March 21 as members of the Central Commission, in a single round on Scarlat Fălcoianu replaced after becoming the March 27, 1859 Foreign Minister in the government of Constantine Crețulescu John Emanoil Florescu, C.N .Brăiloiu, Apostol Arsachi and C. Filipescu.[17]

After Elective Assembly in Bucharest and Iasi chose the 8 members of the Central Committee, called on 9 April , Cuza named other 8members of "members of the Assembly or of the people who will have reached high positions".[18] The countries were appointed Romanian Stefan Golescu, Eugene Predescu, Gregory Arghiropol and Christian Tell Manolachi Costachi and from Moldova Epureanu, Alecu Gregoriou, and Basil Alexander Teriachiu Malinescu. The 16 members of the Central Committee were summoned for May 1, 1859 in Focsani. Government crisis occurred in Moldova, the meeting was postponed. It contributed to the postponement of the convocation and that Manolachi and Alexandru Costache Epureanu Teiachiu were appointed members of the new government in Iasi and, as stated in the statute of the Commission, the function of minister was incompatible with membership of this body. Therefore the three were replaced, their place being appointed Grigore Cuza and Ludovic Steege[19]. The new institution began work in Focsani, May 10, 1859, chaired by Apostol Arsache work, secretaries being Mihail Kogalniceanu and Grigore Arghiropol. The first meeting was attended by the prime ministers of the two principalities: Costache Constantin A. Crețulescu and Manolachi Epureanu who read the message ruler. Five members of the Central Commission at the hearing on May 22, 1859 national draft regulation which was approved on 29 May. The Regulation provides: total voting a bill will be by roll call and will face the choice of special committees consisting of 3-5 members to consider projects that could not be discussed in plenary, composition Commission office composed of a chairman whose role was preponderant, a vice president and two secretaries, attendance at meetings of at least 9 members to vote a law, establish sanctions against those who absented. After six absences in a row, without having received leave and not be communicated in writing because it is currently hinder a member of the Central Committee could be considered resigned.

Commission members were appointed ie, once elected were appointed, they could not be replaced until the end of the mandate of each Principality Elective Assembly. They could be dismissed only if they are suffering from a serious illness that puts unable to fulfill its mission. One such case occurred in June 1860 when the poet Grigore Alexandrescu called by Cuza,

member of the Central Committee of the Romanian Country, was replaced because he suffered from mental problems, the lawyer Arghiropol.

Unlike the Elective Assembly that was presided over by Metropolitan country, the Central Commission at Focsani have the right to elect the president herself. Besides annually elected president there were a vice president and two secretaries. The Commission had numerous responsibilities in legislation and administration. Regarding legislation, the Convention of August 7/19, granted a right of initiative on the laws of common interest to both principalities. They were considered as the law of general interest of the establishment of legislation, in establishing, maintaining or improving the customs union, the Post and Telegraph, the monetary price fixing. In art. 35 of the Paris Convention stated that all these laws should be codified and made by the Central Commission "in harmony with the Constitution of the new organization." Thus, the Commission had the duty to "revise the Organic and condicile civil, criminal, commercial and procedural, so out of laws clean local interest, not to be the next one and the same body of law which run in both principalities. "

Projects of common interest, after they were drawn in Focsani, Assemblies were debated who could reject them or adopt them without change, without amend the text to be submitted. If the text was amended, the bill was returned to the Central Committee. Identical amendments adopted by the assembly in Iasi and Bucharest were to be adopted by the Commission in Focsani. If the Romanian Country House amendments were different from those of the Moldovan Chamber, the Central Commission established the definitive text of this project. Then the two companies were called to decide on this project. They do not have the right to modify it may only accept or reject it. After the bill was passed by both chambers before the two rulers was to be sanctioned. But the lords could deny this.

For the laws of local interest, drawing procedure was simpler. Prince have initiative laws, the bill was passed after the Elective Assembly was submitted to the Central Commission at Focsani which had to assess whether the text of what was depicted was "appropriate with incorporation of the new organization." If the answer was negative, the bill could not be sanctioned by the ruler.[20]

In addition to legislative prerogatives, the Central Commission has been endowed with administrative tasks, so, according to the Paris Convention, it was entitled to "show hospodăř abuses and would seem to need to [be] cut off and mean improvements would be necessary to introduce in osebitele branches of government. "

**Judicial power** was exercised by tribunals[21] whose members were appointed by the rulers of the Courts of Appeal and High Court Judicial and Cassation based in Focsani, joint institution of both primary (art. 38) that "exercise a right of censure and discipline the courts of Appeal and courts "(art. 40).[22]

### **High Court Judicial and Cassation**

Organizing Court of Cassation, according to the 1858 Paris Convention would be made by a special law.

Shortly after the election of Alexandru Ioan Cuza began to work to this end. The establishment of this court was requested by many politicians who saw in it an institution of utmost importance for the country. The Mihail Kogalniceanu, referring to the need to create such an institution claimed that "until Romanians will have complete union was needed to establish

the Court of Cassation, which is so great necessity as the union, at least in moments actual "[23]. He claimed that the issue concerned and foreign powers: "Our agent in Constantinople is asked all the days of foreign ambassadors about the establishment of the Court of Cassation".[24]. His views were confirmed Mihail Kogalniceanu and Grigore Sturdza that "The French Ambassador, Walewski insist on speeding up the establishment of the Court".[25]

The project was developed by the Central Commission sent first Assembly in Bucharest in May 1860. In order to study this project was set to ad-hoc committee which had as its president I. A. Filipescu and rapporteur Constantin Busoianu.[26] . To avoid delays that have occurred because of a dispute that would arise between the Elective Assembly of Romanian Country and the Elective Assembly from Moldova, one from Bucharest meeting of 17 June 1860 decided to propose that the Iasi total adoption of the draft law as the Supreme Court itself will vote for: all the changes that it will bring the text drawn up by the Central Commission. If the answer were negative, the Bucharest Assembly took his total commitment to adopt the bill as it will be "fined in Iasi".[27]

Moldavian Assembly took it into question at the hearing on 28 June 1860, this proposal does not fully accepted. She decided that the debate on the articles of the draft law on the Court of Cassation, to vote on the amendments presented not only its members or sections of it, but the amendments accepted by the Assembly in Bucharest. During the debate most Moldovan deputies received some amendments of the Chamber of Bucharest, but not all. They introduced some changes in the text prepared by the Central Commission which were not in the approved text of the Elective Assembly of Romanian Country.

The Court of Cassation had jurisdiction to all courts of appeal and tribunals had to portray all the orders. This superior court having the right to censure and discipline over members of other lower courts. She had to act on allegations by Mr. or Assembly Ministers, in which case the court held "without appeal" (Art. 39, 40 and 41 of the Paris Convention).

There've been some discussion about the Court's jurisdiction over ecclesiastical courts. Central Commission proposed that they be subject only if they were appealed for abuse of power and incompetence. Bucharest ad hoc commission considered that it is not rational to be removed from the control of the Court of Cassation religious court rulings even when these judgments civil matters.

Regarding the structure and number of members Opinions were divided. Focsani Commission requested that the court is divided into two sections: the civil and criminal, each with 7 members. Ad-hoc Commission has decided to divide into three sections: a reclamațiunilor, civil and criminal, having by 7 members. Justice Minister has advanced the idea that the first section have 5 members and the other two by 7. demanded that members of these sections is to change entirely every year (the Central Commission draft) or to change half of them, and this operation would be made by drawing lots. Members of the Court of Cassation which were declared irremovable were appointed by the ruler of the people who were aged 35 years who hold a doctoral degree or law degree at one of the universities in the country or abroad, will be practiced as a lawyer or legal functions for seven years or will have been teachers at one of the faculties in the country for seven years.[28]

In Bucharest, the Assembly voted on the draft articles, but refused his vote total, pending conclusion of discussions in Iasi. After debates in Iași ended the meeting in Bucharest on 19 July

meeting resumed discuss the bill on the Supreme Court and adopted, as it was amended by the Assembly in Iasi.

Although the law establishing the Court was passed by the assembly in Iasi and Bucharest in 1860 and promulgated by the Prince on 12 January 1861 the new institution actually started to operate until next year, when the royal decree no. 82 of 11 February 1862 was appointed its first members and decided to be installed March 15: Vasile Sturdza (first president), Constantin Hurmuzaki, Gregory Racoviță John Slătineanu (Chairman), Prince Nicolae Șuțu, Alecu Ion Filipescu, Alecu Catargiu, Nicolae Crețulescu, Iordache Beldiman, Constantin Ion Cantacuzino, Constantin Sturdza, Ștefan Ferikide, Anastase Panu, Constantin Bosoianu, Lascăr Roset, Evghenie Predescu, Ion Sturdza, Scarlat Fălcoianu, Petre Manu, Ion Constantin Filipescu, Ștefan Sillion, Constantin Donescu, Dumitru Roset, Aristide Ghica, Prince Scarlat Gr. Ghica (councilors).[29]. Royal decree was published in the Official Gazette of Moldova no. 88 of 29 January 1861 in the Official Gazette No Country Romanian 18 of 24 January 1861. It was signed by the two prime ministers: Michael Kostaki from countries Romanian and Moldovan Mihail Kogalniceanu side.

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