

SEPARATION OF POWERS INSIDE THE STATE, REFLECTED IN A ROMANIAN PROJECT FOR CONSTITUTION (1859)

Roxana DOBRIȚOIU
PhD, Assistant Professor,
Faculty of International Relations, Law and Administrative Sciences, “Constantin
Brâncuși” University of Tg-Jiu, Romania

ABSTRACT

THE ROMANIANS' HISTORICAL BECOMING IN THE 19TH CENTURY IS, ABOVE ALL, UNDER THE SIGN OF THEIR AFFIRMATION AS A NATION. BASICALLY, AS DIMITRIE GUSTI STATED, NATION REPRESENTS THE NATIONAL REALITY WHERE ALL THE INTERNATIONAL MANIFESTATIONS START FROM, NOT TOWARDS A NEW BEING, BUT TOWARDS A NEW PLAN OF RELATIONS. IN OTHER WORDS, BY THEIR ORIGINAL NOTES, EACH NATION IS ORGANICALLY INTEGRATED “INTO THE PUBLIC LIFE OF HUMANITY”. EVEN THE WAY BY MEANS OF WHICH A NATION IS INTEGRATED INTO THE UNIVERSAL IS A FEATURE OF ITS ORIGINALITY, OF ITS PERSONALITY. THIS WAY SUPPOSES A NATION'S FORCE TO EXIST, TO PERPETUATE ITS EXISTENCE, TO BE AMONG THE OTHER NATIONS. IN HISTORY, THE PEOPLES WHO DID NOT HAVE THE UNIVERSE DESTINY HAVE DISAPPEARED OR HAVE BEEN MERGED INTO AMORPHOUS MASSES WITH NO INDIVIDUALITY. THIS IS WHY A NATION MODELS ITS ESSENTIAL ATTRIBUTES: UNITY, INDEPENDENCE AND THE INSTITUTIONS CORRESPONDING TO THE HISTORICAL STAGE AND TO THE PERSPECTIVES OF THE SOCIETY DEVELOPMENT IN ORDER TO ACCOMPLISH OR TO PROVIDE THE REIGN OF ITS POLITICAL-STATE ORGANISM. THIS IS WHY THE NATIONAL STATE IS CONSTITUTED IN THE INDISPENSABLE FRAMEWORK OF THE NATION AFFIRMATION OR, IN OTHER WORDS, IN ITS INDISPENSABLE FRAMEWORK IN FULL SELF-POSSESSION. THE NATION MAY SHOW ITS VITAL CONDITION AS A POLITICAL BODY ONLY IN THE CONTENT OF ITS SOVEREIGN STATE, A CONDITION INVOLVING THE CONSECRATION OF THE BASIC PRINCIPLE OF THE MODERN SOCIAL-POLITICAL LIFE, ACCORDING TO WHICH LAW IS THE EXPRESSION OF GENERAL WILL. DEPENDING ON THE EXERTION OF THIS WILL AND NOT ONLY BY A SIMPLE REDUCTION OF THE THINGS TO THE CATEGORY REPORT, THE REPRESENTATIVE SYSTEM, THE PARTIES AND THE POLITICAL GROUPS HAVE BEEN OUTLINED.

OBVIOUSLY, THE ACCOMPLISHMENT OF THE MODERN POLITICAL-STATE ORGANISM ESSENTIALLY REPRESENTS THE WORK OF THE NATION ITSELF. THE DEEP RESORTS GIVE A STRONG INTERNATIONAL SHADE TO SUCH A HISTORICAL PROCESS. THE FACT IS EVEN MORE VALID FOR THE ROMANIAN NATION WHICH FACED, UNTIL THE MIDDLE OF THE 19TH, CENTURY, THE AGGRAVATION OF THE FOREIGN DOMINATION EXERTED BY THE MOST REACTIONARY POWERS OF EUROPE OF THOSE TIMES. HAVING THEIR ORIGINS AND HISTORICAL RIGHTS CONTESTED, BEING THREATENED WITH THE CLOSURE OF THE PERSPECTIVE OF THEIR NATIONAL AFFIRMATION, ROMANIANS NEED TO FIGHT FOR SAFEGUARDING THEIR CAUSE, BY REGISTERING THEIR ACTIONS TO THE CONTENT OF THE REVOLUTIONARY MOVEMENTS FACED BY “OUR OLD CONTINENT'S LIFE”. NOT ACCIDENTALLY, THE ROMANIAN CAUSE WILL REGISTER TO THE CONSCIOUSNESS OF THE TIME IN A TIGHT INTERDEPENDENCY WITH THE CAUSE OF THE FUTURE EUROPE, THE ONE OF THE NATIONAL STATES. JULES MICHELET'S STATEMENT IN THIS SENSE IS SIGNIFICANT: ROMANIANS, BY THEIR REVOLUTIONARY ACTION, REGISTERED THEIR NATIONALITY TO THE WORLD CALENDAR[1].

KEY WORDS: CONSTITUTION PROJECT, SEPARATION OF POWERS, CENTRAL COMMISSION.

The Constitution Project edited by the Focsani Commission in 1859

Within the meeting from June 8th, 1859, the Central Commission discussed two projects referring to the elaboration of a constitution. The first suggestion, presented by Grigore M. Sturdza, Apostol Arsachi and Petre Rosetti-Bălănescu stipulated the assignment of three committees, each of five members, to edit projects for review different chapters of the Organic Regulation[2].

The second suggestion was presented by Mihail Kogălniceanu, Ștefan Golescu, Grigore Arghiropol, Evghenie Predescu, Ludovic Steege, Vasile Mălinescu and Christian Tell. They stated that they should not have proceeded to the review of the Organic Regulations, but to the elaboration of the project of a new constitution[3]. The debate of the two projects caused contradictory talks, but the second one was finally imposed.

The constitution project edited by the committee composed of Grigore M. Sturdza, Apostol Arsachi, C. N. Brăiloiu, Ioan Emanoil Florescu, Christian Tell was presented to the central Commission on July 8th, 1859. It had 152 articles and most of them were taken over from the Belgian constitution, adopted in 1831 and from the 1852 French one[4]. The discussion about this project started on July 14th and it was presided by Grigore M. Sturdza. He was against this project, stating that, since the Romanian Principalities were not independent, they had no right to politically organize themselves. Mihail Kogălniceanu managed to get the suggestions referring to the foreign prince out of the project.

This constitution project also included the modern principle of the separation of powers inside the state.

The executive power was exerted by the ruler who was helped by the ministers. He had the following tasks: offering decorations, contracting trade treaties and navigation treaties which were applied only after they were approved by the two Public Assemblies and by the Central Commission. Since the ruler's person was declared as irreplaceable, the constitution project established that all the documents emitted by the state leader were to be countersigned by his ministers. When the ministers were under accusation, they could have been sent to judgement by the vote of two thirds of the number of members of the two Assemblies. They were to be judged by the High Court of Justice and Cassation. This procedure only applied to the documents accomplished by the ministers in the exertion of their function. For the offences committed outside the exertion of the function, no derogation from the common law was admitted, they were judged by the ordinary courts, according to the regular forms, like any other person[5].

The legislative power was collectively entrusted to the ruler, to the General Assemblies and to the Central Commission. The assemblies were composed of deputies chosen by the districts and towns on a 7 year term, and of legal deputies among the ones containing the two metropolitans and the bishops. They were convoked every year, by the rules, in an ordinary session starting on the first Sunday of December. The session lasted three months but it could have been prolonged if needed. The ruler could suspend the works of the Assemblies, but only once during the session and only for a term shorter than a month. If they were not convoked until the expiration date of the established lapse of time, they had a regular meeting on the first Sunday of December. If the ruler dissolved the Assemblies before the end of the seven years, he needed to convoke the electors so that the general elections would be accomplished, thus the new assemblies could reunite at maximum three months since the dissolution of the previous assemblies. If the new assemblies were not reunited in a three month term since the dissolution, the vote became null and the members of the dissolved assemblies might legally meet.

The assemblies had the following tasks: checking the members' titles, having the

right to make invalid the election of the deputies who had gained their mandates by electoral frauds or by other proceedings against the law, controlling the ministers' activity by interpellations and investigations, having the right to send to judgement the ministers accused for "disrespecting the laws" or for "wasting public money", examining the law projects presented by the ruler[6] or by Focsani Central Commission having the right to adopt, change or reject them, voting the state budget, granting allowances and gratifications, researching the petitions presented by particular persons having the right to ask for explanations from that minister or to send the petition in order to take the legal measures, granting to the foreigners the "great naturalisation" which offered them the same rights as the Romanians' rights, presenting to the ruler a list of persons among which the state leader assigned the members of the Control Court, electing the metropolitans and the bishops and the new ruler if the throne remained vacant, having the right to take the initiative of the total or partial review of the constitution by a declaration which had been red three times in 15 day lapses of time. If this declaration was approved by the Central Commission and by the ruler, the Assemblies were dissolved, there were general elections and new Assemblies were constituted for proceeding to the review of the constitution that was to become valid only if it was sanctioned by the state leader.

The Central Commission was composed of 16 members among which 8 were elected by the Assemblies and 8 were assigned by the ruler. He had the right to elaborate the law projects he considered as necessary and then he submitted them to the deliberation of the two Assemblies which could reject or approve them with no amendments. If they amended them, the projects were taken back to the Central Commission. As it appreciated the introduced amendments, it decided to keep or to remove them. The projects were sent to the Assemblies for the second time, but they could not amend them anymore, but they could only approve or reject them. After they had been accomplished by the Central Commission and voted by the Assemblies, the law projects were presented to the state leader who sanctioned and enacted them. He had the right to refuse their sanctioning without having to justify his refusal[7].

The judicial power was exerted by the Cassation Court, the Appeal Court and by the courts. The Cassation Court had discipline right on the members of the other judicial courts. The incompatibility between the judge function and another waged function, beside the professor one, was established. The magistrates were irreplaceable. They were assigned for life and they could not be removed from their function, they could be suspended only by a judicial decision, moved from a court to another only with their consent.

The constitution project elaborated by the Central Commission stipulated the creation of the jury court that was to judge the criminal process, the press processes and the political offences[8].

This constitution project also contained two annexes. The first annex referred to the throne vacancy. It stipulated that, in such a situation, until the new ruler took the oath in a common meeting of the Assembly and of the Central Commission, the management of the public affairs was temporarily entrusted to the Council of Ministers. The Assembly, if it was in session, was forced to elect a foreign prince from a ruling dynasty of Europe as a state leader in a maximum term of eight days. For the election, three thirds of the total number of deputies should have been reunited. If, in a 8 day term, the quorum was not reunited, the Assemblies of the ninth day should have elected the state leader, no matter the number of present deputies. If the throne became vacant, in the lapse of time between the two sessions, the Assemblies should have been reunited in a maximum 8 day term. If the Assemblies were dissolved, there were general assemblies in maximum fifteen days and

the new Assemblies were to be reunited in the ten days after the poll closure[9].

The second annex (62 articles) of the project was consecrated to the election of the Assemblies. The right to vote belonged only to the Romanian citizens older than 25. The electoral body was composed of primary electors and direct electors. The primary electors should have had a stable fortune producing an income of at least 100 coins, while the direct electors had a stable fortune in districts producing an income of 1000 coins, and a land, industrial or commercial capital in the city of at least 6000 coins. In such conditions, the electoral body of every district was divided in three colleges: the college of primary electors, the college of the direct electors of the district and the college of the direct electors of the cities (the cities of Bucharest and Iasi assigned 3 deputies each, Craiova, Ploiești, Brăila, Galați and Ismail, two deputies each and the other cities of the district, one deputy each[10]).

The tax as mentioned as a mandatory condition and this is why the number of electors was very small. There were electoral colleges with 3 or 4 electors each, but there were also some composed of only one elector[11].

The Paris Convention established no incompatibility between the public functions and the deputy mandate. The consequence was that many civil servants managed to be elected members of the two Assemblies. The Central Commission, considering the inconvenient of this system, considered that the public functions should have been declared as incompatible with the parliamentary mandate. This is why the Commission decided that the deputies who would accept to be assigned or promoted to a waged public function compatible with the parliamentary mandate or who would receive decorations or gratifications would be considered as quitting from the Parliament. Even the deputies assigned as ministers lost the parliamentary mandate and they could regain it only if they were elected again.

The electoral lists were permanent. They were accomplished, in every district, by the prefect helped by the vice-prefects. They were posted on the first Sunday of January. The contestations should have been laid down in a 3 week term after posting them and they were solved by the prefect. The prefect's decision could have been attacked in a 10 day term since its communication. The appeal was judged by the district court. Against the court sentence, in a 15 day term since pronouncing the decision, there could be a recourse[12]. The number of deputies who were to be elected by each college remained the one stipulated in the Paris Convention. The primary electors assigned three delegates who reunited then in the capital of the district for electing a deputy. The college of direct electors elected two deputies from each district. The number of the deputies elected by the college of the direct electors in the city varied between one and three depending on the city importance. The convocation of the electoral body was made by a ruling ordinance. The established day, the college of primary electors reunited at the county residence, presided by the vice-prefect for electing the three delegates. After reading the convocation ordinance and the nominal appeal of the electors, the vice-prefect stood aside. The presidency was taken over by the oldest one who assigned two secretaries among the youngest electors. The president and the two secretaries composed the temporary office and they were supposed to assign their replacers. A president and two inquisitive secretaries. They composed the permanent office taking over the management of the voting activity. The president called the electors at the urns in an alphabetical order. After all the present electors laid down their ballot in the urn, the votes were counted and the result was communicated. The delegates of the primary electors from different counties were reunited in the capital of the district for electing a deputy. A deputy's election was similar to the

procedure of assigning delegates. The only difference is that, this time, the meeting was presided by the prefect[13]. In the capital of the district, at the date stipulated by the ruling ordinance of convocation, both the primary electors and the direct ones from the city were reunited. The checking of the conditions where the electoral operations had developed, and also of the results was the task of the Assemblies. But they could make the elections invalid.

The second annex ended by establishing certain measures that were to be taken against frauds. Punishments were stipulated against the ones fraudulently registered on the electoral lists or against the ones who had voted without having this right.

The constitution project was voted on October 9th, 1859, with 14 pros and two abstentions, and it was presented on November 12th, to the ruler Alexandru Ioan Cuza. On November 30th, the same year, he sent a message to Focsani Central Commission according to which he postponed the transmission of the project to the Elective Assemblies, because the legislator body from Focsani had much more important things to accomplish.

This project reflects the historical circumstances of the Romanian political life in the first months after union of the Romanian Principalities. Despite the fact that it did not completely satisfy a series of social categories, it created the political-judicial basis for the modern organisation of the Romanian state, constituting one of the normative sources supporting the 1866 Constitution[14]

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