

## GENERAL ASPECTS REGARDING THE POWERS OF THE STATE IN SOME ROMANIAN HISTORICAL PROJECTS FOR THE CONSTITUTION

**Roxana GHERGHE**

**Ph.d. Lecturer**

**University „Constantin Brâncuși” of Târgu-Jiu, Faculty of International Relations,  
Law and Administrative Sciences**

### **Abstract**

*During the development of the works of the Paris Peace Treaty, several representatives of the Romanian political life elaborated a series of constitutional projects, Romanian concerns of state restructuration, regarding the organisation of the Romanian Principalities, and all of these projects contained a series of basic principles of the state organisation, following a more rigorous separation of the powers and the limitation of the ruler's attributions, more specifically a modernisation of the political structures of the state.*

**Key words:** constitution project, powers of the state, powers' separation, memoirs, government form.

### **1. Nicolae Șuțu's constitution project**

In Moldavia's political life from 1832 to 1862, Nicolae Șuțu had an important part. Appointed in 1832 the president of the Court of Commerce of Iași, he exerted this function only for six months. During the same year, the general Kiseleff assigned him as the state secretary, a function where we stayed until 1839, with a short break. The next year, he became the Minister of Finances and in 1846-1848 he led the Ministry of Justice. Even if he was a government member, he participated to the Iași movement from March 1848. This participation made him lose his job as the state secretary and the ruler Mihail Sturza did not like him anymore. In 1849 he was assigned as the interim minister of finances, a function he kept for only one year, because in 1850 he occupied the portfolio of the Minister of Justice. Three years later, we find him in the function of the minister of intern affairs and at the same time, the president of the Council of Ministers. In the summer of the same year and until February of the next year, when he retires from the political life, he owns the portfolio of the minister of cult and political instruction. After 1854 even if he owned no other ministerial function, he continuous to involve in the political life of the Romanian society, as he is a member of the Focșani Central Commission[1].

In November 1855, Nicolae Șuțu published a memoir in French about the flaws of the governmental system in Moldavia. In the memoir introduction, he shows that, in a time when the destiny of the Romanian Principalities was discussed by the great powers, it was

necessary to know the real situation of Moldavia ruled by the Organic Regulation. He says that this last constitutional document imposed by the Russia, the protecting power, had both positive and negative sides. Referring to the negative sides of the Regulation which required its revision, Șuțu stated that “instead of expressing, like any constitution, the basic principles of the state organisation, many details referring to the administration were inserted in its chapters, for example, the number of different civil servants, their wage. It went so far that some texts of the Organic Regulation were consecrated to the street pavement of the capital”. In case of amendment, which could happen only with the consent of the sovereign and protecting powers, it required the introduction of more precise, clearer fragments, it required for the content to be methodically arranged and limited at the essential problems. The new constitution, assigned by Șuțu as a “charter” was to take care of the limitation of the ruler’s prerogatives, the composition and the attribution of an assembly controlling the acts of the executive power, the principles representing the basis of the activity of the judicial organs and of the activity of the administrative organs.

Regarding the ruler’s attributions, Nicolae Șuțu found that they were not stipulated in the Organic Regulation, therefore the state leader was considered to be almighty, exerting “the most absolute absolutism”, being involved in justice by applying punishments with no princely decrees, with no judgement and with no prior investigation, dismissing the workers “as he wanted”. He required for these attributions to be limited, opposing a counterweight. In this purpose, according to the opinion of the politician previously mentioned, it was necessary to settle a General Assembly which could vote the laws because the one settled by the Regulation had no satisfying results as it had been changed by the ruler into a servile institution.

Regarding the justice, it had to suffer during the legal lapse of time, because of the policy led by the ruler: assigning and dismissing the judges according to the state leader’s will, selling the justice on money, the judges’ corruption. Nicolae Șuțu also refers to Moldavia’s legislation which was behind. The civil and criminal codes contained stipulations which could not be applied anymore[2].

In 1856, after signing the Paris Treaty, Nicolae Șuțu reviewed his memoir of the precedent year called *Exposé sommaire des bases du droit politique et public de la Moldavie, des déficiences inhérentes à son régime gouvernemental et des principales conditions d’une réorganisation efficace*, where he revealed “the flaws of the governmental system of Moldavia”. He starts by specifying that he treats neither the union of Moldavia and Wallachia, nor the problem of the foreign prince, as these two basic problems were to be solved by the representatives of the signatory states of the Paris Treaty. The elaboration of a constitution should have been the task of an Extraordinary Assembly which was to be dissolved immediately after achieving this goal.

In the same year, Nicolae Șuțu also elaborated a constitution project where he analysed, among others, the principle of powers’ separation inside the state.

*The executive power* was entrusted to the ruler having the following attributions: he was assigning the judges and the other workers, he was revoking the state workers and he also had the right to accuse them, he was ordering to the army, he was surveying the maintenance of the public order and the correct application of the laws, he was sanctioning and promulgating the laws, he had the right to pardon and to reduce the punishments. Regarding the law projects, the state leader could refuse their sanctioning and, in this case, the Assembly could not discuss them anymore in the same section. In the exertion of his attributions, he was helped by the Administrative Council, led by the minister of intern

affairs, composed of the minister of intern affairs, finances, justices, cults, public works, public instructions, the police leader and all of them were supposed to countersign the documents emitted by the ruler, becoming thus responsible for them[3].

*The legislative power* was exerted by the Assembly of Deputies, elected on five years and convoked by the ruler every year, on December 1<sup>st</sup>. The session lasted until January 15<sup>th</sup>, but it could have been prolonged if needed. This legislative forum could have been prorogued, but no longer than 45 days or dissolved. In this case, the ruler needed to convoke the electoral organ for developing the elections so that a new Assembly could be reunited in maximum three months. The works of the Assembly were led by a president called the ruler among “the oldest deputies”. The Assembly was composed of deputies elected on two colleges, in every county: the college of the rural electors and the college of the urban electors. The first college, which elected a deputy for every county, was composed of all the Moldavians aged over 25 years old and having a fortune of more than 100 falci. Only the ones aged over 30 years old and having more than 300 falci of land. The second college was composed of everyone aged over 25 years old and owning houses estimated at least at 20000 lei in Iași city or at 8000 lei in the residence cities of the other counties. This college was also composed of: the teachers of the state schools, the licensed “lawyers”, the engineers, the agronomists, the merchandisers paying the patent, the city leaders. The urban college elected three deputies from Iași, two deputies of each of the cities Botoșani and Galați and a deputy of all the other residence cities of the counties. In the day established by the decree of convoking the electors, each electoral college was reunited in the capital of the county. In Iași, it was presided by the minister of extern affairs and in the other cities, the works were led by the subprefect of the district. The elector voted by a bulletin where he wrote his candidate’s name and surname. The elected candidate was the one obtaining the absolute majority of the suffrages. If this condition was not accomplished in the first poll, it is used a new voting between the two candidates who had received most of the votes[4].

*The judicial power* was entrusted at six judicial courts: the county court which was to judge, in the first jurisdiction degree, the civil, commercial and correctional processes, the Appeal Committee was to judge the appeal between the civil and commercial sentences pronounced by the first courts (two Appeal Committees were to be settled: one for Northern Moldavia, containing the lands of Suceava, Neamț, Roman, Dorohoi, Botoșani, Iași and another one for Southern Moldavia, including the lands of Bacău, Putna, Covurului, Tutova, Fălciu, Vaslui), the Galați Commerce Court, the Criminal Court that only judged crimes, the Police Court having the headquarters in Iași and sanctioned the offender, the High Court of Revision representing the supreme court (it judged the appeals introduced against the criminal sentences of the land courts and of the Criminal Court and the appeals against the decisions of the Appeal Committee and of the Galați Commerce Court).

Nicolae Șuțu also suggested the settlement, according to the model of the Account Court of France, of an Extraordinary Council composed of 9 members assigned by the ruler among the ones who had exerted high administrative functions and aged over 40 years old, but he finally gave up supporting this project. This council had the following attributions: it could elaborate law projects which were to be submitted to the deliberation of the Assembly of Deputies, it could judge the administrative contentious processes, it could solve the conflicts appeared between the civil servants regarding their attributions, it could check the use of public money[5].

## 2. Barbu Dimitrie Știrbei's constitution project

Barbu Dimitrie Știrbei was a character of the 19<sup>th</sup> century, he was complex by acts and ideas, appreciated for his life dynamism and contested by the quasi-universal revolutionary movement of his time. Having a balanced position in a professional size appropriated from the occidental scholars, Barbu Știrbei tried and managed – partially – to dominate the historical movement, standing in its sense, without keeping its ebullient and overwhelming sense met only in his century. He fully lived all the fundamental moments of his country, being involved in events referring to political exchanges or social inversions. He was a reformer in the most accurate sense of the term, less exposing the revolutionary risks, an innovator, but traditionalist spirit who wanted to change “the flaws and the vices of our social organisation”[6].

His life and acts combined with the ones of the '48 generation, the clear holder of the French revolutionary ideas. From this group of revolutionaries assuming the century spirit, Barbu Știrbei could be only the exponent of the old time, overdrawn by the history, opposite the tendencies of implanting untraditional or foreign life forms[7].

After the defeat of the '48 revolution, under the imperatives of the Balta Liman Convention, Barbu Dimitrie Știrbei was supposed to restore the legal system, but also to adapt and improve it by a modernising legislation. He reported to the idea of new, modern and occidental. We cannot accept the historic Anastasie Iordache's beautiful syntagm according to which this ruler was “a promoter of modernisation, by removing from Europe”[8], even if his conception tended more to make the administration efficient. In a letter to Aali-Pașa from February 21<sup>st</sup> /march 4<sup>th</sup>, 1852, the ruler Știrbei confessed his prudence in promoting the reforms in the judicial branch, being aware of the animosity manifested by the boyars against him. However, he was convinced that he should have given satisfaction to the public opinion which was pro changes, at least in the staff of the High Court[9].

At the Constantinople Conference from January 11<sup>th</sup>, 1856, where the plenipotentiaries of England, Austria, France and Turkey formulated a document in 30 articles and where it was based another future international status of the Romanian Principalities, it was specified that the treaties between Russia and Turkey referring to Wallachia and Moldavia stopped being valid. In this situation, the Organic Regulation could not be the basic law anymore[10]. After this date, Știrbei also understood the social needs and desires, according to the problem spirit of the age and of Europe. He also conceived an improvement project introduced in the country, on the concept of the gradual reforms, guided by the legacy principle in front of the law[11]. It was established for the state to be led by an hereditary ruler helped by a State Council, which was supposed to substitute the Ad-Hoc Committee and the settlement of a senate supposed to regulate the accounts of all the public houses, to establish the budget, to debate and adopt all the law and tax projects presented by the state leader[12].

The ruler's attitudes, conceptions and interferences were in the sense of the modernisation process, but he seemed more like an incorrigible conservatory to his contemporaries because he achieved only patching and miseries instead of healthy reforms. It was a characterisation made by the '48 representative C. D. Aricescu and it could not be different in report to the 1848 apostles untouched by “the gangrene of the Jesuit corruption”[13].

### 3. Emanoil Chinezu's constitution project

A special cultural and political personality of the 19<sup>th</sup> century, lawyer. Communal counsellor in the city councils for several times, mayor of Craiova for a short lapse of time, from July 4<sup>th</sup>, 1872 to February 21<sup>st</sup>, 1873, deputy of Dolj, journalist, historic, Emanoil Chinezu is one of the most radical liberal political personalities of 1850-1880, a refined and original researcher and analyse of the Romanian people from the Antiquity to the remarkable achievements of his time - Tudor Vladimirescu's revolution, the 1848 revolution. The Principalities Union, the reforms basing the modern Romanian state, the conquest of the state independence. Referring to his complex personality, professor Aurel Mircea noted: "An imposing figure of Craiova of the years of our national regeneration, from 1848, 1859, 1866 and 1877-1878, was Manolache (Emanoil) Kinezu or Quinezu. A firm character of a perfect citizen, an insuperable patriot and a very good scholar, Kinezu left us a lot of political-social and historical publications in Romanian and in French"[14].

He consecrated his entire life and activity to the fight for the achievement of the state union, to awake the people conscience of the Romanian people and to defend the legal rights of Wallachia. "The Ad-Hoc Committee is the only and unique mission of requiring the European Commission to define the rule and it circumscribes forever our reports to the Ottomans, so that there would be no equivocal and false interpretations, consequently no interferences and protectorates"[15]. He was directly involved in the 1848 events, in the 1859 union and in the independence war. The revolutionary year 1848 found him in Paris. He returned to the country, at the beginning of March, next to Nicolae Bălcescu, Al. G. Golescu, Ion Brătianu, Costache Negri, Constantin Lecca and Alexandru Aman[16]. He participated to the commission formed by the Ruling Lieutenants of Wallachia, for releasing the gipsies, next to Dimitrie Filîșanu and Grigorie Bengescu.

After the revolution defeat, he chose the exile next to the other revolutionaries. He came back to Craiova in the summer of 1856 and militated for the achievement of the Romanian modern state[17].

Emanoil Chinezu published in Brussels in 1857 a constitution project called *Reintegrated Romanian Constitution or Skritza for a Constitution in Romania*. The project contains the modern principles of organisation of the public and state life, the ways to exert the legislative, executive and judicial power, the citizens' rights, duties and liberties (the conscience liberty, the press liberty, the education liberty, the liberty of association and reunions, the inviolability of the person and of the domicile, the equality in front of the law), registering the people's sovereignty, the representative government and the supremacy of the constitutional document to other normative documents: "Here is a work I published a posteriori not apriori, namely from observation and from practice"[18].

The state government form was to be an elective monarchy led by a ruler elected for life who was supposed to be Romanian. The ruler's election was made by a Constitutive Assembly. The ruler's person was declared sacred and inviolable, he could not be made responsible for his acts. The ones responsible for the acts of the state leader were the ministers. He had many attributions: he suggested laws by his ministers to the Chamber of Tribunes, he pronounced for the punishment reduction of the arrested ones, he granted ranks, he paid "the ones who deserved it", he "encouraged the virtue and the industry", he contracted treaties, he declared war and contracted peace, he sanctioned the documents of

the Chamber of Tribunes that he could reject only once, he dissolved the Chamber and convoked a new one, he assigned ministers, prosecutors, ambassadors, he could send to judgement the corrupt civil servants, he received the inhabitant's petitions, he approved the election of the most important functions in the state (the ones attached next to government, the ambassadors, the members of the High Judicial Court and of the courts, the department executives, the county administrators and subadministrators, the leaders of the Beneficence Institutions) by the ministers, he ordered to the army, he convoked the Senate and the Chamber of Tribunes, he assigned a regent who was supposed to have the "Excellence" title among the senators. If the throne was vacant, the state leadership was provided by the regent who was re-elected any time the Senate changed. He had the obligation, in a three day term since the throne became vacant, to make a reunion of the Senate with the Chamber of Tribunes and to convoke the Constitutive Assembly in maximum 33 days which should elect the new state leader in maximum 56 days. If the regent did not convoke the Constitutive Assembly in maximum 100 days and he ruled by himself, he could have been sent to judgement by the Public Finalisation Committee, being accused of "deviation"[19]. The Constitutive Assembly was formed of the delegacies elected by the county colleges and they were called constitutive deputies. Among the members of the Constitutive Assembly, 12 members were assigned to accomplish the Committee of 12 and they were responsible to receive the list of the throne candidate and to suggest two more persons which were supposed to candidate for ruler. This Constitutive Assembly was supposed to assign the new ruler by a secrete vote, in a three day term[20].

Regarding the powers' organisation inside the state, they were based on the separation principle.

Thus, **the legislative power** was entrusted to the Chamber of Tribunes or to the Court formed of 100 delegacies, including the metropolitan and the bishops, all of them having Romanian citizenship. The ruler could participate to the works of the legislative power whose presidency was provided by the metropolitan, preparing the laws he submitted then to the Senate, for debates and voting. The attributions of the Chamber of Tribunes were the following: it distributed the contributions, it composed the budget, he made the ministers responsible for the developed activity, it elaborated constitutive law projects, it sent to judgement to the Senate any accused person against whom the ruler had taken no measure for a year, it reported o the ruler about the activity developed by the ministers and the civil servants. All of the works of this institution were to be published in an "ex-officio" bulletin whose publisher was a tribune[21].

**The executive and administrative power** was ruled by the Senate. The senators were assigned for life by the ruler, either from the tribunes or form the greatest men of merit. The attributions of this institutions were the following: it assigned, by a general reunion, three candidates for ruler among its members, it assigned the metropolitan and the bishops, he studied by the Committee the constitutionality of the laws sent to the ruler to be sanctioned by the Tribunes, it pronounced the death sentence of the convicted ones, it judged the deviations "of the state civil servants" by commissions accomplished by the ruler, it judged the senators accused by the Tribunes and by the ruler[22]. The Senate meetings, either public or facultative, were presided by the regent assigned by the ruler and they were published in a bulletin whose publisher was one of the senators. Emanoil Chinezu also suggested the settlement of a State Council called the Committee-Senate of Public Finalisation, composed of 12 senators "assigned among them and presided by the Senate president"[23].

**The judicial power** was exerted by the first court presided by a minister-prosecutor assigned by the ruler and by the High Court whose decisions could be attacked no longer[24]. The judges, whose number was established by the Legislative Chamber, could be dismissed by a Senate decision and only when they were accused[25].

All of these constitution projects, Romanian concerns of state restructuration marked, by their stipulations, an important time of our history by attempting to modernise the state, starting from a clearer separation of the three powers inside the state.

## References

- [1]. *The Economist Nicolae Șuțu*, Bucharest, Romanian Academy Press, 1974, p. 96.
- [2]. *Ibidem*, p. 99-104.
- [3]. *Ibidem*.
- [4]. *Ibidem*.
- [5]. *Ibidem*, p. 104-125.
- [6]. Nicolae Iorga, *Barbu Dimitrie Știrbei's Life and Reign, Ruler of Walachia (1849-1856)*, Vălenii de Munte, 1910, p. 15.
- [7]. Cf. C. A. Rosetti, *Epistle to the Ruler Știrbei*, in a brochure published in Paris, 1850, mentioned in N. Bălcescu, *Works*, volume I/2. *Historical and Economical Writings*, Critical edition annotated with an introduction by G. Zane, Bucharest, 1940, p. 249; Stephen Golesco, *Un mot sur le manifeste de M. Știrbey prince règnant de la Valachie*, s.l.n.d. [Paris, October 15<sup>th</sup>, 1850].
- [8]. Anastasie Iordache, *The Romanian Principalities in the Modern Age, vol. II, Legal Administration and the Transition from the Law State (1831-1859)*, Bucharest, Albatros Press, 1998, p. 228.
- [9]. *Ibidem*, p. 247.
- [10]. Anastasie Iordache, Apostol Stan, *Defending the Autonomy of the Romanian Principalities 1821-1859*, Bucharest, 1987, p. 170.
- [11]. Anastasie Iordache, *The Romanian Principalities in the Modern Age*, vol. II, p. 257-258.
- [12]. *Ibidem*, p. 258; Iorga Nicolae, *Știrbei Vodă's Mail, vol. I, Political Mail*, Bucharest, 1904, p. 323-333.
- [13]. Anastasie Iordache, *The Romanian Principalities in the Modern Age*, vol. II, p. 254.
- [14]. Cosmin-Lucian Gherghe, *Emanoil Chinezu, a Remarkable Personality of Craiova of the 19<sup>th</sup> century*, in "Oltenia's Archives". New Series, no. 16, p. 79.
- [15]. Emanoil Chinezu, *Epistle to the Publishers of the Bucharest Gazette. Debates*, Bucharest, 1866, p. 45.
- [16]. Cornelia Bodea, *1848 for the Romanians*, vol. I, Bucharest, 1982, p. 561.
- [17]. Cosmin-Lucian Gherghe, *op. cit.*, p. 81
- [18]. Emanoil Chinezu, *Reintegrated Romanian Constitution or Skritza for a Constitution in Romania*, Brussels, 1857, p. 11.
- [19]. *Ibidem*, p. 102-106.
- [20]. *Ibidem*, p. 100-101.
- [21]. *Ibidem*, p. 107
- [22]. *Ibidem*, p. 109-114
- [23]. *Ibidem*, p. 114
- [24]. *Ibidem*, p. 115.
- [25]. *Ibidem*, p. 116.