



A BRIEF JOURNEY THROUGH THE EVOLUTION OF ROMANIAN FUNDAMENTAL LAW. THE CONSTITUTION OF 1866 AND ITS REVISIONS

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Abstract: *The 1866 Constitution represents a pivotal milestone in the evolution of the Romanian state, symbolizing a clear assertion of independence by omitting any reference to Ottoman suzerainty. As the first fundamental law adopted without foreign intervention, it marked Romania's entry into the sphere of modern constitutional states. Inspired from the Belgian Constitution and shaped by contemporary liberal ideas, it became the first liberal constitution in southeastern Europe and a model for neighboring countries.*

This article presents a brief journey through the history of constitutionalism in the Romanian space, highlighting some important aspects related to the Constitution of 1866 and highlighting the revisions undergone by this fundamental law of the state.

Keywords: *Constitution, democracy, constitutional revisions, Romanian law, constitutional provisions*

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THE CONSTITUTION OF JULY 1st, 1866

After the first essential step — bringing a foreign prince to the helm of the country, which confronted the Great Powers with an undeniable reality — the next natural step was the adoption of a constitution. Thus, on June 29th/July 11th, 1866, the Parliament voted the first Constitution of Romania, at which time the new ruler, Carol I, pronounced the following oath: *"I swear to guard the Constitution and the laws of the Romanian people, to maintain its national rights and territorial integrity"* (Scurtu, 1991a).

This fundamental law of the Romanian state constituted, from a legal point of view, the cornerstone of the establishment of the constitutional monarchy and completed the modernization process initiated by Alexandru Ioan Cuza. Thus, promulgated by the king on June 29th, the Constitution entered into force on July 1st, 1866, being published in the Official Gazette no. 142 of 1st/13th July 1866 (Focșeneanu, 1998).

The constitutional text was based on the draft Central Commission, having as its main model of inspiration the Belgian Constitution, recognized as one of the most modern and democratic in the



European space. Due to this influence, Romania was often nicknamed the "*Belgium of the East*", thus becoming the first constitutional liberal state in southeastern Europe (Scurtu, 1991a).

Article 1 stated that "*The United Romanian Principalities constitute a single indivisible state, under the name of Romania*" (Historia, 2025) At the same time, it is worthy of attention that, although it was still under Ottoman suzerainty, this reality was not mentioned in the Constitution. On the contrary, as mentioned, the first article sanctioned the state unity: "*The United Romanian Principalities constitute a single indivisible state, under the name of Romania*".

The constitution adopted in 1866 was based on the democratic principle of separation of powers in the state. Thus, the legislative power was exercised by the gentleman, as well as by the National Representation, and the laws could be sent for adoption to the gentleman only after the discussion and voting freely in both Assemblies, the legislative initiative being a common attribution of the three components of the legislative power. The executive power was entrusted to the lord, on the other hand, the judicial power was exercised by the courts and tribunals, and the decisions and sentences were pronounced by virtue of the law and were executed in the name of the lord (Scurtu, 1991b).

According to Article 82 of the Constitution of 1866, Chapter II, Section I "About the Lord", Romania became a hereditary monarchy: "*the constitutional powers of the Lord are hereditary, in the direct and legitimate descending line of His Majesty Prince Carol I of Hohenzollern-Sigmaringen, from man to man by order of primogeniture and with the perpetual exclusion of women and their descendants. The descendants of His Majesty will be raised in the Orthodox religion of the East*" Regarding the organization of the powers of the state, the Constitution provided that they originated in the nation (art. 31), being divided according to the principle of separation of powers: the executive belonged to the Lord (art. 35), the legislature was exercised by the Lord and the National Representation (art. 32), and the judicial power belonged to the tribunals and courts (art. 36).

Citizens' rights and freedoms were enshrined in Title II, which expressly provided for freedom of conscience, of the press, of education and of assembly (art. 5). Other important provisions included the inviolability of property (art. 15), the prohibition of capital punishment (art. 18), religious freedom, specifying the dominant religion — Orthodoxy — and the manner of appointment of the hierarchs of the Romanian Orthodox Church (art. 21), free education (art. 23) and the secrecy of correspondence (art. 25).

The only notable limitation of liberties was established in art. 30: "*No Romanian without the authorization of the government may enter the service of a State without thereby losing his nationality. The extradition of political refugees is stopped.*" This provision established that a Romanian citizen could not enter the service of another state without the approval of the Government, such an act entailing the loss of Romanian citizenship.

Also, the Constitution limited the prerogatives of the ruler, an aspect clearly expressed in the content of art. 96: "*The ruler has no powers other than those given to him by the Constitution.*" Article 92 guaranteed the inviolability of the person of the Lord, while the text of Article 93 explicitly established his powers, including, by way of example, the following: the appointment and dismissal of ministers, the sanctioning and promulgation of laws, the right to political amnesty, pardon or reduction of penalties in criminal matters (except in cases concerning ministers), appointment to public offices, leadership of the army, the right to mint money and the signing of international treaties, the latter requiring ratification by the legislature.

Among other important aspects regulated by the Constitution, there are also the powers of ministers, senators and deputies: parliamentary immunity (art. 51), their inviolability (art. 52), the



liability of ministers (art. 101), as well as the prohibition of the gentleman to intervene in favor of a minister (art. 100).

Title VI, entitled "*General Provisions*", provided for the three colors of the national flag — blue, yellow and red (art. 124), specified that Bucharest is the capital of the country and the seat of government (art. 125), enshrined the supremacy of the Constitution (art. 126), conditioned the validity of laws on conformity with the constitutional act (art. 127) and prohibited the suspension of the Constitution (art. 128).

Unlike the Paris Convention of August 1858, the Constitution of 1866 expressly regulated the procedure for its revision, in Title VII, "*On the Revision of the Constitution*". Thus, according to the provisions of Article 129, the legislative power could declare the need to revise certain provisions. This declaration was read three times, at intervals of 15 days, in the sittings of both chambers, which were then dissolved by law, and new legislative assemblies were to be elected. They, together with the Lord, could adopt the proposed amendments, provided that two-thirds of the members were present and two-thirds of the votes were in favour of the change.

This revision article was inspired by the text of Article 131 of the Belgian Constitution and highlighted the principles of modern constitutionalism. Since a constitution, unlike an ordinary law, is, first of all, a convention between the nation and the authority, the strict rules of a mandate contract apply to it. Thus, the nation retained its sovereign right to amend its own fundamental act. The procedure involved convening the electorate within two months and, within a maximum of three months, convening the revised assemblies, which could adopt the new text under the conditions imposed by the Constitution.

Therefore, the Constitution of 1866 is, without a doubt, one of the normative acts that, without a doubt, changed the destiny of the country forever. It represents an essential landmark in the analysis of the political and parliamentary regime of the second half of the nineteenth century and the first decades of the twentieth century (Tribuna Românească, 2024).

REVISIONS OF THE CONSTITUTION OF 1866

According to Article 129 of the 1866 Constitution, it could be revised to better respond to ever-changing social realities. In this context, the Constitution was subject to a number of six revisions: on October 12th, 1879, June 8th, 1884, March 1909, March 16th, 1912, 1914 (incomplete revision) and the last one, on July 19th, 1917.

a) Revision of 12th October 1879

This first revision took place in the context of the recognition of Romania's independence, being determined by the contradiction between art. 7 of the Constitution of 1866 and art. 44 of the Treaty of Berlin, given the fact that art. 7 provided that only "foreigners of Christian rites" could acquire grounding, while art. 44 of the Treaty of Berlin prohibited discrimination on the basis of religious belief in the granting of civil and political rights. Thus, in order to eliminate this incompatibility, it was necessary to revise art. 7. Although the procedures provided for in Article 129 were observed, the debates took place in a tense setting, especially due to disputes over the status of minorities, especially Jews and Turks.

After the adoption in the three readings by both Chambers and the formation of special committees, the opposition continued until the last sitting of the Senate. A telling example in this regard is the rejected motion of Vasile Alecsandri on October 11th, 1879, in which it was argued that Romania should have full legislative freedom.

Finally, the new Article 7 was adopted, with the following votes:

- Assembly of Deputies: 132 votes in favour, 9 against, 2 abstentions (6th October 1879);



- Senate: 56 votes in favor, 2 against, 1 abstention (October 11th, 1879).

According to the Official Gazette no. 234 of October 16th/28th, 1879, approved in the Senate session of October 11th, 1879, the final form of art. 7 established that "*The difference of religious beliefs and confessions does not constitute in Romania an obstacle to the acquisition of civil and political rights and to exercise them.*"

After a relatively short period from this moment, Romania was proclaimed a kingdom by Law no. 710 of March 15th, 1881, but the monarch's prerogatives were kept unchanged, so that a complete constitutional revision was not necessary.

b) Revision of 8th June 1884

The second revision aimed at extending the right to vote and reorganising the electoral system, namely:

- Abolishing multiple electoral colleges and moving to a single college for book connoisseurs;
- This idea was popularized by C.A. Rosetti in the newspaper *Românul* (1882), and Ion C. Brătianu formally initiated the revision procedure on December 22nd, 1882.

Following the observance of the provisions of art. 129, Carol I promulgated:

- Decree no. 1786/8th April 1884 – revision of the Constitution;
- Decree no. 1788/8th June 1884 – the new electoral law (140 articles).

Among the essential changes, we mention the following:

- Art. 1 was rewritten: "*The Kingdom of Romania with its counties on the right side of the Danube constitutes a single indivisible state*";
- Replacement of names: The United Romanian Principalities became the Kingdom of Romania; while the Lord was transformed into King;
- Art. 58–75: reduction of the electoral roll and abolition of exemptions;
- Art. 24: prohibition of censorship and pre-trial detention in press matters;
- Art. 118–122: abolition of the citizens' guard;
- Art. 133: application of the Constitution in Dobrogea.

c) Law of 23rd March 1909

This law introduced the irremovability of magistrates, a text that was inspired by Article 100 of the Belgian Constitution. According to the Paris Convention of 1858 and the Law on the Organization of the Judiciary (1865), until that date, irremovability was provided for only in special laws and applied exclusively to members of the High Court of Justice and Cassation, an institution represents the Supreme Court of Romania which achieves the unitary interpretation and application of the law by the other courts, according to its competence (Hriscu, 2022).

The law provided for some important aspects in this regard:

- Confirmation of the existing irremovability (art. 129);
- Extension of irremovability to judicial inspectors (art. 130) and judges of tribunals (art. 131);
- The conditions of loss of office: resignation, age, infirmity, dismissal (art. 133), established by the "Law for the Judicial Organization" of September 1, 1890.

d) Decision no. 261 of March 16th, 1912 of the High Court of Cassation and Justice

This decision represents a landmark moment in the history of the review of the constitutionality of laws in Romania. The context of this decision is as follows: in 1909, the Liberal government created the *Bucharest Tram Society* for the reorganization of public transport. After the change of government, the new leadership considered the company illegal and tried to annul its articles of incorporation.



After this moment, in 1911, an "interpretative" law was adopted that substantially modified the previous legislation. The company asked the Ilfov Tribunal to find that the law contravenes the Constitution (art. 14, 19, 36).

The Ilfov Court declared itself competent and decided that the law is unconstitutional. Thus, the High Court of Cassation and Justice, by Decision no. 261/1912, confirmed that the courts have the competence to review the constitutionality of laws (Conac, 2000). Through this decision, Romania asserted itself as innovative (Ene-Dinu, 2023).

e) The attempt at revision in 1914

In the autumn of 1913, Ion I.C. Brătianu, leader of the National Liberal Party, initiated the promotion of a program of constitutional reforms, such as: the completion of the agrarian reform, the increase of peasant property, the introduction of the single college, the development of education and the working class. However, this attempt was not successful, especially because of the long political treaties, as well as the outbreak of the Austro-Serbian War on July 14, 1914.

f) Revision of the Constitution of 19th July 1917

The last revision of the Constitution of 1866 took place in the summer of 1917, three years after the accession to the throne of King Ferdinand I, who became sovereign of Romania less than three months after the outbreak of World War I. In the context of extremely important socio-political events, among which we mention the demands regarding the ownership of peasants and the establishment of universal suffrage, an amendment of the fundamental law was imposed. However, the 1917 revision amended only three articles of the Constitution, namely, the texts of Articles 19, 57 and 67.

Thus, the new Article 57 provided that the deputies of the Assembly of Deputies were to be elected by universal, equal, direct, compulsory and secret suffrage, while Article 67 regulated the structure of the Senate, providing that it was to be composed of both elected senators and ex officio senators.

Also within this last constitutional revision, the notion of "cause of national utility" was introduced, which referred to the development of the peasant household, considered the foundation of agricultural production. In order to achieve this objective, the full expropriation of large land holdings was foreseen, in order to allow the establishment of peasant households.

SHORT CONCLUSIONS

The Constitution of 1866 remains a reference act in the history of the Romanian state, marking a moment of affirmation of independence, since, as we have shown, its text made no reference to the suzerainty of the Ottoman Empire. It is also remarkable that this fundamental law was the first to be adopted and promulgated without external influence or intervention.

Inspired by the Belgian Constitution and influenced by the liberal currents of the time, *the Constitution of July 1st, 1866* was the first liberal constitution in southeastern Europe, serving as a model for other states in the region. At the same time, it was considered one of the most modern European constitutions of the time.

Therefore, the adoption of the Constitution of 1866 was a decisive step in the development of the modern Romanian state, contributing to the consolidation of institutions, as well as to the strengthening of the rule of law, this fundamental law of the state undergoing a series of important revisions and remaining in force until March 23rd, 1923, when a new Constitution was adopted, as a result of the materialization of a centuries-old ideal of the Romanians - the Great Union, achieved on December 1st, 1918.



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