

THE SIGNIFICANCE OF THE ADOPTION OF THE CURRENT ROMANIAN CONSTITUTION ON 8 DECEMBER 1991

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Abstract

This article aims to analyze the significance of the moment December 8th 1991, when the Constitution of Romania entered into force, in its initial form. It presents a brief history of the adoption of the 1991 Constitution, which laid the foundations for a real transition from a totalitarian regime to a democratic regime in Romania.

This has also led to the proclamation of December 8 as “Constitution Day” and the annual celebration of this day, through festivities which seek to highlight the value of our fundamental law and the role it has played in creating and strengthening the democratic rule of law, as it is declared by the first text of the fundamental law.

Key words: *Constitution, rule of law, democracy, role, political regime, Constitutional Court.*

I. A short history

After over four decades of totalitarian political regime, Romania gained, at the cost of impressive human sacrifices, the right turn into a democratic rule of law, and this required the development of new fundamental laws, which after almost two years of legal endeavor, became the first Constitution of Romania. The Primary Constituent Assembly that was invested with the development of theses, and subsequently the draft Constitution, was led by the great late Professor Antonie Iorgovan, and it also included other valuable names from the legal world in our country[1].

The Constitution was adopted by national referendum and entered into force on 8 December 1991, a date that has become, over time, Constitution Day, being celebrated every year through events organized by the guarantor of the supremacy of the Constitution, which is the Constitutional Court. It is important to mention that such events are not merely festive; they involve not only the

imminent celebration, but also the presentation of communications which list interesting information, by renowned experts, some of them former members of the Commission drafting the 1991 Constitution or Law no. 429/2003 [2] for its revision. It is appropriate to point out that the interpretation of the constitutional norms by those who have underlain their adoption is undoubtedly advantaged, given that they know the history of each text, the debates taken place, the amendments formulated, and the variations of each constitutional norm until reaching the current form in the text of the fundamental law.

What is significant is that the history of the Constitution represented the topic of specialty papers [3], and we refer here mostly to monographic works, one of them, of reference, having as author the chairman of the Drafting Commission, and which under a provocative metaphor in the title, reveals “the odyssey” of the development of the first democratic Constitution of Romania, adopted after the abolition of the totalitarian regime.

The Constitution of Romania has been the subject of papers commenting on its provisions, developed by narrower [4] or wider [5] collectives of authors, where there are discerned the meanings of the constitutional texts, and there are revealed solutions from the jurisprudence of the Constitutional Court, the aim being to facilitate the interpretation and application of the Constitution in its wording and spirit.

The revision from 2007 of our fundamental law enriched its provisions that had not been included in the original form of the Constitution, and which were imposed by the European destiny that our country assumed, having triggered the procedure of integration in the Euro-Atlantic structures[6].

Currently, Romania has a constitutional edifice suitable to facilitate the path to democracy, to sit among the states of Europe and the world.

II. Democratic valences of the Constitution: a brief presentation

We present below several ideas on what, in our opinion, represent the “*strengths*” of our fundamental law, also indicating, where appropriate, some of

its “*weaknesses*”, which impose, in a timely and developed perspective, the rethinking of certain solutions, the introduction of others, in order to harmonize its norms with the needs of the historical time we are living.

1. The first aspect that we try to reveal is the modernity of our fundamental law, which combines with “the perfume” of some classical theses on the institutions enshrined therein.

We bring forth in support of this claim, the way in which it regulates the principle of the separation of powers in the state, the original and derivative constituent legislator “giving a hand” in the sense of consecrating it in such an implicit manner, by Title III, where we find the authorities performing the prerogatives of the three classical powers of state, and also in an express manner, by its proclamation in paragraph (4) of the first article. Equally, it can be added the constitutional regulation of property, by articles 4 and 136, which *evenly ensure and protect private property and guarantee the right to property and claims against the state, and ensure and protect public property*. This would require, in our view, a future obligation, by *Constitution*, of the *institution* of public domain as a notion of synthesis regarding the idea of the public interest in a legal regime, and the destination of a good, that allows as some other private goods, not only public property ones, to be subject to rules of safety and security, to be set apart and transmitted to future generations.

But the modernity of the Romanian Constitution does not limit only to those norms. It is supported, in our view, by other rules, among which we mention:

a) the constitutional regulation of the fundamental rights and freedoms, both in terms of the principles that govern them, of the rights sphere, which reflects their full spectrum, and their proper content. Remarkable are, in this respect, the constitutional provisions enshrining the emption of international treaties on human rights over the internal ones, except when the latter are more favorable [7] or the consecration of new rights, such as “*access to culture*” [8] or “*the right to a healthy environment*” [9].

b) “the proclamation of Romania” as the rule of law and the consecration of the fundamental institutions that allow its edification and consolidation and we consider:

- the administrative court, which is qualified in the traditional doctrine as a tool to protect the citizen against the abuse of public authorities;

- the constitutional court, guaranteeing the supremacy of the Constitution by the Constitutional Court;

- the existence of independent authorities with a decisive role in defending the fundamental rights and freedoms and respect for the law, and we invoke here the Ombudsman, the Court of Accounts, the Council of Magistrates, which is the guarantor of judicial independence;

c) the declaration, by Constitution of the Parliament, as the supreme representative body and the sole legislative authority of the country, considering that we must signal the need to rethink, in the future, the institutions that affect the legislative role of the Parliament, and we have the *legislative delegation* or *the liability of the Government*;

It has been found, and the doctrine [10] and jurisprudence of the Constitutional Court [11] have criticized and, where appropriate, sanctioned some abusive applications of the two constitutional procedures, with the consequent serious damage, we might say, to the role of the Parliament as sole legislative body.

III. Conclusions

There is no doubt that we could add more to these arguments in support of the thesis that we wanted to convey in this study, with the value of a message, namely that the current Constitution through its content, its democratic valences, sets Romania among the states whose fundamental laws represent an engine in their evolution. Through its essential content, through the clarity and concision of its norms, our current Constitution meets the requirements of the famous axiom that “*a Constitution is not a Constitution unless it fits in a pocket*”.

But the Constitution is itself a law, and a law is eminently perfectible. Therefore, we support, in theory, need to achieve in the future a revision of its contents. It is important to understand that this must be done with a serious and responsible approach, from where there are removed opportunistic political interests, and which should have the contribution of powerful specialists in the field of law, as found in 1991 and 2003. We are not allowed to “make experiments” with the destiny of our country. We use the term “destiny” because it is beyond doubt that, through its contents, a Constitution settles the fate of a country. It is far from our intention to use empty words. We only want to join those consciences responsible for drawing attention to the need to assume the drafting of a bill of revision to correct the insufficiencies expressed in the 25 years since the Constitution is in effect and create the necessary framework for the evolution of Romania as a Member State of the European and international structures of the world.

References:

- [1] From these, we mention professors Ioan Moraru, Florin Vasilescu, Marian Enache, the late professors Ioan Deleanu or Mihai Constatinescu
- [2] Published in the Official Gazette of Romania, Part I issue 758 of 29 October 2003.
- [3] Example Geneza Constituției, RA “Official Gazette of Romania”, Bucharest.
- [4] Example Victor Duculescu, Constanța Călinoiu, Georgeta Duculescu – *Constituția României comentată și adnotată*, Lumina Lex, Bucharest, 1997.
- [5] Ioan Muraru, Elena Simina Tănăsescu (coord.) – *Constituția României, Comentariu pe articole*, C.H.Beck, Bucharest, 2008.
- [6] Considering Title VI of the Constitution newly introduced, for the “*Euro-Atlantic integration*”.
- [7] Norm comprised in art. 20 of the Constitution.
- [8] Article 33 of the Constitution.
- [9] By art. 35 of the Constitution.
- [10] See Dana Apostol Tofan – *Drept administrativ*, 3rd ed., Vol. I, C.H.Beck, Bucharest, 2014, pp 243 – 253, 263 – 272.
- [11] Decision of the Constitutional Court no. 738/2012, published in the Official Gazette of Romania, Part I issue 690 of 8 October 2012.