

# CONSTANTIN HAMANGIU: A COMPARATIVE STUDY ON THE NECESSITY OF APPLYING THE PRINCIPLE OF LEGISLATIVE UNIFICATION

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## **Abstract**

*Our paper aims at presenting the vision of Constantin Hamangiu on the necessity to accomplish legislative unification and, implicitly, the administrative one. This process took place in Romania after the First World War, simultaneously with other European countries. A supporter of the idea of legislative unification, Hamangiu conducted a comparative study on the topic by analyzing the process in Romania, as well as in France, Italy, Poland and Czechoslovakia. His conclusions were that achieving unification by means of extending the legislation existing in the “mother state” (i.e. France, Italy) to the provinces integrated in 1918, was correct, and that, in case of Romania (where the process of legislative unification was prolonged), there was the urge to accelerate this process.*

**Key words:** *legislative unification, Romania, France, Italy, Poland, Czechoslovakia.*

## **1. Introduction**

In 1918, the Romanian provinces outside the Romanian state, namely Bessarabia, Bukovina and Transylvania, united with Romania[1]. Therefore, political unification was achieved, but the newly constituted unitary national state also needed administrative and legislative unification.

Legislative unification represents an important direction of our research activity. We may mention in this respect several works, of which we particularly highlight: *Unificarea administrativă a României întregite (1918 – 1925). Integrarea Basarabiei, Bucovinei și Transilvaniei în structurile administrației românești* (The Administrative Unification of Great Romania (1918 - 1925): The Integration of Bessarabia, Bukovina and Transylvania in the Structures of the Romanian Administration), Mega Publishing House, Cluj-Napoca, 2016. When elaborating this monograph, I surveyed the opinions of several

lawyers, such as Andrei Răulescu. In a previous short study dedicated to Constantin Hamangiu, I briefly approached his vision on the issue of administrative unification [2].

This paper aims at further investigating the topic, by analyzing the comparative study Constantin Hamangiu performed so pertinently on the process of legislative unification in several countries that either integrated new territories or constituted themselves as national states after the military operations of the First World War, states such as: France, Italy, Poland, Czechoslovakia.

## **2. Preliminary considerations**

In the Explanatory Memoranda to the Draft Bill for the Enforcement of the Civil, Commercial and Criminal legislation throughout Romania, from 1931 [3], actually the completion of the legislative unification process in Romania [4], Constantin Hamangiu analyzed how this process had been carried out in other European countries. In 1860, Napoleon III introduced French legislation in Nice and Savoy. The Germans did a similar thing in 1871, when they annexed Alsace and Lorraine and extended their national legislation to the newly annexed territories.

After the First World War, when Alsace and Lorraine were integrated back to France, the process was repeated, obviously in the opposite direction. In 1919, there started the process of gradually introducing French legislation in these two provinces, process that had salutary results, as highlighted at that time by several specialists from the University of Strasbourg, such as law professor J.B. Niboyet. A similar series of events took place in Italy, where the unification of constitutional, administrative, criminal and fiscal law had been completed with good results by 1923 [5].

The idea of extending the legislation of a national state throughout its territory was very well understood by the federal states after the First World War. For example, between 1873 and 1890, Germany gradually introduced the German Civil Code in its entire national territory. Such a decision could “reflect the evolution of the federal states to the unitary states”. It was thus certified the fact that “legislative unification is the basis of political unity” [6]. As a matter of fact, this principle was stipulated in the German Constitution of 1919 (Articles 6 and 7). The same thing happened in Switzerland. (In 1905, a Swiss civil code was adopted at the level of the entire state confederation) [7].

Comparatively, immediately after 1918, in Romania, the legislation that had to regulate the functioning of the public services was still not unitary. In the opinion of Constantin Hamangiu, this lack of cohesion would lead to national “prejudice to the exercise of sovereignty” [8]. By maintaining in the provinces united with Romania the traditional, local legislation, there was created a paradoxical situation, namely the fact that the laws of ministries organization were modified by local laws. Specifically, in the field of disciplinary law, prior to the adoption of the Statute of civil servants in 1923 [9], these had been disciplined not in relation to the provisions of the new Romanian unitary national state, but according to the local legislation from the former states, no longer existing at that time [10].

The old legislation was temporarily kept in force in almost all the states that changed their territory after 1918. Immediately after the return of Alsace and Lorraine to France, local laws were maintained. Nevertheless, jurisprudence supplanted the absence of the new legislation, by stating that French law had actually replaced the German one [11].

This phenomenon occurred in the Romanian state, as well. However, in the case of civil laws there were identified serious problems. Specifically, the Romanian supreme court annulled several wills drafted in the Old Kingdom and validated those elaborated in the united territories. Therefore, the need for legislative unification appeared as a necessity, emphasized the Romanian jurist [12].

### **3. Legislative unification in France**

In Alsace and Lorraine, several measures of legislative unification were adopted since the armistice. Civil and Criminal Codes were maintained in force, whereas the laws that contradicted the new situation of the province were disregarded. After the ratification of the Peace Treaty by the French parliament, there effectively started the process of legislative unification by extending the French legislation [13]. Thus, one month after the ratification of the treaty, on November 25, 1919, the French administrative jurisdiction was introduced [14]. There were registered several discrepancies between the old and the newly introduced legislation, and, as a consequence, a special law stipulated the way to

solve these inadvertencies in the field of private law, which represented in fact a new modality to impose the French law [15].

For the newly integrated provinces, there was a similar process to the introduction of the French legislation in Nice and Savoy, in 1860. As, in some respects, the local laws were superior to the French law and “it would have been regrettable to substitute these for rules that were considered to be better” [16], provincial laws were maintained for a while. The gradual extension of the legislation started in 1919 and ended in 1924. In March 1922, the draft law was tabled in the Parliament, and, on June 1st, 1924, the law was passed. On January 1st, 1925, the law entered into force and both civil and commercial legislation was introduced in Alsace and Lorraine. All the process lasted six years [17]. Nonetheless, it is worth mentioning that the public had been previously prepared for this process. The Faculty of Law in Strasbourg had introduced a lecture of Legislative unification since the spring of 1919, and the number of such lectures increased, being doubled by a series of public conferences held by famous personalities of the time in different cities of the provinces [18].

#### **4. Legislative unification in Italy**

The situation in Italy was, at the time, almost identical to the one in France. The necessity to extend the legislation in the integrated provinces was considered appropriate. As in Alsace and Lorraine, some of the local legislation was superior to the Italian one and, therefore, it was decided to keep the local one. Consequently, the inherent conflicts between local and national laws were triggered. Contrary to the French, the Italians began to reform their own legislation in accordance with the European reforms. Their goals were to eliminate German and French influences and to strengthen the Italian specificity [19].

Although the post-war difficulties made the reform arduous, at the end of 1923, Italy had achieved most of the legislative unification through the constitutional, administrative, criminal and fiscal legislative unification. The final step of unification was achieved by a Royal Decree, in 1928, when the Italian legislation entered into force in the newly integrated territories. However, there were several norms provisionally maintained that were included in the transitional provisions [20]. The final steps of the harmonization

were carried out between 1929 and 1931, which finalized the legislative unification, for the benefit of the Italian society and its evolution [21].

## **5. Legislative unification in Poland and Cehoslovakia**

These two states had a particular situation with respect to their “legislative unification”, as they either constituted or reconstituted (Poland) after the first world conflagration. In their case, there was no national legislation to be further extended. Therefore, the main concern was to create a legislation that, on the one hand, would support the unification of the whole society, and, on the other hand, it would be in accordance with the newest acquisitions in European legislation.

The process of fulfilling the legislative unification was quite arduous in Poland, as this country was under the influence of three legislative systems: the German one in the west, the Austrian - in the south, and the Russian - in the east. The process of legislative unification and codification of this country was generally completed in 1930 [22].

In the case of Czechoslovakia, the situation seemed a little simpler as there had been into function only two legal regimes, namely the Austrian and the Hungarian ones. The main fields of interest on which the Czechoslovak legislation focused were those related to the Constitution and to the agrarian and administrative issues. More serious problems were posed by the process of administrative unification, an area in which the law adopted immediately after the war, i.e. in 1919, was modified in 1927. The new law represented a return to the centralized administrative system (under the influence of the French law of 1884) [23 ].

As a conclusion, it was obvious that any state that had achieved its political unification after the First World War was to also fulfill the unification of their civil life as a unique foundation that “supported the very political organization of the state”.

## **6. Legislative unification in Romania**

The legislative unification in Romania was carried out in a similar manner to the one in France and Italy. The topic triggered serious debates among the Romanian jurists: some supported the idea that the legislation existing in the united provinces was superior to that from the former Kingdom of Romania. Nevertheless, after further having analyzed

the situation, one may have concluded that it was rather a sense of pride of the united provinces, in fact of the political leaders of these provinces, and not of the population, in maintaining the former legislation. Constantin Hamangiu considered that the position of these political leaders was a false one because the previous laws had been made by the former neighbouring empires in order to subordinate and annihilate the national spirit of the Romanian majoritary population to the foreign occupants of these territories [24].

The idea of the inferiority of the Romanian law was fought against by the prominent lawyer Andrei Rădulescu and by Vasile Dumitriu, professor at the University of Cluj. Vasile Dumitriu argued that the Transylvanian Romanians were the direct descendants of the Romans, the founders of a superior legal system. Therefore, the Romanians in Transylvania inherited their ancestors virtue, had “justice in their soul” and “the notion of right in their mind”, being forced to endure the “bitter suffering” imposed by the foreign occupation [25].

According to Constantin Hamangiu, it was due to certain technical aspects that the former legal systems were kept in force in the united provinces after the Great Union of 1918. Nevertheless, the needs from daily social life required the gradual, partial introduction of the former Kingdom’s legislation [26].

This process was carried out with positive results, starting with 1919. Very special results were obtained in 1923, as a result of the adoption of the new Constitution [27, 28], and of the Statute of civil servants [29] and especially (with respect to the administrative territorial unification) of the Law for administrative unification of 1925 [30, 31].

However, the complete legislative unification, as Hamangiu noted, was not still achieved ten years after the unification of 1918. Unification by means of law extension was, in Andrei Rădulescu’s view [32, 33], the best way to defend the interests of the Romanian nation. Anibal Teodorescu was in turn a strong advocate of the legislative unification, by establishing a judicious relationship between administrative centralization and decentralization [34, 35]. Constantin Hamangiu considered that any delay in the process of legislative unification represented a “real danger” for the moral and economic interests of the nation [36], reason for which Hamangiu himself proposed, during his term as the Minister of Justice, a draft bill for legislative unification [37].

In the Explanatory Memoranda of this legislative project, Constantin Hamangiu appreciated that the legislative unification could be finalized at that time, as the Romanian society was well prepared for this. Law faculties from the united provinces had already introduced lectures on the Romanian law (including the history of Romanian law). This process was very intense in Cernăuți (Bukovina) and remarkable in Cluj and Oradea (Transylvania). Somehow, Romania repeated the preparatory process carried out by the university environment in Strasbourg, France. Besides the importance of university lectures, one is to mention public conferences held both in the academic environment and in different provincial centers. The conclusion of Constantin Hamangiu was that legislative unification could be finalized by the draft bill he submitted, fact that would have laid a “new stone at the foundation of our state” [38]. Unfortunately, his legislative proposal did not materialize [39].

Constantin Hamangiu was an unconditional supporter of the principle of legislative unification, being the advocate of introducing the Romanian law in the united territories and of the revision of the entire legislation, in order to harmonize it with the requirements of the time. His opinions were similar to those expressed by other specialists, such as G. V. Buzdugan, Andrei Rădulescu, Anibal Teodorescu, or to the ideas promoted by the magazine “Pandectele Române” [40].

## **7. Conclusions**

As revealed by our brief presentation, the lawyer Constantin Hamangiu was an active supporter of the principle of legislative unification of Romania after the completion of the state unification in 1918. He considered legislative unification to be a fundamental element in the consolidation of the unity of the Romanian state. For this reason, C. Hamangiu was extremely critical of the practice of preserving traditional legislation in the united provinces. By supporting the principle of legislative unification, the jurist followed the mainstream of ideas expressed in the Romanian society, after the achievement of the Great Union.

When comparing legislative unification in Romania with the similar process in some Western countries (France, Italy, and sometimes Germany) and in Central Europe (Poland and Czechoslovakia), Constantin Hamangiu identified several similarities with

the unification process from the western states. Explicitly or implicitly, he was a constant supporter of the unification process, by means of extending the legislation of the mother state in the reunited Romanian provinces. Western models consolidated and influenced his opinions. By presenting the efforts of legislative unification from the above-mentioned countries, Hamangiu implicitly pleaded for the national legislative unification.

Furthermore, it should be noted that jurist Constantin Hamangiu was a true exponent of patriotism, which was based on a solid legal training. His plea in favour of legislative unification represented in fact a plea for the consolidation of the national state itself. The process was all the more necessary as it had been carried out in other European states, such as France and Italy, true statal models of that time.

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