



Reflections on the Adoption of the 1923 Constitution of Romania

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Abstract. The 1923 Constitution of Romania is often referred to in legal literature as one of the greatest Romanian constitutions. It is a fact that due to the union in 1918, some regions of Greater Romania showed significant differences in their public law. The harmonization of these and the unification of the public law of Greater Romania was carried out with great vigour by the National Liberal Party in 1922–1923. However, both the legality of the constitutional process and the novelty of the resulting Constitution raise a number of questions. In the following contribution, I would like to briefly address these issues.

Keywords: 1923 Constitution of Romania, unification of public law, parliamentary debate, the constitutional process

1. Introduction

After the union of Transylvania¹ (1 December 1918), Bessarabia (27 March 1918), and Bukovina (27 October 1918) with the Romanian Old Kingdom, Greater Romania found itself in a special situation that required amendments to its public law. The extension of the 1866 Constitution to the newly acquired Romanian territories would not have been an optimal solution for a number of reasons. As a consequence, there were two possible solutions to the resulting constitutional situation: a comprehensive amendment to the 1866 Constitution or the adoption of a new constitution. However, as we will see in this contribution, Romania eventually opted for the adoption of a new constitution based to a large degree

¹ In this study, the reference to Transylvania has been made by the author in a broader sense; therefore, in addition to the historical Transylvania, it also includes the Banat, Crişana, and Maramureş regions of Romania.

on the old constitution, thus combining to some extent the two alternatives mentioned above.

Finally, in the spirit of legal unification and harmonization of public law, the new Constitution of Romania entered into force on 29 March 1923, but its drafting and adoption raise a number of questions of legal historical relevance.

In what follows, after outlining the arguments in favour of the need to adopt a new constitution, I will look at the parliamentary debate that unfolded on the question of the competence of the National Assembly to adopt the new constitution. Finally, I will address the question of whether the 1923 Constitution can be considered a new constitution or merely a major and significant amendment to the 1866 Constitution.

2. Reasons for Adopting the New Constitution

After the union of Transylvania, Bessarabia, and Bukovina with the Romanian Old Kingdom, extending the scope of the 1866 Constitution to these territories did not seem an appropriate solution for the unification of public law. First of all, the unification resulted in the emergence of a large number of minorities (Hungarians, Germans, Ruthenians, Serbs) and churches of major denominations (Greek Catholics, Protestants).²

A few years after the adoption of the 1923 Constitution, the need for it was justified in legal literature as follows:

‘Following the unification of all Romanian provinces into a single State, the 1866 Constitution, which had been the fundamental law of our State for so many years, was no longer adapted to the new situation. It had to incorporate the new territories of the country and to provide for the political settlement of all new citizens.’³

This new social context demanded a new constitution, especially as the legislature considered that the 1866 Constitution represented only the will of the citizens of the Old Kingdom.⁴ In addition to these changes in the social context, the fact that the organization and administration of the State in various territories differed considerably from that of the Romanian Old Kingdom played an important role in the adoption of the new constitution.

The main difference between the administration of the Old Kingdom and that of the newly unified territories was related to the issue of decentralization. As the former senator from Bukovina, George Grigorovici pointed out, ‘The Old Kingdom

2 Focșeneanu 1992. 57.

3 Alexianu 1926. 83.

4 Fegyveresi 2020. 467. Translation by the author. [Unless otherwise specified in the footnotes, all translations from non-English sources are by the author.]

has no administrative decentralization, it does not know what communal autonomy is, it does not even know what an even more advanced urban autonomy means. Here everything is done from the centre.⁵ By contrast, in Bukovina, for example, a local parliament existed, which was responsible for, among other things, the administration of municipalities, the management of hospitals and elementary schools, and the control of locally owned railways.⁶ Indeed, local autonomy extended to the point where *Cernăuți*, the region's largest city, had the right to levy and collect special taxes.⁷ With regard to Transylvania, it should be noted that the Transylvanian Diet, established by the Principality, continued to function during the years of the Habsburg Empire, until 1865. Based on this experience, Transylvania also knew the advantages of a high degree of local autonomy.⁸

In addition to the different approaches to the issue of decentralization, the backwardness of the administrative system of the Old Kingdom was also seen as problematic by the jurists of the time. As Anibal Teodorescu, lawyer and former mayor of Bucharest put it:

[...] the administrative system of the Old Kingdom is not perfect, but, on the contrary, it is completely outdated. Its reform had been demanded long before the war, both from the heights of the university professoriate and through the various manifestations of political parties [...].⁹

With such a diverse administrative system at different levels of development, it was clearly not possible to unify them by extending the scope of the 1866 Constitution, as was done in Dobruja¹⁰ in 1884. Thus, the legal unification could only be achieved by a substantial amendment to the 1866 Constitution or by the adoption of a new constitution.

At the same time, not only did the organization of public administration differ from one territory to another, but there were also significant differences in other areas of social life. The organization of the education system in the Old Kingdom, for example, was based on the provisions of the 1866 Constitution, while the Hungarian model of education prevailed in Transylvania, the Austrian model in Bukovina, and the Russian model in Bessarabia.¹¹

Social disparities and inequalities in development have led to the need for legal unification; however, these factors cannot be seen as the sole cause, since land reform also brought about social changes.

5 Grigorovici 1990. 116.

6 Ibid.

7 Id. 117.

8 On the functioning of the Transylvanian Diet during the years of the Habsburg Empire, see: Kisteleký 2020. 337–339.

9 Teodorescu 1990. 409.

10 In 1884, by a simple additional article, the application of the Constitution to Dobruja was ordered. For details, see: Focșeneanu 1992. 56.

11 Nistor 1990. 518.

The land reform in Romania began with the expropriation of the large estates after the end of the First World War (for example, the Transylvanian agrarian reform of 12 September 1919),¹² followed by the process of land distribution among the peasantry as a second step after the formation of the new Parliament (the Bessarabian agrarian reform of 10 March 1920; the agrarian reform of Transylvania, Banat, Crişana, and Maramureş of 30 July 1920).¹³ The main objective of this land reform was ‘to increase the number of rural smallholders and enlarge their lands, including common pastures and woodlands’.¹⁴

Thus, the land reform had a strong impact on the social structure of Romania, best illustrated by the expropriation of some 6 million hectares of land, which resulted in the ownership gained by nearly 1.4 million peasants.¹⁵ Relating to this social transformation, George Grigorovici noted the following:

‘The land reform has transformed the poor peasant into a peasant who has or will have land. These land-owning peasants will demand political rights commensurate with the economic power they have acquired. Here we are faced with a new and real factor which requires the Constitution to be broadened.’¹⁶

It can be therefore concluded that, in addition to the territorial and demographic changes resulting from the union, the social changes brought about by the land reform also necessitated changes to the existing constitutional architecture and thus the adoption of a new constitution. At the same time, even the jurists of the time did not agree on whether this situation should be remedied by a comprehensive amendment to the existing 1866 Constitution or by the adoption of a completely new constitution. ‘Each of these views has its more or less ardent supporters, and the constitutional issues aroused enormous interest in the political and cultural spheres, as well as in the press and the general public.’¹⁷

In discussing the situation of public law in the early 1920s and the search for a possible solution, the role of the Romanian Social Institute (*Institutul Social Român*) cannot be overlooked. This institute, under the leadership of its president, Dimitrie Gusti, organized a series of 23 lectures between 18 December 1921 and 4 June 1922. In these lectures, some of the most eminent Romanian intellectuals and experts of the time discussed the need to adopt a new constitution. The lectures covered a wide range of social issues, including women’s rights, the difficulties of the post-war economic establishment, freedom of the press, representation and voting rights for minorities, and parliamentary reforms. Although there were differences of opinion on a number of issues, the

12 Veress 2020. 570.

13 Cernea–Molcuţ 1994. 259–260.

14 Fegyveresi 2023a. 303.

15 Székely 2018. 71.

16 Grigorovici 1990. 115.

17 Focşeneanu 1992. 57.

speakers were almost unanimous in their view that a new constitution should be adopted as soon as possible.¹⁸

3. The Drafting Process and the Debates on the Adoption of the 1923 Constitution

Virtually all parties wanted to have a say in the process of legal unification. Therefore, four different preliminary drafts were produced: by the National Liberal Party; by the Peasants' Party; by Romul Boilă, a professor at the University of Cluj (which unofficially represented the point of view of the Romanian National Party); by Constantin Berariu, a professor at the University of Cernăuț.¹⁹

It is interesting to observe how the authors of each of these preliminary drafts expressed their views on the constitutional process, the 1866 Constitution, and the factors that would require its amendment. For example, Boilă explained in the preamble to his draft:

A new and unitary organization is imposed on us by the very act of the union. The unification of the different provinces, which was unconditionally accomplished in terms of their subordination to the sovereign power of the united Romanian State, does not mean that it was achieved without determining how the unification was to be carried out. In particular, it does not mean that the provinces *ipso jure* submitted themselves to the provisions of the old Constitution.²⁰

Moreover, Constantin Berariu considered that 'The 1866 Constitution itself is incomplete, since, given the circumstances of the time, it does not contain all the provisions necessary for the governance of an independent State.'²¹

Although all four of the above-mentioned drafts were completed, the adopted Constitution was based on the draft of the National Liberal Party.²² The reason for this was that after coming to power on 19 January 1922, the National Liberal Party, under the leadership of Ion I. C. Brătianu, obtained a decree from the King for the dissolution of the Parliament and for the organization of new elections.²³ The elections of March 1922 were won by the National Liberal Party, which set up a constitutional committee and closed the ordinary sitting of the Parliament on

18 The lectures were published for the first time by Tiparul Cultura Națională București in 1923, titled *Noua Constituție a României*. The second edition was published by Hamangiu in 1990, titled *Constituția din 1923 în dezbaterile contemporanilor*.

19 Bolovan–Moțiu 1998. 78.

20 Sevastian 2021. 55.

21 Ibid.

22 Bolovan–Moțiu 1998. 78.

23 Șianțu 1999. 30.

12 April 1922. The Committee completed its preliminary work on 23 November, and the National Constituent Assembly convened just five days later.²⁴

It is important to point out that the declaration of the Parliament, formed after the 1922 elections, as a National Constituent Assembly was strongly protested by the opposition parties, who claimed that their participation in the elaboration of the draft had been excluded, and thus the Romanian society was not fully represented.²⁵

In support of their opinion, the opposition members relied on the provisions of Article 129 of the 1866 Constitution on the amendment to the Constitution. This article required the legislature, if it deemed it necessary, to declare the need for a constitutional amendment and then promulgate it three times every 15 days. Thereafter, the Parliament had to be dissolved by virtue of law, and a new one (an Assembly with constituent powers) had to be convened in its place.²⁶

According to some scholars, ‘The adoption of a constitution, by ignoring or even abolishing the previous laws, and especially the previous Constitution, can only take place in the event of a substantial and structural transformation of society, or it is obvious that after 1918 such a transformation did not take place.’²⁷

The National Liberal Party tried to adopt a new constitution with great haste and without regard to the provisions of the 1866 Constitution, mainly for two reasons: firstly, to avoid a second election, as they were not sure that they could form a parliamentary majority, and secondly, for a subjective reason, wishing to be the sole authors of great historical deeds.²⁸

Some members of the opposition parties initially proposed extreme solutions, such as refusing to participate in the work of the Parliament by resigning *en masse* (this opinion was expressed by Alexandru Averescu, Dr Nicolae Lupu, and Alexandru Marghiloman).²⁹ In fact, the opposition went so far as to propose the organization of a large rally at Alba Iulia with revolutionary aims.³⁰ However, as there was no consensus among the opposition parties on how to act in a united manner, the National Liberal Party, aware of its majority, was free to continue the constitutional process.³¹

Moreover, on 20 January 1923, the National Liberal Party merged with two regional parties: with the Bessarabian Peasants’ Party and with the Democratic Union Party of Bukovina. This merger was greeted with dissatisfaction by the opposition parties, given the *divide et impera* tactics used by the National Liberal Party.³²

24 Focșeneanu 1992. 58.

25 Cernea–Molcuț 1994. 250; Focșeneanu 1992. 59.

26 The 1866 Constitution can be found in Romanian at the following address: <https://legislatie.just.ro/Public/DetaliuDocument/26844> (accessed on: 05.02.2023).

27 Șianțu 1999. 31.

28 Popescu 1983. 97.

29 Id. 102.

30 Id. 103.

31 Id. 105.

32 Id. 137.

As soon as the debate on the draft Constitution began in the chambers of the Parliament, the opposition parties immediately expressed their disagreement. On 26 January, the Romanian National Party's declaration was read out both in the Chamber of Deputies by Mihai Popovici and in the Senate by Mihai Gropşian. After this declaration, which called for the dissolution of the Parliament, the members of the Romanian National Party left the chamber.³³ Another statement was made by the Peasants' Party, through Dr Nicolae Lupu and Neculai Costăchescu, on 29 January, stating that the party does not recognize the legislation of the Parliament and will consider the Constitution null and void.³⁴

The prominent voice of the opposition was Iuliu Maniu, President of the Romanian National Party, who argued that the Parliament had been diverted from its constitutional purpose and forced to adopt a decision that did not fall within its normal legislative powers.³⁵ Moreover, in Maniu's opinion, the new Constitution 'protected the oligarchy of the Old Kingdom, affiliated to the National Liberal Party'.³⁶

After a long period during which the opposition parties tried to act against the constitutional process individually and in many cases in different ways, finally, on 3 March 1923, the Peasants' Party and the Romanian National Party signed an agreement in Bucharest to jointly oppose the constitutional process.³⁷ After this agreement, the leaders of the two parties decided to return to the Parliament for the general debate on the draft, but also to start organizing the resistance outside the Parliament.³⁸

At the sitting of the National Assembly of Deputies, on 9 March 1923, Maniu read out a manifesto, in which he argued that '[t]he Constitution itself can only be derived from a direct and express mandate given by the Nation to a Constitutional body'.³⁹ This manifesto was also supported by the Peasants' Party led by Ion Mihalache.⁴⁰

In addition to their parliamentary interventions and press appearances, the opposition parties' representatives went to the King for audiences on several occasions, but even these audiences were unsuccessful.⁴¹

Despite the opposition parties' protests, the draft constitution was submitted for debate to the Chamber of Deputies on 5 March 1923. Although there were minor debates on human rights and freedoms, women's rights and the right to

33 Id. 141–142.

34 Id. 143.

35 Veress 2022. 34.

36 Ibid.

37 Popescu 1983. 155.

38 Id. 157.

39 Focşeanu 1992. 59.

40 Ibid.

41 Popescu 1983. 143.

vote, the new Constitution of Romania was adopted almost unanimously by the Chamber of Deputies on 26 March 1923 and by the Senate on 27 March 1923.⁴² It can be affirmed that, although the opposition parties had protested against the draft of the Constitution and had contested the legitimacy of the Parliament, their resistance and opposition failed. The new Constitution was promulgated by Ferdinand I on 28 March and published on 29 March 1923.⁴³

It is interesting to note, especially in the light of the vehement objections of the opposition, that the 1923 Constitution was adopted almost exactly one year after the Constitutional Commission had been set up. This rapid adoption can be explained by two main reasons: firstly, there was a long elaborated draft⁴⁴ and, secondly, the fact that the 1923 Constitution draws heavily on the provisions of the 1866 Constitution. In the following, I would like to briefly address the latter factor.

4. Can the 1923 Constitution Be Considered a New Constitution?

One of the most heated debates that appeared in the legal literature concerning the 1923 Constitution is whether this Constitution should be considered a new one, or it is merely a comprehensive amendment to the 1866 Constitution. While it is true that formally, that is, from a procedural point of view, a new constitution was adopted,⁴⁵ the situation is not so clear-cut in terms of substance.

Of the 138 articles of the 1923 Constitution, 52 were taken verbatim⁴⁶ from the text of the 1866 Constitution, with a further 27 being adapted with minor amendments.⁴⁷ The fact that more than sixty percent of the provisions of the newly adopted Constitution are essentially a reproduction of the provisions of the 1866 Constitution tends to support the view that the 1923 Constitution is essentially just an amended version of the previous Constitution.

In addition to the large number of reproduced articles, the fact that both the 1866 and the 1923 Constitution are structurally built up from the same 8 titles supports the above-mentioned thesis.⁴⁸ Nor should we ignore the fact that the 1923 Constitution essentially retained the monarchical form of government and the

42 Bolovan–Moțiu 1998. 78.

43 Cernea–Molcuț 1994. 250.

44 Focșeneanu 1992. 60.

45 The clearest evidence of the fact that a new Constitution was adopted from a procedural point of view is the fact that every single article of the 1923 Constitution was submitted to vote, not just the amended ones. *Ibid.*

46 According to some authors, the number of articles carried on verbatim reaches 76. Firoiu 1993. 290.

47 Mikó 1938 *apud* Fegyveresi 2020. 468.

48 Firoiu 1993. 290.

principle of national sovereignty as well.⁴⁹ In essence, therefore, the organization of the State did not undergo any significant changes with the entry into force of the 1923 Constitution. It could be concluded that, with a few exceptions, the new Constitution continued the existing principles and organizational model.

One important exception lies in the amendment to Article 1 of the 1866 Constitution, which provided for the indivisible nature of the State. This provision was adapted to the social realities of the time in such a way that Article 1 of the 1923 Constitution emphasized that the 'Kingdom of Romania is a unitary and indivisible nation-State'.⁵⁰ It is a fact that '[t]he 1866 Constitution did not yet consider these two aspects, i.e. the emphasis on unity [...], and on the one nation';⁵¹ therefore, the provisions of the 1923 Constitution contained a novelty in this respect. Furthermore, the 1923 Constitution provided that all citizens were equal, which was again a new principle.⁵²

Although, in addition to the above-mentioned amendment, the new Constitution introduced a number of other changes (such as granting equal rights to women, changing the composition of the Senate, or providing constitutional status of land reforms),⁵³ all of these could have been introduced by a comprehensive amendment to the 1866 Constitution.

In the light of the foregoing, I accept the view expressed in the legal literature, according to which the Romanian constituent power 'has opted for the solution of revising the old Constitution, but officially it has been claimed to be a new Constitution, taking into account the objection that the new Constitution, as a whole, must represent the will of all the citizens of the country, including those from the new provinces'.⁵⁴

This opinion was also supported by the jurist George Șofronie, who argued that the 1923 Constitution was not a new one but only a substantial amendment to the 1866 Constitution.⁵⁵ Indeed, even the liberal jurist Mircea Djuvara considered that the 1923 Constitution was only a restatement of the old provisions.⁵⁶

Since the 1923 Constitution can be regarded as an amended version of the 1866 Constitution, the question arises: why was its adoption so urgently sought? By transposing some sixty per cent of the provisions of the 1866 Constitution, either verbatim or with only minor changes, into the new Constitution, the constituent legislator essentially expressed the opinion that the constitutional framework provided by the 1866 Constitution was fundamentally adequate to the social

49 Mikó 1928 *apud* Fegyveresi 2020. 468.

50 Firoiu 1993. 291.

51 Fegyveresi 2023b. 315.

52 Ibid.

53 Mikó 1928 *apud* Fegyveresi 2020. 468.

54 Focșeneanu 1992. 60.

55 Șianțu 1999. 38.

56 Ibid.

and political realities and only needed to be corrected. Although the changes brought about by the union and the land reform did indeed necessitate a revision of the existing constitutional order, the outcome shows that this could have been achieved by amending the 1866 Constitution. Furthermore, this constitutional process could have been done by taking into account the objections of the opposition parties as well.

5. Concluding Thoughts

The period between the two world wars saw significant legal unification processes taking place in Romania. The 1923 Constitution of Romania played a substantial role in these processes due to its role in the harmonization of public law. Nevertheless, its adoption raised a number of issues being procedurally questionable and contrary to the relevant provisions of the 1866 Constitution. Moreover, legal literature still considers that the 1923 Constitution cannot be seen as a new constitution as regards its provisions but merely an amendment to the previous Constitution, since it incorporated a significant part of the articles of the 1866 Constitutions without any amendment. As a result, the new Constitution organized and governed the State on the same principles.

The 1923 Constitution was only in force until 1938, when Carol II's royal dictatorship adopted a new Constitution by referendum. In fact, the adoption of the 1938 Constitution also had major shortcomings, as the referendum was held in just a few days (the referendum was announced on 20 February and held on 24 February); a state of siege was imposed throughout the country at the time of the referendum, and the authorities recorded those who voted against the adoption of the new Constitution.⁵⁷

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⁵⁷ Fegyveresi 2018. 383.

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