PERIODS OF ROMANIAN CONSTITUTIONAL LAW - WITH REGARD TO THE RIGHT TO VOTE

CZU: 342.821(498)
https://doi.org/10.59295/eiqd.16

József Zoltán FAZAKAS[*]

Abstract. *The development of constitutional law in Romania is based on fundamentally different foundations compared to those of Western European states, primarily due to the delayed formation of the state, despite the fact that it has essentially adopted foreign models for its state organisation and legal system. The Romanian state was a constitutional monarchy at its inception, with limited constitutionalism, before turning into an open royal dictatorship in 1938 and then a military dictatorship in 1940. After the Second World War, Romania returned to constitutionalism nominally, however as consequence of the Soviet occupation, the Soviet political, economic and constitutional system was adopted, leading to the necessary abandonment of former constitutionalism. Consequently, between 1948 and 1989 - and 1991 de jure - Romania lived in an era of de facto unconstitutional constitutions. In the case of Romania, therefore, effective constitutionalism has been established after 1991, when the Constitution of 1991with the adoption of the current Constitution. The lessons of this historical process carry messages that are still relevant today. It is therefore particularly important to look at the right to vote in the above sense in terms of constitutionally defined state objectives and policies. Indeed, until the introduction of universal suffrage, the constitutional ends of the state did not necessarily embody the will of the people, but the will of the ruling elite as laid down in the constitutions. This is why an overview of the development of the constitutional journey to genuine popular sovereignty is remains significant today.*

Keywords*: Romania, Constitution, constitutionalism, suffrage, law history*

Introductory thoughts

International law does not require any further criteria of statehood beyond the three basic conditions of statehood, namely the existence of a contiguous territory, a permanently settled population and sovereign supremacy over it (Jellinek, 1959: p. 394-

[*] Dr., Associate Professor; Institute of Private Law Studies, Department of Commercial Law Faculty of Law of the Károli Gáspár University of the Reformed Church in Hungary, www.kre.hu, jozsef.zoltan.fazakas@kre.hu

406, 427-434.). These conditions define the state from a formal, external perspective. From an internal, substantive point of view, the criterion of the modern state is provided by Section XVI of the Declaration of the Rights of Man and of the Citizen, adopted by the Constituent Assembly of the French Revolution on 26 August 1789, which states that *"Any society in which the guarantee of rights is not assured, nor the separation of powers determined, has no Constitution."* In fact, the Declaration contains a basic model of constitutions bound to the rule of law by enshrining the principle of equality, based primarily on Sections I and VI. (Ionescu, 2019: p. 313-316.). In addition to and based on these, Section III defined the basis of the power of the State in the proposition of popular sovereignty, finally replacing the previous exercise of power based on divine legitimation. Taken together, these propositions have become the basis of international law and an international constraint on domestic state legislation (Szabó, 2015: p. 189.). Popular sovereignty is the guarantee of proportional participatory rights, i.e. the stabilizing factor of the state through elections (Rousseau, 2001: p. 59., 84-85.), leading to the embodiment of equality of rights in legislation, whereby power is subject to law (Dissescu, 1915: p. 166-176.). To put it another way, from the point of view of popular sovereignty, without universal, equal, direct and secret suffrage, popular will and popular sovereignty cannot prevail. If any of the above elements of suffrage are missing, it is not a case of popular sovereignty, but of group rule.

Modern constitutions are expected to lift the constitution out of the realm of ordinary law, and to reflect the Montesquieuian principle of separation of powers (Bolovan, 1998: p. 3.) in the organisation of the state. At the heart of this state organisation is the question of the legislature and the right to vote, based on the equality of rights that underpins it. Consequently, one element of the question of substantive constitutionality is the structure of the legislature.

By exploring and examining the relationship between the past and the law, and the causal links between them, the history of law (Horváth, 1997: p. 13-16.) provides a historical perspective that helps explore and understand the foundations of existing legal institutions. The results of legal history can serve as a legislative starting point for defining the political and legal framework of law in the present in the context of historical lessons (Szabó, 2015: p. 223-226.). Consequently, the constitutional legacy of a state is not a closed legacy of the past, but rather an evolving influence. Constitutional history is an institution that influences the constitutional arrangements and legislation of a state and is open to the future because of changing circumstances (van Caenegem, 2008: p. 50-55, 401-405.). It is in this context that the roots and development of the main basic institutions of substantive constitutionalism, including the main elements of the question of legislation and suffrage, can be sketched.

The constitutional history of the modern Romanian state

The development of constitutional law in Romania (Ionescu, 2019: p. 693-704.) differs from that in Western European countries because of the delayed state formation. The principalities, which were established in the 14th century without a classical system of Estates (Murzea-Matefi, 2015: p. 41-44.), were initially under Hungarian and Polish vassalage (Durandin, 1998: 44-48.). This dependence was soon replaced by the sovereignty and then suzerenity of the Ottoman Empire (Matei, 1980: p. 465-468.). The

combined effects of the crisis of the Ottoman Empire and the Romanian national awakening, with the support of the European powers, led to the unification of the lands of the Wallachia and Moldova from the mid-nineteenth century. After the unification, Romania, which then gained its independence with written constitutions, essentially adopted foreign models for its state organisation and legal system (Guţan, 2022: p. 109-117.), despite the fact that there had been earlier attempts at constitutionalisation in both principalities (Vlad, 2002: p. 14-52.).

Despite the promulgation of the Constitution of 1866, the Romanian state faced serious shortcomings in the substance of its constitutionalism (Selejan-Guţan, 2020: p. 57-59.). Although Romania was a constitutional monarchy (Firoiu, 1992: p. 205-221, 284-297.), this constitutionalism was limited and transformed into an open royal dictatorship in 1938 (Bădescu, 2021: p. 43.), and later into a military dictatorship in 1940 (Focşeneanu, 2018: p. 115-128.). *Consequently, Romania was in an era of limited constitutionalism from its creation until 1938*. The dominant feature of this period was the pursuit of nation-state values and Romanian irredentism, which, once successfully achieved, prioritized to the state's goal of establishing Romanian national supremacy (Guţan, 2022: p. 115-120.). However, the momentum of this state policy was interrupted after the initial results had been achieved. The external cause was the collapse of the peace system at the end of the First World War, while the internal cause was a series of integration failures, which together fractured the Romanian state framework, dismantled limited constitutionalism and resulted in significant territorial losses.

The above processes led to a constitutional paradox, represented by the royal dictatorship and its constitution introduced in 1938 (Focşeneanu, 2018: p. 106-114.). *This period was an era of apparent constitutionalism*: the royal dictatorship had a formal constitution, but by its very nature it could not have any constitutionalism in the substantive sense (Selejan-Guţan, 2020: p. 59.). In less than two years, the royal dictatorship's system of government was also a complete failure. In addition to the internal tensions of the state, the reasons for this can be found in the challenges of foreign policy, especially the territorial losses suffered in 1940 the Soviet Union, Hungary and Bulgaria, which ended the period with the suspension of the 1938 Romanian Constitution (Ionescu, 2019: p. 749-750.). Romania then began to build a total state without a constitution, even without a constitution in principle, with the appointment of Ion Antonescu as *conducător* on 5 September 1940 (Drăganu, 1998: p. 382-383.).

As a result of a guiding principle based on the logic of faith in a more glorious future and national unity for a nation that had suffered humiliation and crisis due to significant territorial losses, Ion Antonescu became a legislator and a national leader, in charge of the state's organisation of violence. *Between 5 September 1940 and 23 August 1944, totalitarian Romania lived in an era of unconstitutionality* (Selejan-Guţan, 2020: p. 59.) in both formal and substantive terms (Firoiu, 1992: p. 347-348.). Romania, which entered the Second World War in an attempt to compensate for and restore these losses, initially made significant advances on the Eastern front, but by the summer of 1944 its participation in the war had become untenable. Despite Ion Antonescu's unwavering insistence on German alliance, the moves of the historical parties and the royal court to prepare the way for Romania's withdrawal from the war, which had been launched in

secret, towards the Allied, led to the successful transition of Romania to the Allied side on 23 August 1944. (Focşeneanu, 2018: p. 129-130.)

Following the arrest of the *conducător,* Romania returned in principle to the path of constitutionalism, but this step could only mean limited constitutionalism at best. Formally and constitutionally questionable, the 1923 Constitution - already repealed by the 1938 Constitution - was restored (Firoiu, 1992: p. 366-376.), but the last waves of the war and the fact of the Soviet occupation also substantially impeded the exercise of this limited constitutionality (Focşeneanu, 2018: p. 129-146.). The left-wing organisations, strengthened and supported by the occupying Soviets, increasingly took the initiative in domestic politics, completely eclipsing the traditional historical parties (Durandin, 1998: p. 337-343.). The traditional elite and royal Romania came under mounting Soviet pressure, which, especially with the uncertainty over Transylvania, aimed to create the constitutional basis for a communist takeover, and ultimately succeeded (Focşeneanu, 2018: p. 147-155.).

As a consequence of the Second World War, the countries of Eastern Europe, including Romania, came under the military occupation of the Soviet Union, and as a result, the Soviet political, economic and constitutional system was adopted in these countries within a short period of time under Stalinist pressure (van Caenegem, 2008: p. 356-361.). This fact obviously meant the rejection of the former constitutionalism (Guţan, 2022: p. 109-120.). The essential starting point of Soviet-style constitutions was the utopian class-based view of society of communist ideology, which proclaimed the denial and extinction of law (Focşeneanu, 2018: p. 12-14.). The characteristic feature of these constitutions was the construction and operation of a totalitarian state (Dănișor, 2006: p. 62-63.). Consequently, Soviet-style constitutionalism could not really be regarded as true constitutionalism in a substantive sense (van Caenegem, 2008: p. 264, 359.), it was in fact a totalitarian state, a communist dictatorship (Selejan-Guţan, 2020: p. 105-110.). *Consequently, Romania lived de facto from 1948 to 1989 - de iure 1991* (Bădescu, 2021: p. 50.) - *in an era of unconstitutional constitutions.*

As mentioned above, in the case of Romania, constitutionality can only be considered in the framework that has been in place since 1991, when the Constitution in force was adopted (Guţan, 2022: p. 122-125.).

Question of Romanian statehood and the states inhabited by Romanians

The development of the Romanian state during the Middle Ages took place in several state formations (Firoiu, 1992: p. 51-133.) and inevitably led to irredentism, a program of state unification, which Romanian literature dates back to the 14th and 15th centuries (Marcu, 1997: p. 141-142.), and marking its first fulfilment during the reign of Mihai Viteazul (Drăganu, 1998: p. 129-130.).

In the traditional Romanian approach, the Romanian nation primarily existed in three considered Romanian states: Transylvania, the Wallachia and Moldova, with that note Bukovina, which belonged to Austria and originally to Moldova, as well as the Romanian-speaking linguistic islands in Istria, the Balkans and Russia, have not been sufficiently emphasised in Romanian public thought or in constitutional history research (Firoiu, 1992: p. 145-146., 203-204., 279-281.). The constitutional foundations of these states were different, but the birth of the linguistically based concept of the nation in the

19th century led naturally to a nation-state programme that set the unity of these states as its goal, indicating the constitutional choice of values for the nation-state (Guţan, 2022: p. 109-117.). The Romanian nation-state was thus both nationalist and irredentist; it included a programme for the creation of an independent and unified modern Romanian nation-state based on equal rights, and the need and goal of the unification of all Romanian nationalities (Focşeneanu, 2018: p. 21-23.). The programme and goal developed in the three states as follows:

The constitutional structure of Transylvania was based on the union of the three political nations as Estates - the *Unio Trium Nationum* - on the basis of the Union of Kápolna of 1437: the German-speaking Saxon, the predominantly, but not exclusively Hungarian-speaking Hungarian and the Hungarian-speaking Székely Estates (Timon, 1903: p. 692-711.). *The Estate based political nations cannot be identified and equated with the modern concept of nations*, such identification is an anachronism and, in this form, leads to serious interpretative problems. *Estate poltical nations were privileged social classes and not understood in linguistic terms.* Therefore, a significant number of Romanian-speaking individuals were integrated into the Hungarian political nation, i.e. the Hungarian nobility in Transylvania and Hungary, over the centuries (Şotropa, 1980: p. 476.), who were not excluded from the enjoyment of political rights, although their numbers were undoubtedly smaller. The members of the political nations held political rights as equal members of an Estate, enjoying rights regardless of their mother tongue (szabó, 1848: p. 60-61.). For this reason, the recognition of a Romanian nation, understood on the basis of language, was not and could not be granted, because it would have fundamentally upset the delicate balance of order constitutional rights that had been established over centuries. For this reason, the Romanian nation as separate Estate did not and could not gain support from the other political order nations or from the imperial court.

In Hungary and Transylvania in 1848, the basic legislative position, which had been gradually evolving for more than five decades, was that the rights of the Hungarian nation, i.e. the nobility (Timon, 1903: p. 552-554.), should be extended to the people excluded from political rights by abolishing feudal privileges (Eckhart, 1935: p. 242-244.). Thus, the extension of rights necessarily implied uplifting the population living under the hitherto restricted rights, including the Hungarian and non-Hungarian-speaking population, which was not considered as the Hungarian nobility, and the essence of the extension was precisely the realisation of this thesis and political programme (Szemere, 1941: p. 39.). The fundamental laws of April 1848 were based on the principle of equality of rights and were also enacted in Transylvania, on the basis of which the Hungarian legislature extended the political rights of the Hungarian nation of the Estate to the widest possible extent to the population of the country, irrespective of language or nationality (Cheresteşiu, 1964: p. 4-6.). The last Diet of the Estates wished to create a modern Hungary as a state, understood together with Transylvania, on the above-mentioned basis, abolishing the feudalist Estate system (Schlett, 2009: p. 655-670.) in the belief and hope that equality of rights would eliminate national antagonisms and foster unconditional loyalty to the state among nationalities (Miskolczy, 2004: p. 221-222.).

These changes had a profound impact on the Transylvanian Romanian community, which had been a numerical majority in the separate Transylvanian state but

had become a minority in the new Kingdom of Hungary. The Transylvanian Romanians, on the basis of their political programme adopted at the Blaj Assembly of 15 May 1848, regardless of the new liberal constitutional order, continued to demand their privileges and recognition as a nation (Ionescu, 2019: p. 715.) on the basis of the Estate, which had by then already been superseded, and then openly opposed the union with Hungary (Bolovan, 2016: p. 415-416.).After the defeat of the Hungarian War of Independence, these demands were finally recognized by law at the last Transylvanian Diet in Sibiu in 1863, when the official languages of the Principality of Transylvania were introduced, German and Romanian, in addition to Hungarian, and the Romanian nation's claims for equal rights and recognition were also fulfilled, with the exception of the Romanian national autonomous territory (Firoiu, 1992: p. 259-261.). The statehood of Transylvania was finally abolished by the Austro-Hungarian Compromise, from which time the Romanian ethnic group of Transylvania could live within the new state framework of the Austro-Hungarian Monarchy as a great power.

In Hungary, which included Transylvania, the Act XLIV of 1868 on equality of nationalities was soon adopted as part of the historical constitution on the concept of Hungarian political nation as community of all citizens of the kingdom. The constitution recognised the linguistic fragmentation of the state (Nagy, 1907: p. 157-159.), the *de facto* multi-ethnic Hungarian state, and created the constitutional framework for a state based on the dichotomy of majority-minority (Bethlendi-Szeredai, 2018: p. 142.). Under the law, the Hungarian state language was placed at the centre, while at the same time the linguistic regulation, which was chiselled for reasons of linguistic diversity, sought to establish equality of nationality and citizenship and thus to create a common Hungarian, or more precisely, a Kingdom of Hungary citizen's identity. Despite this, the Transylvanian Romanian community rejected Hungarian liberal policies outright, identified modernisation with the notion of a unified Hungarian political nation, with rapid assimilation and thus with the creation of Hungarian supremacy (Xenopol, 1999: p. XIX-XX.), and perceived anti-Romanian intentions in all the actions of the Hungarian state (Xenopol, 1999: p. 16.).

The constitutional revolution of 1848 abolished the right to vote and created a new electoral system with Act V of 1848. The law did not impose any linguistic conditions for active suffrage, and required Hungarian language proficiency as a condition for passive suffrage only because of the Hungarian language of the legislature, and basically applied property censuses (Romsics, 2017: p. 334.). In what was considered by the law to be a wide proportion of the population at the time, 7-9% of the total population won the right to vote (Cheresteşiu, 1964: p. 5.), but it is an undeniable fact that the sociological limitations of the property censuses meant that the number of national minority representatives did not reflect the proportions of the population (Marcu, 1997: p. 194.).

Regarding the Transylvanian perspective of the processes leading to the creation of the modern Romanian state, it should be noted that during the dualism, political parties of nationalities, including Romanians, were formed (Bolovan, 2016: p. 436-438.). Initially, nationalist parties were based on passivity in domestic politics (Amuza, 2001: p. 257-262.), and soon afterwards they sought to achieve their national goals through the direct or indirect influence of their newly established nation-states bordering Hungary,

which inevitably increased national intolerance (Bíró, 2002: p. 77.). Passivity was abandoned by the Romanian minority with the formation of the united Romanian National Party in 1881 (Bolovan, 1996: p. 439.). From that time onwards, the Romanian National Party's political activity varied in intensity, rejecting the concept of a Hungarian political nation and advocating an equal alliance of the nations of Hungary, mainly for the autonomy of Transylvania, and indirectly for the purposes of Romanian irredentism (Durandin, 1998: p. 196-197.). However, it is a paradox that, although the nationalities considered and rejected the Act XLIV of 1868 as an octroi (Ciato, 1929: p. 14.) and as a means of eroding their nationality (Marcu, 1997: p. 194.), they preserved and developed their identity primarily through their ecclesiastical self-governments and economic, educational and cultural institutions (Bolovan, 2016: p. 533-569.).

Simultaneously with the emergence of the idea of the nation-state, and in accordance with its original purpose, the process of the transformation of the principalities of Wallachia and Moldavia into a single state began. As a first step, the Treaty of Adrianople of 14 September 1829 granted autonomy to the Principalities under Russian protectorate (Murzea-Matefi, 2015: p. 84-85.), and the so-called Organic Regulations, *Regulamentul Organic* (Ionescu, 2019: p. 709-713.), were established, which entered into force in 1831 in Moldova and in 1832 in Wallachia (Carp, 2002: p. 160.). The Organic Regulations set both Principalities on the path of constitutionalism and modernisation (Guţan, 2022: p. 109-110.). The significance of the Organic Regulations can be seen in the fact that, by introducing the same institutions at the same time, and by making the social structures of the two principalities essentially identical, they actually anticipated their unification into a single state (Bolovan, 1998: p. 47.). The events of 1848 in Moldavia and the Wallachia (Bolova, 1998: p. 48-50.) - along with several attempts at constitutionalism (Ionescu, 2019: p. 550-554, 704-708.), especially the *Proclamația de la Islaz* (Bădescu, 2021: p. 34-36.) - could have focused on the actual programme of unification of the Romanian states, which were meant to be part of the Transylvanian state, into one state (Guţan, 2022: p. 109-117.). This state goal, which included all three state entities, thus became, beyond the achievement of independence, the most prominent political objective of the following decades.

Following the Crimean War, Russian protectorate was replaced by a great power protectorate under the terms of the Treaty of Paris signed on 30 March 1856 (Dissescu, 1915: p. 364-365.). The Great Powers, under the direct influence of the Treaty of Paris, soon succeeded in their efforts to unite the two countries and the Constitutional Convention signed on 7 August 1858 at the Congress of Paris paved the way for the creation of a unified Romanian state as the *de facto* constitution of the soon-to-be united principalities (Dissescu, 1915: p. 366-368.).

The final step of the unification of the two Romanian principalities was the election of Alexandru Ioan Cuza as the Prince of Moldavia in Iași from 5 to 17 January 1859 and of the Prince of Wallachia in Bucharest between 24 January and 5 February 1859, which led to the creation of the United Principality of Wallachia and Moldova through a personal union followed by a real union, through a personal union, followed by a real union (Bădescu, 2021: p. 94.). In the new state - which officially named Romania in 1862 - the language issue, which was one of the main factors of nationalism, did not arise at that time due to the essentially homogeneous social conditions (Ionescu,

2019: p. 803-804.), and the modern unitary nation-state was taken for granted as the focus of legislative value choices (Selejan-Guţan, 2020: p. 78-79.). On this constitutional basis - and in accordance with the original programme of nationalism - Romania soon modernized and unified its legal system (Bolovan, 1998: p. 59-65.) primarily by adopting mainly French and Italian models.

Of all the legislative issues, the most significant was undoubtedly the constitution, which was at the top of the legal hierarchy. The first Romanian constitution of 1866 (Selejan-Guţan, 2020: p. 53-57.) - based on the Belgian constitution adopted on 7 February 1831(van Caenegem, 2008: p. 319-329.) and incorporating its unitary state organization (Guţan, 2022: p. 114-117.) - was in line with the social reality of the time (Ionescu, 2019: p. 803-804.). The state order based on the Belgian Constitution set Romania on the path of modern European state development, and despite the fact that the construction of a state organisation based on foreign models and patterns suffered in many cases from real substantive shortcomings (Ionescu, 2019: p. 720.), the creation and success of the independent Romanian nation-state induced by the national idea was fuelled by nationalism, so that the productive side of the idea and its successes cannot be fundamentally disputed.

In this period, suffrage was first regulated by the Electoral Law of 1864, which served as a means of consolidating the power of Alexandru Ioan Cuza as head of state (Bolovan, 1998: 61-62.). The law set up a rather differentiated system based on the wealth censuses common at the time, with voting being secret and based on an absolute majority. The Electoral Law Act of 1866 clarified the electoral provisions outlined in the Constitution of 1866 and remained in force until the adoption of the Electoral Law Act of 9 June 1884, later amended several times (Dissescu, 1915: p. 730-732, 873.). The Act also applied different censuses, setting up an indirect electoral system for the bicameral legislature, where it also granted senatorial seats to the heir to the throne, church leaders and universities on the basis of office or dignity. The differentiated and censorial logic of the electoral system did not change substantially after 1884, despite the clarifications (Dissescu, 1915: p. 732-771.). According to the Romanian electoral law of the time, the number of voters had risen from a few thousand at the beginning of Alexandru Ioan Cuza's reign to tens of thousands by 1866, but even in 1913 only 1.9 per cent of the population had direct suffrage, while 15.7 per cent of the population had indirect suffrage (Pantelimon, 2009: p. 112.).

The next stage in the historical development of the Romanian state was the achievement of independence as a result of the Russo-Turkish War of 1877-1878, recognised by the Congress of Berlin in 1878 and the Treaty of Berlin adopted there (Focşeneanu, 2018: p. 45-47.). Prince Charles of Hohenzollern-Sigmaringen - elected after the dethronement of Alexandru Ioan Cuza in 1866 (Focşeneanu, 2018: p. 35-36.) - assumed the title of King in 1881 and the Kingdom of Romania was established (Murzea-Matefi, 2015: p. 91-93.).

Considering the fact that independent Romania at that time was far from encompassing the whole of Romania's national regions, the justified nation-state basis necessarily embraced and incorporated an irredentist state purpose. According to the above-quoted basic thesis of the political programme, the lands of the Wallachian Basin, Moldova and Transylvania are in fact Romanian states, and the (re)creation of the unity

of these states is a historical necessity (Boia, 1999: p. 14-28.). However, the Kingdom of Romania, as a neighbour of the Great Powers, had only limited capacity to achieve this goal (Murzea-Matefi, 2015: p. 134-142.) until the First World War.

At the outbreak of the First World War, Romania, as a member of the Triple Alliance, was allied with the very state with which it had the greatest territorial claims, while it did not undertake a war against Russia, despite its territorial claims in Bessarabia and its alliance obligations. From 1914, Romania thus adopted a position of withdrawal (Focşeneanu, 2018: p. 63.), entering the war on the basis of the secret political and military agreements of 17 August 1916 in Bucharest (Vesa, 2016: p. 471.). The collapse of the Central Powers in the autumn of 1918 opened up the possibility of achieving the goal of a state (Bolovan, 1998: p. 75-78.). The changes resulting from these events were legally recognized by the peace treaties around Paris. Thus, by the end of 1918, Romania had successfully used the agents of nationalism to achieve the goals of its decade-long political programme, but this success had also fundamentally altered its essentially homogeneous social structure, and thus - in principle - presented it with a real choice of constitutional values (Guţan, 2022: p. 110-111., 117-119.).

The constitutions of modern Romania and the right to vote

The first constitution of Romania, adopted before its independence, the Constitution of 1866, formally described the state organisation of a modern constitutional monarchy (Ionescu, 2019: p. 720-731.) and accordingly included the rights of Romanians on the basis of equality of rights and individual rights (Dissescu, 1915: p. 430., 440-614.). As regards the choice of values in the Constitution of 1866, it should be pointed out that the enjoyment and exercise of the rights contained therein were understood as being linked not only to citizenship but also to the Romanian quality, which was understood as a set of unspecified sacrifices (Stanomir, 2002: p. 106-108.), and other moral obligations, derived from a certain older tradition (Dissescu, 1915: p. 622-623.). All this has a special role to play in the context of the huge gap between the Constitution of 1866 and the reality of the situation during its period of application, as acknowledged by contemporaries (Selejan-Guţan, 2020: p. 90-95.). Elements of this were the predominance of the sovereign power (Selejan-Guţan, 2020: p. 57-59.) resulting in the existence of parliamentary majorities and governments without accountability (Drăganu, 1998: p. 368-369.), i.e. the illusion of separation of powers. All of this was partly recognized by the legislature when, in 1917, in amending the Constitution of 1866, it decided to introduce universal, equal, direct, immediate, compulsory and secret suffrage, while retaining the office of Senator for certain Senate seats (Pantelimon, 2009: p: 112.).

The limited constitutionality and the limited suffrage itself were thus a key issue in the Romanian state system from the outset, challenges that were compounded by the increased territory and the decisively changed social structure of Romania as a result of World War I. In terms of the changed social structure, which posed serious integration challenges, the Alba Iulia Resolutions essentially contained elements (Ionescu, 2019: p. 732-735.) that could have been a value choice for the new Romanian state framework with an integrationist approach (Guţan, 2022: p. 110-111., 117-119.). In particular, point III of the Resolutions contained principles that confronted the constitutional organization

of the new Kingdom of Romania with concrete expectations (Maniu, 1925: p. 5-8.), while at the same time highlighting the substantive shortcomings and limitations of the existing Romanian constitutional order, among which the right to vote, which is direct, universal, secret, equal, independent of gender, and guaranteed to all citizens over the age of 21, should be highlighted. In response to this, there have also been *partial* legislative responses to the right to vote (Pantelimon, 2009: p. 112-113.).

The above constitutional context, the burden of internal integration challenges and international legal obligations, the changed social structure, economic and legal environment, and the combined issues of the growth of the state territory, i.e. the consequences of the Romanian national and state goals achieved in World War I, confronted Romania with the requirement to adopt a new constitution (Ionescu, 2019: p. 732-744.). The task of drafting a constitution was taken up by Ion Ionel Constantin Brătianu, the winner of the 1922 elections, and his National Liberal Party (Focşeneanu, 2018: p. 75-75.).

It was an encouraging sign for the drafting of the Constitution of 1923 that some prominent representatives of academic life and politics (Bolovan, 1998: p. 78-79.) - also preparing alternative drafts of the Constitution (Ionescu, 2019: 740-742.) - attached a special role to the new value choices, including the Alba Iulia Resolutions and the principles contained therein (Boilă, 1922: p. 383.), to the actual decentralization and the specificity of the regions (Grigorovici, 1922: p. 70-71.). However, despite the proposals and initiatives aimed at constitutionalizing the content, the majority position of Romanian politics remained unchanged in favor of the unified nation-state (Gusti, 1922: p. 2.), and thus no change was made to the original nation-state value choice during the constitution-making process (Drăganu, 1998: p. 369-374.), excluding, of course, any nuancing and change of the constitutional value choice from an integration perspective, which also stemmed from the requirements of international obligations (Guţan, 2022: p. 110-111., 117-119.). As domestic policy reasons, they refrained from changing the nation-state thesis (Brătianu, 1922: p. 27-28.) and advocated its strengthening, primarily on the basis of the lessons of the disintegration of the Austro-Hungarian Monarchy (Focşeneanu, 2018: p. 82-83.) and the danger of possible minority separatism that could break up the new state framework (Guţan, 2022: p. 110-111., 117-119.). On the basis of the above starting points, in Romania, Article 1 of the Constitution of 1923 placed the unitary and indivisible state, already codified, on the basis of the nation-state (Bădescu, 2021: p. 42., 169.). The choice of values of the nation-state thus affirmed was clarified by the understanding of traditional Romanian constitutional law that the members of the nation are individuals (Budişteanu, 1928: p. 13.), all of which, as a nation, form a kind of spiritual-soul community on the spiritual basis of the consciousness of belonging (Dissescu, 1915: p. 619.). According to this conception, a nation defined as a community can be a depository of the will of the people and thus of sovereignty, it constitutes a nation-state and this nation-state results in a state of law (Gaftoescu, 1939: p. 41-43.). Accordingly, both in the 1923 Constitution and later in the 1938 Constitution, which codified the practice of the 1923 Constitution, despite the declaration of equality of rights, those who did not accept the condition of belonging to the Romanian nation were placed in a subordinate position, due to the vague content of the above constitutional concept (Guţan, 2022: p. 110-111., 117-120.). Accordingly, minorities in the new

Romania were subjected to political, economic and legal vulnerability, and the nation-building techniques promoted by Romanian state nationalism and its law made majority-minority relations and integration and social consolidation impossible (Guţan, 2022: p. 110-111., 117-119.).

On the above basis, the formally declared equality of citizens' rights has been seriously distorted in the drafting and implementation of lower-level legislation (Guţan, 2022: p. 118-119.), and in many cases has been openly unconstitutional, both in the legislature and in the central and local governments and the judiciary. This practice was also evident in later elections. In the bicameral Romanian legislature of the time, elections to the Chamber of Deputies were based on the universal, equal, direct, compulsory and secret suffrage of Romanian citizens, with the right to stand as a candidate being reserved to Romanian citizens aged 25 and over residing in Romania who were entitled to exercise their civil and political rights.

According to the Electoral Act of 1926, each county represented one voting district in the election of representatives and, according to the table of the numerical distribution of representatives by district annexed to the Act, a total of 387 representatives were elected in a system that distorted proportionality, with the party that won 40% of the total votes receiving half of the total seats as a premium (Pantelimon, 2009: p. 113-115.). The other half of the seats were distributed between the winning party and the parties that had obtained an absolute majority or at least 2% of the vote in each constituency (Alexianu, 1926: p. 421-422.). For the Senate elections, the election system was a county list system with universal, secret, equal, direct, active and direct suffrage for Romanian citizens aged 40 and over and honourable and *ex officio* senators were also appointed.

The distorted electoral system, the electoral geography of the policy of reorganising the public administration, and the abuses and violence committed during the elections meant that minorities were not represented in the legislature in proportion to their numbers during the period (Bíró, 2002: p. 445-450). In this context, there were also electoral results in which the candidate of the national minority did not win a seat in areas predominantly populated by minorities in which the electoral register and results were different from the actual minority proportions (Balázs, 2008: 30-31., 57., 69, 112-113, 133.). Even when minority representatives have won seats, they have faced constant attacks questioning their loyalty to the state. It should be noted that, as in the Austro-Hungarian Monarchy, minorities formed national parties, thus there were the Hungarian National Party, the German Party and the Jewish National Party respectively (György, 2006: p. 152-154.).

The combination of these reasons led to a series of governmental crises and the radicalization of Romanian political life by the end of 1937 Romania was in a state of ungovernable (Focşeneanu, 2018: p. 97-107.). Elections called after the domestic political crisis of late 1937 saw the radical right gain strength and the ruling party defeated, but still failed to address the challenges that were tearing apart state life, and King Carol II dissolved parliament on 10 February 1938 and imposed an open royal dictatorship (Bolovan, 1998: p. 86-89.) and the establishment of an Italian-style corporative state (Firoiu, 1992: p. 327-328.) and a state of emergency . The crisis of legitimacy of the royal dictatorship inevitably called for the drafting of a new

constitution, which, however, was impossible to implement under the existing 1923 Constitution, given the dissolution of parliament and the tense domestic political situation. King Carol II thus completely disregarded the rules of constitution-making and put the text of the Constitution, drafted in less than two weeks, to an open referendum in the name of the nation, and then, referring to the results of the referendum held on 25-26 February 1938 (Focşeneanu, 2018: p. 108-110.) , proclaimed it on 27 February 1938 (Bădescu, 2021: p. 23., 43.).

The most significant innovation of the 1938 Constitution (Tănase, 1994: p. 278-284.) was the explicit departure from the previously codified principle of equality of rights for citizens, by recognising the priority right of the members of the Romanian nation (Nagy, 1944: p. 81.). Article 27 of the 1938 Constitution formulated the denial of the equality of citizenship and the declaration of the primacy of members of the Romanian nationality among the provisions governing the right to hold office, by implicitly incorporating it in the previous articles. Article 27 of the 1938 Constitution stipulated that civil and military offices and dignities could be held only by Romanian citizens, but that the majority and state-forming character of the Romanian nation had to be taken into account when filling these offices (Nagy, 1944: p. 186.). The 1938 Constitution established a clear distinction between all Romanian citizens (*cetăţeni*), who enjoyed certain rights without distinction of religion or race, and members of the Romanian nation (*naţiunea română*) as state-builders (Guţan, 2022: p. 120.). Under this provision, the 1938 Constitution no longer conceived of the Romanian state as a community of Romanian citizens, but recognised only those of Romanian nationality as state-makers, with national minorities being were considered citizens, but were excluded from membership of the state-making community. The 1938 Constitution further clarified the above point in its Article 29, which derived state power from the Romanian nation as defined above.

The 1938 Constitution reorganised the constitutional structure of Romania on a corporative basis, with the dominance of the king's legislative role (Bolovan, 1998: p. 89-90.) and made suffrage conditional on participation in occupational groups (Pantelimon, 2009: p. 115-116.). All political parties were dissolved and only the Front for National Revival, *Frontul Renașterii Naționale*, was allowed to function as the only authorised party after its transformation into National Party (Focşeneanu, 2018: p. 112-113.).

Even the royal dictatorship under the 1938 Constitution failed to remedy the domestic political crisis in Romania and the political processes that were causing instability and the internal rupture of the state framework were particularly accentuated by the radically changed foreign policy environment after the outbreak of World War II and the combination of its pressures on Romania, which by the summer of 1940 had caused significant territorial losses (Ionescu, 2019: p. 755-757.). Among these, the new Romanian-Hungarian border, established by the Second Vienna Award, generated an elementary social outcry which set the state order established by the 1938 Constitution of King Carol II on an unsustainable course (Selejan-Guţan, 2020: p. 103.). Within days, social and political discontent led to the resignation of the monarch and his departure from the country, and although Romania retained its monarchical form of government, the process of dismantling the remaining semblance of constitutionalism (Ionescu, 2019:

p. 749-750.) and the construction of a new totalitarian state (Firoiu, 1992: p. 347-348.) began ***by appointing*** of Ion Antonescu as *conducător* on 5 September 1940 and the suspension of the 1938 Romanian Constitution (Focşeneanu, 2018: p. 115-119.). Consequently, after 5 September 1940, Romanian constitutionalism - apart from the absence of a formal constitution (Firoiu, 1992: p. 349.) - was not even substantive (Selejan-Guţan, 2020: p. 103-104.), and Romania was soon distorted into a chauvinistic legionary dictatorship (Bădescu, 2021: p. 145-146.) under the leadership of the Iron Guard movement (Bolovan, 1998: p. 93-94.). Although the legionary state was overthrown on 24 January 1941 (Focşeneanu, 2018: p. 122.), the restoration of constitutionality had to wait until 23 August 1944 (Selejan-Guţan, 2020: p. 104.).

The era of unconstitutionalism ended following the arrest of Ion Antonescu, when King Michael I, professing the constitutional foundations of the nation-state, declared his belief in civil rights and freedom in his proclamation of 23 August 1944 and the 1923 leading to the restoration of the Constitution (Ionescu, 2019: p. 758-759.). However, the restoration of limited constitutionalism did not result in a change of constitutional values or state objectives. This continuity was not only professed by the young monarch, the historical parties and the government but also joined by the communists, as the rearguard of the national patriotic forces, according to later interpretations (Fodor, 1976. p. 384.).

The historical parties continued to adhere to the *interbellum* concept of the national state, while the communist and social-democratic united front rested on similar foundations. However the quality of Romanian citizenship being constitutionally replaced by the quality of Romanian worker, by transposing the ideological basis (Deleanu, 1980: p. 141-142.). The left united front programme based on class considerations, which in principle rested on communist principles independent of the national idea, in fact had a sharp nationalist content when it presented the Transylvanian question as a counterweight to the fight against fascism by emphasizing Romanian interests, while, because of the Soviet Union's previously fixed starting point, it was forced to accept the Soviet annexation of northern Bukovina and Bessarabia (Focşeneanu, 2018: p. 144-146.). On these grounds, King Michael I appointed Petru Groza as prime minister, who was associated with the leftist movements on 6 March 1945 (Ionescu, 2019: p. 761-763.). The outcome of the increasingly intense internal political struggle between the left-wing parties, which enjoyed the support of the Soviet occupiers, and the historical parties was inevitable (Tismăneanu, 2006: p. 34-40.).

The era of limited constitutionalism that returned after the Romanian transition in World War II represents a mere three and a half years' journey to an era of unconstitutional constitutions. During this period, despite the *de iure* restoration of the constitutional framework, the combined efforts of the Romanian communist movement and the Soviet government, combined with political pressure, gradually achieved the repression of limited constitutionalism in the Romanian state, and eventually led to the establishment of another total dictatorship (Firoiu, 1992: p. 366-367.).

As a result of foreign policy events and processes that ended World War II, Romania, supported by the Soviet Union, finally achieved its main state objective, the recovery of Northern Transylvania, independent of its state apparatus and allied regimes in World War II. The success of the state policy goal was clearly attributed by the Romanian communist interpretation to the Romanian leftist unity and the transmission

of this interpretation to the whole Romanian society clearly provided a legitimation basis for changing the existing state apparatus, based on limited constitutional foundations, justifying the Soviet occupation of the state and serving to justify the social acceptance of the communist takeover (Durandin, 1998: p. 336-340.).

Romania, after regaining with Soviet assistance the territories lost under the Second Vienna Award, came under increasing pressure from the Soviet Union and the left-wing political organisations it supported (Focşeneanu, 2018: p. 147-154.) to change the foundations of the existing state structure and limited constitutionalism (Drăganu, 1998: p. 385.). Following the appointment of the Groza government, the transformation of the social, economic and legal environment in Romania began on such a political basis (Marcu, 1997: p. 279-281.). Left-wing political forces, strengthened by the marginalisation of the historical parties, were able to form the new legislature (Focşeneanu, 2018: p. 135-143.) in the elections of 19 November 1946, winning 347 out of 414 seats and the coalition of left-wing parties, with Soviet support, achieved its goal less than a year later (Focşeneanu, 2018: p. 147-154.). King Michael I was dethroned on 30 December 1947 and the Romanian People's Republic (Drăganu, 1972: p. 88-89., 94-95.) was proclaimed the same day. Romania was thus constitutionally incorporated into the Soviet bloc.

Following the proclamation of the People's Republic, the parliament elected in November 1946 dissolved itself, and soon afterwards, with the election and convening of the Grand National Assembly on 28 March 1948, a new Soviet-style constitution for the state based on a new ideology was drawn up (Focşeneanu, 2018: p. 177-180.) according to the resolutions and directives of the VI Congress of the Romanian Communist Party (Deleanu, 1980: p. 80.). The Grand National Assembly, in the course of the constitution-making process, repeated the constitutional formal defects of the previous practice, a legitimacy defect which the body finally sought to remedy at its meeting of 13 April 1948, by 401 unanimous votes, adopting the 1948 Constitution in the form of Law 114/1948 (Drăganu, 1998: p. 385-387.). With the adoption and proclamation of the 1948 Constitution, Romania formally entered the era of unconstitutional constitutions, breaking the constitutional development arc.

The new constitutional foundations - practically integrated into and continuing the processes begun after the changeover of 23 August 1944 - soon had profound social, economic, political and legal consequences, and brought about (Deleanu, 1980: p. 68-75.), and culminated in decisive changes in the organisation of the state, the essence of which was the rejection of the previous constitutionalism in the Soviet Union in 1936 Stalinist Constitution of 1936, and the full implementation of the class-based social theory of communist ideology (Deleanu, 1980: p. 80-82.). However, the communist totalitarian state, which was then established and had an apparently constitutional basis, could not in fact be considered a constitutional state in a substantive sense, due to its distinctive features (Dănișor, 2006: p. 62-63.).

The leading role of the working class in the new type of state apparatus placed a new vision of man, a new ideological basis, at the centre of the Soviet-style Romanian legislation. The new image of man was based on a class approach, in opposition to and rejecting the previous identities (Deleanu, 1980: 136-137., 141-142.). The system established by the new constitution declared the domination of a single class or party as

a political group, rejecting the previous constitutional distinctions (Guţan, 2022: p. 120.) and thus by its very nature constituted a totalitarian system, which, pyramidally built up in Romania, eventually led to the introduction of a one-man rule, reinforced by a personal cult (Bădescu, 2021: p. 121-122.). Inevitably, the ruling party not only rejected political pluralism in the construction of its own dictatorship, but also sought to destroy opposition forces by absolutising class struggle. The Constitution of 1948 (Ionescu, 2019: p. 766-770.) thus represented a radical change of the previous political, economic and constitutional environment of Romania, the adoption of the Soviet constitutional model, the necessary rejection of the previous constitutionalism, i.e. the absence of substantive constitutionalism (Bădescu, 2021: p. 46-47.).

Given that the essential feature of the so-called people's democratic constitutions (Deleanu, 1980: p. 67-68.) is the rejection and outright denial of the traditional principle of the division of power (Dănișor, 2006: p. 441-452.) based on Marxist-Leninist doctrines (Boboș, 1983: p. 9-11., 28-29.) , i.e. the concentration of power (Deleanu, 1976: p. 19-20.), on the basis of which the Unitarian conception of the state was increasingly prevalent and thus led to the construction of a highly centralised party-state in Romania as well (Boboș, 1983: p. 36.). As a further characteristic of Soviet-style states, power over the whole of state and economic life was not actually exercised by the bodies declared in the constitutions, but as a particular result of the concentration of power, which actually went to the Communist Party (Bădescu, 2021: p. 46-47., 256-259., 265.), or more precisely to its upper echelons which held power as a monopoly (Alexandru, 2008: p. 77-78.). The concentration of power can be further described as a monolithic (Deleanu, 1980: 390-413.) intertwining of the state and party organisation as a further element of the state organisation established by the communist constitutions (Deleanu, 1980: p. 332-337.), the constitutional foundations of which can be derived from the leading role of the working class and its party in the constitutions (Boboș, 1983: p. 11-14., 28-29., 68-69.), by which the communist party, as the only party, was transformed into a state party, its structure mimicking the structure of the state organs laid down in the constitutions. Accordingly, the organs of the state party not only functioned in parallel with the state organs (Deleanu, 1980: p. 196-200.) but, in addition to the typical personal interconnections, also, by essentially abstracting from their powers, effectively controlled everyday life with or without the subsequent approval of the state organs, even against the rules of the specific law. As part of this system, the implementation of party decisions became a specific task of the state and the law (Ionescu, 1970: p. 35.). On this basis, political pluralism naturally disappeared, in popular democracies, and the enforcement of traditional democracy became admittedly superfluous (Bădescu, 2021: p. 47.), and even - calling it bourgeois dictatorship and hypocritical democracy (Boboș, 1983: p. 23.) - abhorrent. Accordingly, rights (Dănișor, 2006: p. 101-102.) based on formal and extreme equality, especially fundamental freedoms, were enshrined in Soviet-style constitutions as mere declarations (Focşeneanu, 2018: p. 188., 204.), without any possibility of actual judicial protection and enforcement, and were restricted without any legal measure or condition because of the lack of guarantees of legal protection. Thus, the people's democratic constitutions were led by their choice of ideological values, the communist class view (Boboș, 1983: p. 23.), to interpret the declared equality of rights and civil rights on a class and

internationalist basis, and ultimately led to the de facto subordination of individual rights to equality of rights in the name of and on the grounds of the absolutisation of class struggle (Bădescu, 2021: p. 46-47.). Thus, the tensions between the declared rights and equality of rights and the subordination of individual rights led directly to the hierarchization and exclusion of citizens on a class basis (Focşeneanu, 2018: p. 188., 204-205.) and later on a national basis in Romania (Guţan, 2022: p. 120-121.).

The radical transformation of the state and social structure, achieved with Soviet support in the space of a few years, also justified the legal settlement and anchoring of the results achieved on a new constitutional basis (Deleanu, 1980: p. 83-84.), which was adopted through a propaganda-based and broad consultation process that attached party goals and interests to its social legitimacy (Drăganu, 1998: p. 101-102.). On this basis, the Grand National Assembly finally began debating the new Constitution on 22 September 1952 and adopted the 1952 Constitution five days later (Selejan-Guţan, 2020: p. 27.).

The 1952 Constitution, despite being almost completely forgotten today, is in many respects a landmark legislative achievement in Romanian constitutional history. In the classical constitutional sense, it was the first constitution in the history of the Romanian constitution to be drafted and adopted in accordance with the procedures in force, in this case Articles 103 and 104 of the 1948 Constitution, and with the broad social consultation process, as mentioned above, albeit formal in the reality of a totalitarian state (Deleanu, 2003: p. 84.). Likewise, the 1952 Constitution was the first to expire, also in compliance with the existing constitutional procedures, i.e. Article 105 of the Constitution, with the creation, unanimous adoption and entry into force of the 1965 Constitution. The significance of these facts for constitutional history highlights aspects of the development of the Romanian constitution which, on the one hand, point to the anomalies, distortions of content and lack of legitimacy that characterised the era of limited constitutionalism and, on the other, to the fact that the totalitarian state, lacking constitutionality in content, then sought to establish legality, at least in formal terms, after consolidating its position (Drăganu, 1998: p. 101-102.). The combination of these circumstances, however, increases the value of the environment created by the Constitution in force, highlighting the importance of formal legitimacy and the importance of substantive constitutionalism.

The Constitution of 1952 (Bădescu, 2021: p. 48-49.) was unchanged in accordance with the historical period, and in line with the guidelines set by the preparatory work of the party (Deleanu, 1980: p. 83-84.) - it was based on communist ideology, its class approach was set out in its preamble. The party's ideology was outlined in its preamble and in its I and II chapters, whose provisions, in addition to the class approach, identified the sovereignty (Ionescu, 2019: p. 838-839.) and independence, security and peace of the Romanian people as a particular value, while the fundamental rights and duties of citizens were formulated mainly on the basis of class differences according to participation in economic production (Deleanu, 1980: p. 84-86.). The Constitution of 1952 enshrined the structure of the state organization with the leading power and political primacy of the state party (Ionescu, 2019: p. 771.), effectively the exclusivity of the state party's possession of state power. The basic constitutional position in this regard is clearly in line with the totalitarian programme of the transition to communism,

and this was emphasised in the Preamble of the 1952 Constitution itself, and was also clearly inferred from the articles on social order (Deleanu, 1980: p. 86.).

Under the 1952 Constitution, the ideological pressure on the country's population intensified, which did not ease significantly after Stalin's death, but at the same time created an opportunity to assert the construction of a specific Romanian communist path (Bottoni, 2006: p. 14-19.), with a more nationalist flavour. Although some party leaders expressed reservations about this aspiration, the system became even more rigid in 1956, especially after the Hungarian Revolution and War of Independence (Boia, 2017: p. 60.), as confirmed by the military intervention of the Soviet Union in Hungary. The Soviet reaction to the events in Hungary made clear to the members of the Eastern Bloc the limits of deviation from the existing framework, which the Romanian state took note of and soon achieved the withdrawal of Soviet troops from its territory as a result of cooperation with the Soviets (Durandin, 1998: p. 366-368.).

By the early 1960s, also in view of the withdrawal of the Soviet Union, the position of the Communist Party in all political, social and economic spheres had become unquestionable and the internal party infighting had been resolved, stabilising the position of the Romanian domestic communist elite in place of the Muscovite internationalist party cadres (Durandin, 1998: p. 371-380.). Following the death of the General Secretary Gheorghe Gheorghiu-Dej on 19 March 1965, the Romanian popular line in the party was thus able to elevate Nicolae Ceaușescu, whose Romanian and working-class origins and genuine commitment to the ideal were indisputable, to the post of party secretary without any particular doubts (Durandin, 1998: p. 380-385.). As a direct consequence, a reassessment of the system established by the 1952 Constitution was thus on the agenda within months.

By the mid-1960s, the stabilisation of the party-state system, as described above (Deleanu, 1980: p. 87-88.), and the increased and effective freedom of internal political manoeuvre resulting from the withdrawal of Soviet troops, together with the essentially positive attitude of international expectations towards Nicolae Ceaușescu (Durandin, 1998: p. 383-385.), and the essentially completed social transformation (Drăganu, 1998: p. 105-109.), and the power interests of the new Secretary General, led to the adoption of a new, now more nationalist, constitution. On this basis, the Constitutional Drafting Committee published its draft Constitution on 29 June 1965, which was adopted by the Grand National Assembly at its session of 21 August 1965 by a unanimous vote of 446 members, promulgated and entered into force on the same day (Bădescu, 2021: p. 49.).

The Constitution of 1965, also called the Constitution of "Victorious Socialism" (Deleanu, 1980: p. 87-89.), clarified the class approach of the previous constitutions, and identified the worker-peasant alliance as the basis of popular sovereignty (Deleanu, 1980: p. 19-21., 25., 170-183.) , in which the working class is the ruling class of society, and the peasantry, the intelligentsia and other categories of workers, regardless of nationality, build the socialist order, creating the conditions for the transition to communism (Boboș, 1983: p. 23-35.). The Constitution of 1965 continued to name the state party the Romanian Communist Party, as the leading political force in society (Deleanu, 1980: p. 390-413.),, in fact the only political party, in Article 3 of the Constitution (Ionescu, 2019: p. 525., 532.). The class approach to popular sovereignty was enforced in the organisation of the state (Deleanu, 1980: p. 365-389.) through

general, equal, directly and secretly elected bodies (Deaconu, 2017: p. 91-92.), and since any kind of pluralism - traditional parliamentary (Boboș, 1983: p. 58-60) - was incompatible with the political system, the concentration of power (or more precisely the party monopoly of power, effectively continued to prevail at all levels of power (Bădescu, 2021: p. 49-50.).

In terms of the organisation of the state, the organs of the state were established on the unchanged ideological basis of the socialist constitutions (Deleanu, 1980: p. 458-546.), but as a result of the constitutional amendment of 28 March 1974, the institution of the president of the state was introduced with the declaration of party general secretary Nicolae Ceaușescu as president of the state (Focşeneanu, 2018: p. 195.). The post of State President of the Party General Secretary was a qualitative change in the concentration of power (Boboș, 1983: p. 81-82, 117-118, 187.) and can be seen as a symbolic moment in the construction of the party state, a declaration of the primacy of his will. The President of the State thus not only performed the classical functions of head of state as President of the Council of State and Commander-in-Chief of the army, but also chaired government meetings as required, could call referendums, and exercised the power to appoint and dismiss ministers, the heads of central bodies, members of the Supreme Court and the Attorney General, but also became partly a legislator in the absence of a sitting of the Grand National Assembly (Deleanu, 190: p. 538-546.), while otherwise effectively concentrating power in the hands of his family (Dănișor, 2006: p. 125-126.).

In 1965. The state system set up by the 1965 Constitution, as described above, soon moved away from its self-proclaimed Marxist-Leninist principles, or more precisely from their socialist economic starting points, including the preservation of forced industrialisation and economic sovereignty, in less than a decade (Tismăneanu, 2006: p. 406-423.), but suffered severe state-nationalist distortions with the concentration of power and the elevation of the party-state and the development of a Stalinist cult of personality built around Nicolae Ceaușescu, following his guidelines (Guţan, 2022: p. 111., 121.).

On this basis, from the 1970s onwards, the nationalist tendency, which had already been taken up in public party resolutions, was strengthened, creating a deeper and wider gap between the rights declared in the 1965 Constitution and the violations that were actually taking place. The national-communism of the Romanian state as constructed above (Tismăneanu, 2006: p. 526-530.), the tensions between the declarations of constitutional rights and reality, were then increasingly escaping the attention of the Western powers (Durandin, 1998: p. 401-406.).

The inefficiency of communist economic organisation, the forced industrialisation of state economic policy and the goal of an independent sovereign state free of foreign influence and debt had by the end of the 1970s plunged Romania into general poverty (Tismăneanu, 2006: p. 441-445.), the state having essentially become a war economy (Durandin, 1998: 407-411.). The general deprivation, which thus threatened the very existence of the Romanian nation, was presented as a sacrifice to the homeland and the socialist nation and its mission of creation, while these concepts led to the exaltation of the head of the state, using the cult of personality and the guiding principle that had been built up.

Simultaneously with the above political processes, the Romanian legal system has increasingly emphasised the role of the socialist legal system, according to which socialist law is in fact an instrument for the implementation of party decisions, and thus law is subordinate to the party. The emptying out of law in this way was in fact in line with the aims of the state party to create a Romanian, and at the same time communist, man and state (Boboș, 1983: p. 11-12.).

Given that, as explained above, there is no real constitutionalism or political pluralism after World War II, due to the Soviet occupation and the Stalinist foundations of the state system, the question of political participation, the right to hold office and thus representation in the legislature has essentially been decided by the state party (Boboș, 1983: p. 23-25., 82-88., 101-103.) and not by elections following the dismantling of political parties and civil society organisations (Tismăneanu, 2006: p. 132-136.). In the unicameral Grand National Assembly, a legislature based on universal and equal voting rights for active voters up to the age of 18 and passive voting rights up to the age of 23, the candidates of the Socialist Unity and Democracy Front was allowed to stand, ultimately characterised by reliable party loyalty, i.e. class solidarity and socialist national consciousness, and were also recallable (Deleanu, 1980: p. 436-437., 440-441.).

The 1980's witnessed the continuation and even more pronounced assertion of the state policy that had crystallised in the previous decade. The success of the Romanian communist state was justified by huge mass events, personality cults, the glorification of a historical past, and increased propaganda, as defined and anticipated in point 16 of the July Theses (Guţan, 2022: p. 121.). The reality, however, presented a completely different picture, whereby unfulfilled achievements and general deprivation not only increased social disillusionment to the extreme, but also resulted by then in Romania's total international isolation, while the structures of the party-state were also being solidified (Durandin, 1998: p. 426-439.). The Romanian state was now relying exclusively on its own internal resources, its distorted state system, which was also distanced from its own constitutional law, and its new type of communist nationalism and image of man, threatened the very existence of the Romanian nation in the traditional sense.

The stability of the regime and the unbroken faith in the leader were to be demonstrated by the resolutions and the externalities of the XIV Congress of the Romanian Communist Party in November 1989, where neither the constitutional foundations nor the policies of the party-state were to be changed, and thus the social tensions that had been simmering under the surface of a regime considered stable and unshakable could not be calmed, and soon erupted with elementary force against a system that was in fact unsustainable.

Following the XIV Congress of the Romanian Communist Party, the revolution that broke out in Timisoara a few weeks later, swept away the communist dictatorship and its distorted image of man, with the execution of Nicolae Ceaușescu on 25 December 1989 (Tismăneanu, 2006: p. 618-625.) , set Romania on a new path (Focşeneanu, 2018: p. 229-233.).

The cornerstone of Romania's new path is the 1991 Constitution in force which leads to closing remarks. This Constitution, following a long struggle for popular

sovereignty, established universal, equal, direct, non-discriminatory, and secret suffrage as a reality, fulfilling Romania's aspirations for a European future at the end of the 20th century. From an electoral perspective, several lessons can be drawn from the history of the Romanian constitution. The limited suffrage that remained in place until the end of the First World War primarily served the existing power structure, excluding the majority of the population from exercising political rights— a situation not unique in Europe at the time. Consequently, genuine popular sovereignty did not exist. The distorted electoral system of the interwar period, which favored the ruling government by awarding it 50% of parliamentary seats with only 40% of the vote, clearly does not meet today's constitutional standards. In addition to legal shortcomings, widespread maladministration and electoral abuses effectively restricted the will of the people. During the brief transitional period following World War II, Soviet pressure effectively excluded any notion of popular sovereignty. While the communist period technically introduced universal, equal, direct, and secret suffrage, it was merely an illusion. The nature of the totalitarian regime and its systemic practices essentially excluded genuine popular sovereignty. The so-called elections served only to legitimize a class-based dictatorship; however, even this objective was not fully realized, as it was the party elite - rather than the working class - that held true political and economic power. The democratic environment established by the current Constitution is therefore not only the result of a long and hard-fought struggle but also carries an important lesson: substantive constitutionalism universal, equal, direct, and secret suffrage is a fundamental value that must be preserved. It represents a constitutional minimum that should be upheld, protected, and cherished. Genuine popular sovereignty in this context presupposes a dialogue-based settlement of majority-minority relations, the building of a consensual and con-social democracy. This is the way to fulfil the requirement and programme of Article 4 of the Constitution, according to which the solidarity of citizens is the basis of the Romanian state, irrespective of race, nationality, ethnic origin, language, religion, gender, opinion, political affiliation, wealth or social origin. On the substantive side, it is clear that the solidarity and patriotism enshrined in Article 4 of the Constitution can only be realised if substantive equality is achieved for the population as a whole, as the foundation of genuine popular sovereignty.

BIBLIOGRAPHY

Alexianu George (1926), *Dreptul constitutional*, Editura Librăriei Socec & Co., București, 1926, p. 421-422.

Amuza Ion T. (2001), *File din istoria statului şi dreptului românesc,* Editura Sylvi, București, 2001, p. 257-262.

Bădescu Mihai (2021), *Drept constituţional şi instituţii politice*, Editura Hamangiu, București, 2021, p. 23., 34., 36., 42., 43., 46-50., 94., 121-122., 145-146., 169., 256-259., 265,

Balázs Sándor (2008) *Magyar képviselet a királyi Románia parlamentjében*, Kriterion Könyvkiadó, Kolozsvár, 2008, p. 30-31., 57., 69, 112-113, 133.

Bethlendi András, and Szeredai Norbert (2018) *The minority status of Romanians in Transylvania before 1918*, Acta Universitatis Sapientiae, Legal Studies, 7, 2018/2. p. 142.

Bíró Sándor (2002), *Kisebbségben és többségben. Románok és magyarok 1867-1940*., Pro-Print Könyvkiadó, Csíkszereda, 2002), p. 77., 445-450.

Boboș Gheorghe (1983), *Teoria generală a statului şi a dreptului*, Editura didactică și pedagogică, București, 1983, p. 9-14, 23-35., 28-29, 36., 58-60.68-69, 82-88, 101-103., 117-118., 187.

Boia Lucian (1999), *Történelem és mítosz a román köztudatban*, Kriterion Könyvkiadó, Bukarest-Kolozsvár, 1999, p. 14-28.

Boia Lucian (2017), *A román kommunizmus különös története (és szerencsétlen következményei)*, Koinónia, Kolozsvár, 2017, 60.

Boilă Romul (1922), *Principiile constituției noui* in Constantin Dissescu (ed.), *Noua constituție* României, *României, 23 de prelegeri publice, organizate de Institutul Social Român, cu o anexă cuprinzând nouile constituții Europene,* Institutul Social Român, București, 1922, p. 383.

Bolovan Ioan (1998), *Istoria dreptului românesc*, Cluj-Napoca, 1998, p. 3., 47-50, 59-65., 75-79., 86-90., 93-94.

Bolovan Ioan (2016), *Cazul românilor*, in Ioan-Aurel Pop, Thomas Nägler and Magyari András (eds.) *Istoria Transilvaniei Vol. III.,* Academia Română Centrul de Studii Transilvane - Editura Episcopiei Devei și Hunedoarei, Cluj-Napoca – Deva, 2016, p. 436-439.

Bolovan Ioan (2016), *Cultura românească,* in Ioan-Aurel Pop, Thomas Nägler and Magyari András (eds.) *Istoria Transilvaniei Vol. III.,* Academia Română Centrul de Studii Transilvane - Editura Episcopiei Devei și Hunedoarei, Cluj-Napoca – Deva, 2016, p. 533-569.

Bolovan Ioan (2016), *Epoca liberală*, in Ioan-Aurel Pop, Thomas Nägler and Magyari András (eds.) *Istoria Transilvaniei Vol. III.,* Academia Română Centrul de Studii Transilvane - Editura Episcopiei Devei și Hunedoarei, Cluj-Napoca – Deva, 2016, p. 415-416

Bottoni Stefano (2006), *1956 Romániában – Eseménytörténet és értelmezési keretek*, in Stefano Bottoni, László Márton, László Réka, Lázok Klára, and Novák Zoltán (eds.), *Az 1956-os forradalom és a romániai magyarság*, Pro-Print Könyvkiadó, Csíkszereda, 2006, p. 14-19.

Brătianu Vintilă I. (1922), *Nevoile statului modern și constituția României Mari,* in Constantin Dissescu (ed.), *Noua constituție* României, *României, 23 de prelegeri publice, organizate de Institutul Social Român, cu o anexă cuprinzând nouile constituții Europene,* Institutul Social Român, București, 1922, p. 27-28.

Budișteanu Radu (1928), *Un nou capitol în dreptul internaţional public şi privat: minorităţile etnice, Minorităţile etnice un nou capitol în dreptul internaţional public şi privat*, "Voinţa" Const. Antonescu, București, 1928, p. 13.

Carp Radu (2002*), Constituţiile şi cutumele constituţionale româneşti în secolul al XIX-lea*, in Radu Carp, Ioan Stanomir, and Laurențiu Vlad (eds.), *De la "pravilă" la "constituție": o istorie a începuturilor constituționale românești,* Editura Nemira, București, 2002, p. 160.

Cheresteșiu Victor (1964), *Az 1848-as forradalom*, in *Erdély története II*., A Román Népköztársaság akadémiájának Kiadója, Bukarest, 1964, p. 4-6.

Ciato Aurel (1929), *Problema minoritară la noi: cu o prefaţă lămuritoare a diferendului dintre români şi maghiari: conferinţă rostită la Timişoara, Lugoj şi Cluj,* Cluj, 1929, p. 14.

Dănișor Dan Claudiu (2006), *Drept Constituţional şi Instituţii Politice vol 1. Teoria generală*, Editura Sitech, Craiova, 2006, p. 62-63., 101-102., 125-126., 441-452.

Deaconu Ștefan (2017), *Instituții politice*, Editura C.H. Beck, București, 2017, p. 91-92.

Deleanu Ioan (1980), *Drept constituţional,* Editura Didactică și Pedagogică, București, 1980, p. 19-21., 25., 67-75., 80-89., 136-137., 141-142., 170-183., 196-200., 332-337, 365-413., 436-437., 440-441.458-546.

Deleanu Ion (1976), *Cetățenie Română*, Editura Dacia, București ,1976, p. 19-20.

Deleanu Ion (2003), *Instituţii şi proceduri constituţionale în dreptul român şi în dreptul comparat*, Editura Servo-Sat, Arad, 2003, p. 84.

Dissescu Constantin G. (1915), *Dreptul constitutional*, Editura Librăriei Socec & Co., București, 1915, p. 166-176., 364-368., 430., 440-614., 619., 622-623.,730-771, 873.
Drăganu Tudor (1972), *Drept constitutional*, Editura Didactică și Pedagogică, București, 1972, p. 88-89, 94-95., 101-102., 105-109.
Drăganu Tudor (1998), *Drept constituțional și instituții politice*, Editura Lumina-Lex, București, 1998, p. 129-130., 368-374., 382-383., 385-387.
Durandin Catherine (1998), *A román nép története*, Maecenas Könyvek, Budapest, 1998, p. 44-48., 196-197., 336-343, 366-368., 371-385., 401-411., 426-439,
Eckhart Ferenc (1935), *Magyarország története*, Káldor Könyvkiadóvállalat, Budapest, 1935, 242-244.
Eleodor Focșeneanu, *Istoria constituțională a României: (1859 - 1991)*, Editura EIKON, București, 2018, p. 12-14., 21-23., 35-36., 45-47., 63., 75-76., 82-83., 97-155., 177-180., 188, 195., 204-205., 229-233.
Firoiu Dumitru V. (1992), *Istoria statului și dreptului românesc,* Fundației „Chemarea", Iași, 1992, p. 51-133., 145-146., 203-221,259-261., 279-281., 284-297., 327-328., 347-349., 366-376.
Fodor László (1976), *Az észak-erdélyi néptömegek hozzájárulása hazánk felszabadításához a fasiszta uralom alól*, in Bányai László (ed.) *Tanulmányok a romániai együttlakó nemzetiségek történetéből és testvéri együttműködéséről a román nemzettel, I. kötet,* (Politikai Könyvkiadó, Bukarest, 1976, p. 384.
Gaftoescu Vintilă (1939), *Poziții juridice în dreptul internațional. Problema minorităților,* Imprimeriile „Curentul" S.A., București, 1939, ***p.*** 41-43.
Gheorghe Tănase Gheorghe (1994), *Separația puterilor în stat*, Editura Ştiinţifică, București, 1994, p. 278-284.
Grigorovici G. (1922), *Constituţia sovietică şi constituţia democratică* in Constantin Dissescu (ed.), *Noua constituție* României, *României, 23 de prelegeri publice, organizate de Institutul Social Român, cu o anexă cuprinzând nouile constituții Europene,* Institutul Social Român, București, 1922, p. 70-71.
Gusti Dimitrie (1922), *Cuvânt de deschidere* in Constantin Dissescu (ed.), *Noua constituție* României, *României, 23 de prelegeri publice, organizate de Institutul Social Român, cu o anexă cuprinzând nouile constituții Europene,* Institutul Social Român, București, 1922, p. 2.
Guțan Manuel (2022), *Romanian Constitutional Identity in Historical Context* in Csink Lóránd and Trócsányi László (eds.), *Comparative Constitutionalism in Central Europe*, Central European Academic Publishing, Budapest-Miskolc, 2022, p. 109-121.
György Béla (2006), *Az Országos Magyar Párt története (1922-1938. Doktori Disszertáció*, Eötvös Lóránd Tudományegyetem Bölcsészettudomány Kar Történelemtudományi Doktori Iskola, Budapest, 2006, p. 152-154.
Horváth Pál, *Egyetemes jogtörténet I.* Nemzeti Tankönyvkiadó Rt., Budapest, 1997, 13-16.
Ioan Alexandru, *Tratat de administrație publică*, Universul Juridic, București, 2008, p. 77-78.
Ionescu Cristian (2019), *Tratat de drept constituțional contemporan*, Editura C.H. Beck, București, 2019, p. 270., 313-316., 525., 532., 550-554., 693-713., 715., 720-744., 749-750., 755-759., 761-763., 766-771., 803-804., 838-839.
Ionescu Romulus (1970), *Drept administrativ*, Editura Didactică și Pedagogică, București, 1970, p. 35.
Jellinek Georg (1959), *Allgemeine Staatslehre*, Wissenschaftliche Buchgesselschaft, Darmstadt, 1959, p. 394-406, 427-434.
Maniu Iuliu (1925), *Problema minorităţilor. Extras din volumul "Politica Externă a României"*, Institutul Social Român, București, 1925, p. 5-8.
Marcu Liviu P. (1997), *Istoria dreptului românesc*, Lumina Lex, Bucureşti, 1997, p. 141–142., 194., 279-281.

Matei Ioan (1980), *Statulul autonom al ţărilor române. Conţinut şi funcţionalitate*, in Ioan Ceterchi (ed.), *Istoria Dreptului Românesc Vol. I.*, Editura Academiei Republicii Socialiste România, Bucureşti, 1980, p. 465-468

Miskolczy Ambrus, *Határjárás a román-magyar közös múltban*, Lucidus Kiadó, Budapest, 2004, p. 221-222.

Montesquieu, *A törvények szelleméről* (Osiris Kiadó, 2000), 240-241.

Murzea Cristinel Ioan and Matefi Roxana (2015), *Evoluţia statului şi dreptului românesc,* Editura Hamangiu, Bucureşti, 2015, p. 41-44., 84-85., 91-93., 134-142.

Nagy Ernő, *Magyarország közjoga (Államjog)*, Az Athenaeum Irodalmi és Nyomdai R.-T. Kiadása, Budapest, 1907, p. 157-159.

Nagy Lajos, *A kisebbségek alkotmányjogi helyzete Nagyromániában*, Minerva Irodalmi és Nyomdai Műintézet Rt., Kolozsvár, 1944, p. 81., 186.

Pantelimon Răzvan Victor (2009), *Evoluţia legislaţiei electorale româneşti (1864-1938)*, Analele Universităţii Ovidius din Constanţa - Seria Istorie Volumul 6, Constanţa, 2009, p. 112-116.

Romsics Ignác (2017), *Magyarország története*, Kossuth Kiadó, Budapest, 2017, p. 334.

Rousseau Jean-Jacques (2001), *A társadalmi szerződés*, Kriterion Könyvkiadó, Bukarest-Kolozsvár, 2001, p. 59, 84-85.

Schlett István (2009), *A politikai gondolkodás története Magyarországon 1*. Századvég Kiadó, Budapest, 2009, p. 655-670.

Selejan-Guţan Bianca (2020), *Drept constituţional şi instituţii politice*, Editura Hamangiu, Bucureşti, 2020, p. 27., 53-59., 978-79., 90-95.,103-110.

Șotropa Valeriu (1980), *Nobilii feudali (Boierii)*, in Ioan Ceterchi (ed.), *Istoria Dreptului Românesc Vol. I.*, Editura Academiei Republicii Socialiste România, Bucureşti, 1980, p. 476.

Stanomir Ioan (2002), *Modernizarea intelectuală şi vocabularul constituţional în epoca paşoptistă*, in Radu Carp, Ioan Stanomir, and Laurenţiu Vlad (eds.), *De la "pravilă" la "constituţie": o istorie a începuturilor constituţionale româneşti,* Editura Nemira, Bucureşti, 2002, p. 106-108.

Szabó Béla, *A' magyar korona országainak státusjogi és monarchiai állása a' Pragmatica Sanctio szerint*, Schmid Ferencz és Busch., Pozsony, 1848, p. 60-61.

Szabó Miklós, *Rendszeres jogelmélet*, Bíbor Kiadó, Miskolc, 2015, p. 189., 223-226.

Szemere Bertalan, *Szemere Bertalan miniszterelnök emlékiratai az 1848/49–i magyar kormányzat nemzetiségi politikájáról*, Cserépfalvi Kiadás, Budapest, 1941, p. 39.

Timon Ákos, *Magyar Alkotmány-és jogtörténet különös tekintettel a nyugati államok jogfejlődésére*, Hornyánszky Viktor cs. és kir. udvari könyvnyomdája, Budpaest, 1903, p. 552-554., 692-711.

Tismăneanu Vladimir (2006), *Raport Final Comisia Prezidenţialâ pentru Analiza Dictaturii Comuniste din România*, Bucureşti, 2006, 34-40., 132-136., 406-423., 441-445., 526-530., 618-625.

Van Caenegem Raoul Charles (2008), *Bevezetés a nyugati alkotmányjogba*, Magyar Közlöny Lap- és Könyvkiadó, Budapest, 2008, p. 50-55, 264., 319-329.356-361., 401-405.

Vesa Vasile (2016), *Transilvania în timpul Primului Război Mondial (1914-1918)*, in Ioan-Aurel Pop, Thomas Nägler and Magyari András (eds.) *Istoria Transilvaniei Vol. III.*, Academia Română Centrul de Studii Transilvane - Editura Episcopiei Devei şi Hunedoarei, Cluj-Napoca – Deva, 2016, p. 471.

Vlad Laurenţiu (2002), *Inventarea "constituţiei". O istorice a cuvintelror,* in Radu Carp, Ioan Stanomir, and Laurenţiu Vlad (eds.), *De la "pravilă" la "constituţie": o istorie a începuturilor constituţionale româneşti,* Editura Nemira, Bucureşti, 2002, p. 14-52.

Xenopol A.D. (1999), *Românii şi ungurii în opera lui A.D. Xenopol*, in *A.D. Xenopol Românii şi ungurii*, Editura Albatros, Bucureşti, 1999, p. XIX-XX., 16.