

In 1866 and back to the Future with a Sense of *Déjà vu*. The Fall and revival of the Head of State's authoritarianism

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1. *A contextual overview of the 1866 and 1991 constitutional moments*

1.1. 1859-1866

In the period spanning 1859-1864, an authoritarian regime emerged, camouflaged in sporadic and unclear parliamentary elements. A.I. Cuza, the elected Prince of the two Romanian Principalities, sacrificed the uncertain and volatile parliamentary regime that seemed to be prescribed by the Paris Convention¹ and started to rule in the name of political efficiency. But he needed more formal constitutional power in order to fully objectify his agenda of reforms. He therefore plebiscited, in May 1864, a 'developed' form of the Paris Convention. This legal act, with constitutional character, was entitled, quite suggestive, *Statutul Desvoltător al Convenției de la Paris* [The Developing Statute of the Paris Convention]². The revised constitutional text further extinguished the fragile parlia-

mentary avatar of the conventional regime. Or to put it more directly, Cuza's authoritarian conduct or tendencies were implemented at the level of the written formulae of the political regime. For this, the Paris Convention provided fertile ground. The political regime became, without any curtains, authoritarian.

The head of state's authoritarianism did not trigger socio-political reactions against an unsuited and inefficient political regime³ but rather a proud-spirited response from a weak political class that failed to enable concrete and coherent parliamentary practices against a powerful head of state. A.I. Cuza was forced to abdicate and a new constitutional order was to be enforced in response to the former head of state's authoritarianism. In other words, the irritant had to be amputated and something different had to be transplanted. The solution was sought and found outside the Romanian socio-political background, namely in the Belgian legal constitutional model. For this reason, the then Romanian constitution-

al identity may be labelled as Western via its external referential constitutionalism. There was a pervasive desire to become part of the civilised European community. The main source of the new Constitution was set to contribute to the international legitimacy of the Romanian state against a tumultuous geopolitical context.

In 1859, M. Kogălniceanu's speech, which he prepared for a meeting of the Central Commission of Focșani⁴, is suggestive of the generalised obsession with external models, guided by the prestige of the West:

Not only we, but foreigners, too, compare our Principalities with Belgium. I believe that all efforts must be made for the Romanian Principalities to live up to the name given to them on more than one occasion: Belgium of the Orient. The first step in this regard is to move closer towards to the wonderful laws of Belgium⁵.

The political regime of the past had to disappear. A new and antagonistic one had to be created and implemented. In this context, an aversive constitutionalism⁶ was also bound to emerge.

1.2. 1947-1989

The seizure of the political power by a small group, in the first part of the Romanian communist era (1948-1965), and its further concentration, during its second part (1965-1989), in the hands of a "great and brilliant leader" (Nicolae Ceaușescu), who became the president of the "anti-liberal Romanian Republic" in 1974, slowly but surely irritated the Romanian political class and people, which were deprived of their social and political rationality. Fif-

teen years after the constitutional establishment of the presidential institution, a harsh reaction was triggered against the irritant: a coup d'état merged with a bloody revolutionary outcry. The head of state had to "leave". A new constitutional order was to be created in reply to the former head of state's authoritarianism. In the national consciousness, the presidential institution became associated with repulsion and fear. A historical pattern of aversion towards the one-man power model was reiterated. Solutions were sought, once again, in Western legal systems. In congruence with this action, an immediate goal had to be fulfilled, namely that of achieving member status in the liberal-democratic European community. A Romanian Western referential constitutionalism emerged within an Eastern European aversive constitutionalism frame.

2. *Travelling to the past and back into the future. Instances of déjà vu*

Notwithstanding their dissimilarities, both constitutional moments give rise to similar questions and hypotheses regarding their expected outcomes, which can be grouped into several segments of socio-political behaviour, as follows:

a. *Preliminary thinking and action* – triggered by the aversion towards the former political establishment (what we no longer want); this stage involves bringing together ideas, principles, and standards whereby an objective is achieved (what we want) and preselecting the modalities for constitutional creation or, in other words, choosing the means of reaching the desired outcome.

b. *Interactions during the process of "constitutional creation"* – establishing political institutions at the constitutional level; a conflicting selection of the features of the system of government; obtaining a formula for distributing power in a standardised way, approved by the "good old West" (referential and aspirational constitutionalism⁷), for the "wild East"; decanting congruences and incongruences in the political and legal thought, which are in an ideational and capacitive conflict within the political class⁸.

c. *The "constitutional creation" outcomes* – balancing the Constitution, understood as a written program in abstract formulae, with its applications; this phase also follows the interaction between the constitutional framework and the socio-political background of the state's actors and their ability to apply the constitutional formulae in their political behaviour.

In the following sections of the paper, the above mentioned stages will be briefly examined. To this end, the statements made by the main political actors of the period shall be the key-proof of the raised issues. In so doing, the paper emphasizes that legal change is not a dictum or a guaranteed effect of a purpose-oriented action but, rather, an assumption and a consequence of understanding the content of the intended change.

A legal system that is not, in essence, a creator of law will most likely be dependent on non-organic new data. Indeed, you cannot have a reformed praxis if you do not have new rules. If they are not organically created and developed, the prospect of a legal transplant is attractive, although this process does not guarantee the effectiveness witnessed in the source systems.

It is nonetheless fast⁹ and cost effective¹⁰. Sometimes it must be done quickly, in response to an urgency dictated by the geopolitical context, for example. This is the case of the 1866 Romanian constitutional transplant, when the Romanian state faced the risk of losing its national and unitary characters. Under such circumstances, the selected sources for the constitutional (re) creation and their blitzkrieg transposition – via Western prestige – were also a strategy for obtaining international legitimacy. An instance of déjà vu was witnessed in 1991, when the post-communist Romanian state found itself at an international geopolitical crossroads. It had its aversions, desires, and was called to choose a new trajectory. In that context, Western legitimacy was opted for¹¹.

2.1. *Preliminary thinking and action*

2.1.1. *What is it that we do not want?*

The answer was: a new authoritarian head of state. The anxiety over the one-person power model pervaded the two constitutional moments. The main objective of "having a certain model of Constitution" was clear: to avoid concentrating decision-making instruments in the hands of one person.

In 1866, on the occasion of the constitutional debates, G. Lahovari stated that:

Gentlemen, when the country overthrew the former government, its intention was to overthrow not only the persons representing that government but also that specific state of affairs, the Constitution that was given to the Prince and whereby that Prince did nothing but harm the country¹².

In 1991, in the Constitutional Commission proceedings, A. Moțiu hinted at a similar requirement in his speech on the dangers of dictatorship:

[...] to think that there will never be a Carol II, no Ceaușescu, we must think about that [...]

Certainly, in order to obtain the proper constitutional framework, two essential conditions had to be met, i.e. rational political thinking and, as a consequence of the latter, a truthful understanding of the mechanisms of state power distribution and exercise.

2.1.2. *What do we want?*

The answer was: we must become part of European modernity and be recognised as such; thus, we need to forge a European identity for ourselves and eliminate the existing inferiority complex; we must ensure national unity and territorial integrity, while defending the state's primary nucleus of existence: the Romanian community of origin, bound together by a common language, religion, and past turmoil.

In February 1866, I. Lahovari, in a "statement of principles" of the conservative political group, noted that:

The monarchical and constitutional Europe is a big family. We, too, want to enter this family, to join [...] the ranks of the civilised and European nations¹³.

Unfortunately, Western liberal modernity was appropriated (via Belgium) without a clear and coherent Romanian intention/ability to be truly liberal in relation with others. And despite the attempts to address

the head of state's potential authoritarian tendencies, the fragile liberal spirit of the transplanted Constitution was shaken by the intervention of the ethnocentric Romanian culture (see e.g., Articles 7¹⁴ and 8 of the 1866 fundamental law). By combining the European liberal legal mentality profiles of the period with the traditional Romanian self being, the dissimilarities between the Romanian national and the allogeneic were emphasized and commended.

In 1866, religion provided scaffolding to the Romanian national spirit. The foreign prince was called to rule under the Christian Orthodox faith. In the Constituent Assembly, at the end of the meeting of 26 June 1866, it was enthusiastically announced that:

His Highness wants the children who will inherit the Throne to be raised in our faith (prolonged applause). At the same time, His Highness wants this provision to be included in the Constitution¹⁵.

The struggle between the "traditional Romanian" and the "modern European Romanian" is very much alive today. The Constitution of 1991 in its Title I (General Principles) Article 1 paragraph 3, dedicated to the definition and characterization of the Romanian state, provides that Romania is a national, sovereign and independent state, unitary and indivisible. The Constitutional Assembly's debates¹⁶ on this article raised interesting amendments¹⁷. It was argued that, by expressly asserting the national character of the state, the Constitution risks becoming non-inclusive for the ethnic minorities living in Romania. The amendments were rejected, with the Commission counterclaiming that:

According to official data, all the existing ethnic minorities do not exceed 11% of the country's population. At the same time, it is unanimously admitted that "the nation" is a constituent element of the state, representing its psychological dimension. For the Romanian people, the nation signifies its identity card. [...] The arguments put forward do not correspond to reality, a minority ethnic group not being a nation¹⁸.

Just as in the past, the territory came to support the nation that historically existed prior to the emergence of a state identified with that territory. The latter was perceived, once again, as a geographic background in which the (organic) nation got organized and recognized politically. Everything else was perceived as allogenic and outside the box of Romanian identity.

In both cases, 1866 and 1991, a tendential constitutionalism emerged – a balance between the national constitutional identity and the European constitutional identity¹⁹.

In 1991, orthodoxy was connected – at the level of political ideas – to a pattern of a system of government that promoted the primacy of the legislature. Orthodoxy was linked not with the political representation of the People, but directly with the logic of the system of government.

The Romanian historical tradition advocates the primacy of the executive. We are an Orthodox country and all the Orthodox countries that inherited the concept of Byzantine domination, the Oriental system, almost totalitarian, did not know feudalism. The Orthodox tradition is the tradition of the primacy of the legislative over the executive. In the Romanian political life, Carol I did what he wanted with extraordinary ability; Ionel Brătianu did the same, Carol II also did what he wanted, so did General Antonescu, Ceaușescu. The Romanian tradition is a Byzantine tradition. We sought to oppose the primacy of the legislative over the executive. I do not agree with their equality. We have to move forward [...] ²⁰.

2.1.3. *What should be done first?*

The answer was: we must eliminate the old constitutional framework and design a new antithetic constitutional architecture, built on modern constitutional principles and power distribution formulae (separation of powers) archetypically approved by the Western European constitutional systems (Western referential constitutionalism).

In 1866:

We must abolish that Constitution and put another in its place. [...] This Constitution must be all the more liberal as we want to replace a vicious past system and therefore should not be narrower than the other²¹.

In the opening of the Constituent Assembly debates of 13 February 1991, Ion Deleanu, member of the drafting committee, stated:

It is rare, very rare, for a constituent power to have the chance to go down in history for introducing, establishing completely different economic, political, social and legal arrangements, put under the sign of an altruistic ambition to fulfill the vocation of the Romanian people wherefrom it originates²².

2.1.4. *What is the fastest way to reach the intended goal?*

The answer was: the legal transplant. Apart from the subjective stimulants and excuses for engaging a massive constitutional transplant, which are identifiable in the Romanian historical background and the socio-political context of the mentioned constitutional moments, several objective stimulants, which are linked, to some extent, with the subjective ones,



Photograph of Carol I King of Romania

can also be noted: time and cost effectiveness. Theoretically, if a similar issue was solved successfully by X through solution A, why wouldn't it work for B? Why reinvent the wheel?²³ Why waste time?

The two Romanian cases show that it is simple to eliminate an entire constitutional architecture (*tabula rasa*), yet the same two episodes demonstrate that it is very difficult to create a new one, on organic societal foundations or capacities, especially when the national repository of political experiences provides only rejected constitutional regulations²⁴, tested without success in the battles against the head of state's authoritarianism. The mind-set whereby *we do not have enough time for an exhaustive ideological exploration and evaluation of our specific legal requirements, capacities, and solu-*

tions dictated the majority of the blitzkrieg solutions implemented during the process of "constitutional creation" (especially in 1866).

2.2. Interactions during the process of "constitutional creation"

2.2.1 Why do we need a head of state?

In 1866, the political class understood that it was necessary to have a head of state with directly recognized political power legitimacy. Set to share the sovereignty with the Romanian nation (represented by the Parliament), the head of state was charged with a clear international role, namely that of a state symbol mirroring the unity of the Romanian nation organized in a unitary and national state. Within the Romanian *fait accompli* stratagem for the conservation of the young national and unitary state, the international position of the head of state had to be strong. Thus, the monarchy was institutionalized with a foreign prince on the throne, from a prestigious European ruling family. *In concreto*, the prestigious family name of the prince summoned to the Romanian throne was expected to come with a political voice worthy to be noticeable at the international level and, as a consequence, to set international blockages favourable for the endangered Romanian state.

On March 13, 1866, I. Lahovari and E. Stătescu (students in Paris) explained, in a letter published in a French publication, why Romanians decided to ask for a foreign monarch.

If Romanians ask for a foreign prince, they are not doing it for the pleasure of paying a civil list, they do not do it because they feel incapable of governing themselves, they do it in order to put an end to all claims, to remove all ambitions, to leave no pretext for foreign intervention. Those who marvel at such a desire, those who accuse us of not taking advantage of this opportunity to proclaim the republic, are not taking into account the particularities of the situation at hand²⁵.

The desideratum of asserting a Romanian national and sovereign state could not be achieved only through the prestige of the foreign prince, able to attract the support of some powerful Western states.

On May 1st, we unified the state under a foreign Lord, but it is not enough; this accomplished fact in our country must become a fact accomplished in Europe as well. If we had two hundred thousand bayonets, we would say: this is what we want, this is what we do; but we do not have thousands of them, and we must therefore pursue the will and ideas of Europe²⁶.

Romania also had to demonstrate as soon as possible to the European powers its ability to act as a modern state at the international level, through modern legal and constitutional institutions. This last prerequisite, which also constituted a national urge, would be reiterated and re-contextualized in 1989, culminating with the elaboration of the 1991 Constitution.

In 1991, the head of state was also engaged in an international mission, namely to ensure a strong national voice and a 'trademark' for a reformed and self-sustaining Romanian state mirrored in the statements and aspirations laid down in the Constitution. The head of state is construed, first and foremost, as an international representative, i.e., a symbol of the nation's perpetuity, and an external symbol of strength, i.e., a guarantor of the territo-

rial integrity of the Romanian independent state. The constitutional debates of 1991 are clear in this regard, as is evident from Article 80 of the Constitution in force²⁷:

The fundamental element for establishing the place and role of the presidential institution in our constitutional system is the quality of the President of Romania as a guarantor of national independence, territorial integrity and compliance to treaties, as well as a symbol of the nation in international relations. The latter characteristic corresponds to an imperative of time. A requirement for Romania's participation in the process of building a new Europe, a new world²⁸.

The President is the resort towards whom all large problems are directed and from whom proper and correct solutions must come²⁹.

In the context of preserving the «Romanian nation», the head of state developed, in the post-communist experience, an extra-constitutional role within the people's conscience, specifically that of a guardian of the Romanian nation-state of origin, i.e. the traditional Romanian. In accordance, the President is expected to protect the Romanian ethnic nation, which is perceived as a political identity landmark. This is not a constitutional presidential attribute *per se* but an added *de facto* mission, which emerged from the historical Romanian legal and political thought. A political actor enforced with such a popular-emotional role cannot be perceived as a weak element within the spectrum of political power.

Upon taking office, the president ceases to be a serving member of a political party³⁰, with this incompatibility further emphasizing the mediator role of the head of state³¹. At the same time, this prohibition also prevents the president from taking an active part in any governing agenda bearing the political colours of a party. The pres-

ident was thought to be a contextualized active "constitutional king", an active neutral political character³², part of the transition to democracy, wherein the parliament wears the political helm. In this context, the Spanish model – which was elaborated after the fall of the Franco regime – proved to be attractive to the constitutional transition in Central and Eastern Europe³³, especially when faced with organising the parliament³⁴ and rethinking the role of the head of state³⁵.

It should be noted that in Romania, in 1990, the parliamentary and presidential elections had taken place simultaneously before the post-communist Constitution was adopted. Ion Iliescu was elected president with 85% of the votes (12,2 million) cast by 14,8 million people (86,2%). Such an outcome greatly influenced the power distribution in the post-communist Constitution. The office of the president could no longer be relegated to that of a mere appendix of the Parliament³⁶. This is the reason why the Romanian president is not a ceremonial political actor, as is in the parliamentary regime but, rather, an active element in certain political and constitutional contexts.

The head of state was designed to be a pawn of power, a status that implies, in some circumstances, a truly active political role. He is a pivotal pawn that, in the right circumstances and when faced with decisive situations of national interest, may become the needed – stronger – piece, e.g. a queen, a rook, on the political chessboard.

2.2.2. *What form of government should we have?*

In 1866, the solution had to be *Monarchy*, and in 1991, had to be *Republic*. The two forms of government were somewhat pre-established by the geopolitical context, the prestige of the West, and past affinities and aversions. The only thing left on the "shopping list" was a political regime – a power distribution architecture antithetical to the discarded political past.

Constantin A. Rosetti, a political voice hard to ignore at the time, was aware as early as 1863 that:

[...] to want republic when all of Europe is in a constitutional monarchy is to be a madman or a paid murderer by the enemies of the Romanian nation³⁷.

Determined as it was to become the Belgium of the East, Romania could not have chosen a different form of government. Also, the pleas made in the 1857 ad hoc *divans*, which advocated the foreign prince solution for the problematic Romanian political scene, remained as topical as ever.

In 1991:

Within the intrinsic logic of the future fundamental political settlement, together with the specified state structure, the preservation of the republican form of government was also envisaged. [...] Between the formal tradition, constituted by the succession of the three Romanian Constitutions prior to 1947, and the tradition as a product of the Romanian political and philosophical thinking, the Constitutional Commission, with an overwhelming majority of its members, was attached to the second. But in this option it should not be ignored that by Law no. 363 from December 30th, 1947, the abdication was noted, for him and his followers, that by the Decree-law no. 92 from 1990 the republican form of government was established, that some political parties, appointing candidates for the presidential function, seem to have recognized it as such [...] ³⁸.

The political anxieties of the constitutional moment of 1991 were not only linked to Ceaușescu's regime, but also to what monarchy meant for the Romanian political class, *i.e.* submission and the inability to react. The aversion to the heads of state's authoritarianism had deeper temporal roots. Monarchy posed a high risk of political power personalization, while the Republic was more manageable from the inside, as it implies electing a changeable president in a multi-party political spectrum.

2.2.3. *What political regime should we have?*

In 1866, the most accessible counter-model for an authoritarian regime was the one that strengthened the position of the parliament and limited the power of the monarch, so the parliamentary regime, as it was available and understood in the 19th century.

In 1991, the political acquirements offered three possibilities: the presidential regime, the parliamentary regime³⁹ and the semi-presidential regime.

[...] you have to reflect that by choosing a way of electing the President you choose a certain political regime. [...] It is significant that in the totalitarian regimes, in general, and in the communist ones, in particular, no President election was engaged through a direct option of the citizen, but it was set to be chosen by the Parliament [...]. The political and constitutional practice have shown over the years that the direct election of the President by the people cannot, under any circumstances, be considered as a cause or a premise for establishing a dictatorship⁴⁰.

By embracing such a pattern of thinking, two solutions remained available: presidentialism and semi-presidentialism. Af-

ter clarifying the direct election of the head of state, all that was left was to weaken the president's power leverages. To this end, semi-presidentialism was ultimately opted for, although this solution does not necessarily imply that the president is weak. On the contrary, actually, as in some political contexts, due to the presence of some avatars of mutual interdependency between the executive and the legislative, the presidential institution may prove more powerful than in a presidential regime.

2.2.4. *Where should we look for a successful political regime formula?*

The prestige of the West was breath-taking for the Romanian political class, which had always shown an almost blind faith in the creative and reforming power of institutions. The presumption of success broadcasted by the Western political experience was hard to ignore. Furthermore, the affinity for the French cultural-political heritage was strong. Also, at the international level, no one would have supported a Romanian state formed or reborn outside the modern political and constitutional standards accepted and promoted by civilised European states.

During the meetings of the 1886 Constituent Assembly, the statements glorifying the political experience of the West and advocating similar measures at the domestic level received standing ovations⁴¹.

We have no other remedy left but that indicated by the wisdom and experience of civilized and liberal nations⁴².

[...] we need the West and the West tells us [...] ⁴³.

[...] the idea that you only imitated Belgium in this regard should reassure me⁴⁴.

In 1991, the American presidential archetype was rejected from the outset of the constitutional debates, as it was thought to promote a far too powerful president. The predilection for the French legal system (*transplant bias*⁴⁵) evinced a clear interest for a diluted presidential system and, thus, for a presumed weaker presidential institution than that existing in the American system. In the drafting of the Constitution, the French fundamental law was the main source of inspiration. The membership in the Constitutional Drafting Committee of the presidential adviser F. Vasilescu and the assistance offered by several French consultants strengthened the above mentioned influence of the French model. However, in designing the prerogatives of the president, the *transplant bias* and the Trojan pro-presidential policy exercised limited influence on the Constituent Assembly. The attributes and the arbitrator role of the French head of state were just too much to embrace. A mediator role was easier to accept, which is why – as already mentioned – the Spanish monarch found its place among the main sources of inspiration regarding the head of state institution.

2.2.5. *How should we distribute power among the various state mechanisms? What are the situations in which authoritarian tendencies can appear?*

These were questions to which the Romanian political elites, entrusted with the mission of creating a fundamental law, should

have sought clearer and more detailed answers, especially because they designed a system of weights and counterweights on a foreign empirical foundation. A more extensive analysis on the particularities of the chosen political regime and on the dynamics of different governing contexts would have set off the alarm against power abuse or at least against some power seduction risks.

2.2.5.1. *The Romanian dualist parliamentary regime created in 1866. A brief and partial rhetoric on the distribution of power*

In 1866, the monarch and the parliament enjoyed equal power legitimacy. The monarch shared sovereignty with the nation. The fundamental law of 1866 was a constitutional pact between the monarch and the nation (represented by the Parliament). The political class, in such a context, should have been even more responsible and coherent in how it exercised its political representative role of a counterweight to the head of state traditional power. The dualist parliamentary regime was, after all, nothing but a transitional regime to a new system of political thinking, i.e., full sovereignty of the people/nation. The Parliament should have possessed the means to reach the desired result. The future monarch was expected to derive his powers exclusively from the Constitution as a prior legal norm, and not from an extra-constitutional source. However, although the fundamental law was drafted with the intrinsic purpose of eliminating the authoritarian regime established by A.I. Cuza, the final constitutional provisions regarding the distribution

of power were more favourable to the monarchical power.

A Romanian paradox emerged. The monarch received the right to initiate laws, was granted absolute⁴⁶ and unconditional⁴⁷ veto, the right to dissolve the parliament⁴⁸, and was actively involved in the process of appointing the ministerial cabinet. In other words, the monarch was a co-legislator with executive powers, and the ministerial cabinet, having a dual political responsibility, i.e., in front of the lord/king and in front of the parliament, existed only as a catalyst between the monarch's and the parliament's will.

The Constituent Assembly of 1866 and Carol I agreed to a series of compromises that were in stark contrast with the intended teleology of the fundamental law. The definitive form of the fundamental law maintained a powerful monarch in the governance act⁴⁹, although the finality desired by the Constituent was closer to the formula «the king reigns but does not rule».

Where is the paradox? An inexperienced and weak Romanian political class, unorganized in political parties, accepted far too easily to enter the "political arena" with a monarch who enjoyed significantly more power leverages.

The faith in the prestigious origin of the transplanted institutions and mechanisms was far too strong. Their mere existence was considered to be enough for the desired social and legal changes to occur. It was not enough. The aspirational constitutionalism, which stemmed from aversions, proved to be a *fata morgana* constitutionalism – a paradox generated by the intrinsic inability to understand the state of affairs and make the appropriate decisions.

2.2.5.2. *The Romanian semi-presidential regime created in 1991. A brief and partial rhetoric on the distribution of power*

In 1991, a directly elected president was drafted, thus enjoying an electoral legitimacy equal to that of the Parliament. Indeed, the Constituent was careful enough to insert a constitutional superiority clause for the Parliament⁵⁰. Yet that was not enough to change the social perception; in the national collective consciousness what matters is the fact that the President is elected directly by the People and he alone represents all Romanians. Having a strong electoral legitimacy coupled to the illusion of an apolitical role, an aura of a nation saviour developed around the head of state institution, while the Parliament began to be perceived as a sum of individuals pursuing the interests of various infamous political parties. This is a paradox, because the elected President is usually the former leader of the political party that supported her/him in the election campaign.

This brings about another Romanian paradox: an inexperienced Romanian political class, completely unfamiliar with the semi-presidential regime and having clear political reminiscences from the past, tried not to create a strong president in the constitutional framework. Thus, the head of state has no right to initiate laws, a weak and suspensive right to veto laws, a highly circumstantiated right to dissolve the parliament, and no permission to engage in political party activism.

Where is the paradox? A theoretically weak president was placed in a context that encouraged power concentration. The legitimacy of the president was strengthened when a four-year presidential mandate was

introduced in a bid to establish congruence with the parliamentary mandate and allow for parliamentary and presidential elections to take place at the same time. In so doing, the Constituent paved the way for a social tendency towards congruence between the political colours of the first-chair party in the Parliament and the political colours of the one wherefrom the president originates. Thus was created the paradoxical institution of an apolitical political leader. It is naïve to believe that a former party president – accustomed to a high level of power over his/her peer – will accept to play a weak presidential role, in stark contrast with his/her personality (a party leader is presumed to have a strong persuasive and ruling personality) and his/her high electoral legitimacy.

Under such circumstances, linked to the specifics of the Romanian social and political background, an authoritarian president will most likely re-emerge. An ambitious president, with no real power, will try to obtain and exercise power.

2.3. *A short selection of "constitutional creation" outcomes*

2.3.1. *One cannot graft tulips on rose roots, in 1866*

The dualist parliamentary regime encourages a dynamic political game, which can be fairly played only if the political opponents are on a relatively equal footing at the starting point. If one of them becomes noticeable stronger than the other, the political regime will change. If the monarch becomes stronger, the political regime will

be authoritarian. If the parliament becomes stronger, the political regime will evolve towards a monist parliamentary regime.

The Romanian political class, poorly organized in political parties with no doctrinal coherence and no clear ideological identity, did not stand against a king with authoritarian tendencies (Carol I was part of a prestigious ruling family) and great constitutional powers. There was no bridge to cross the troubled political waters. Or maybe the bridge was too fragile to support the heavy weaknesses of the Romanian political class. After five years of authoritarian latency, Carol I decided, in 1871, that in order to ensure political effectiveness in Romania, it was necessary to deploy, with a camouflaged iron fist, the monarchical instruments of power laid out in the Constitution.

2.3.2. *One cannot graft tulips on rose roots, in 1991*

When the Romanian semi-presidentialism was exercised in the context of political congruence between the representative public authorities, a deficient and unsuccessful dualist parliamentary regime⁵¹ was rather practiced. An authoritarian head of state was once again brought to life by the same historical weaknesses of the political class. The Romanian rudimentary parties were and are mainly centred on individuals with dominant and rather selfish personalities and it is widely known that the electoral battle for the presidential mandate is, in fact, a competition that involves party leaders.

In order to have a political elite capable of tempering the authoritarian tendencies of a former party leader, we need strong parties, with a coherent and consistent political ideology and identity. Such a political elite would be very useful when Romania practices cohabitation, a political context in which intra-executive conflicts are profound, preventing the political efficiency of both the Government and the Parliament. The political and constitutional crisis of 2012 is just one example in this regard. Indeed, if we take into consideration the year 2012, there was also the issue with the coherence of constitutional justice⁵², but that is a different, albeit equally problematic story. However, the period spanning 2017-2019 showed that there is an urgency of “domesticating” the Parliament and Government⁵³ as well, not only the head of state, who, in some contexts, should be a check-and balance in decision making⁵⁴.

2.3.3. *A paradox never comes alone in the Romanian constitutional praxis*

2.3.3.1. *In 1866*

Carol I was the main actor on the political scene. The Romanian political class remained powerless in the antechamber. The conservatives and liberals became in turn the greatest enemies or allies of the lord/king, depending on the place they occupied in the political system instrumented by the monarch – the rotation of the political parties at the representative wheel. Quite frequently, the leader of the opposition party/faction visited the prince/king with promises of loyalty and requests for pow-

er privileges outside the framework of the parliamentary regime. In case of a refusal, promises usually turned into threats.

The executive (the monarch) started to form the legislative, through the cabinet of ministers, entrusted with the manipulation of the elections that were to follow after the dissolution of the parliament. For example, in 1884, the conservatives tried to block the revision of the fundamental law and, in relation to this action, wanted to receive the majority in the parliament, of course, through the rotation system instrumented by Carol I.

[...] I received these gentlemen in a very friendly manner, but I told them that they can get to govern only by constitutional means and that I was not allowed to overturn with a gesture of power a legislative work that had lasted one year. At their threat that the country could be disturbed, I replied, jokingly, that Romania is really the only country in Europe where the conservatives are making revolutions⁵⁵.

2.3.3.2. *In 1991*

In 2003, the 1991 Constitution was revised with a view to, among others, encourage cohabitation. Thus, the president's term was increased to five years, while the parliamentary mandate remained the same. Nowadays, after experiencing several periods of cohabitation, the Romanian political class is considering the return to the previous constitutional design in a bid to avoid any such future scenario. This sequence of political actions is, in fact, a Romanian legal thinking paradox derived from an older paradox. Traditionally, the Romanian political class seems to not condone authori-

tarian slips on the part of the head of state, but at the same time, it is not at all reluctant to make political compromises known to be conducive to the personalisation of power. In Romania, achieving political congruence between the President and the parliamentary majority is not a rational solution against the authoritarianism of the head of state. However, it is politically efficient and satisfactory for the weak Romanian political parties, which find it easier to govern with a knee bent down before their former party leader, in office as the state's President, then to battle with a head of state that is the former leader of the main party of the opposition. This alone amounts to a compelling instance of *déjà vu*: it is much better to have the king/president on your side than against you.

The political praxis of the years 2017-2019, which span the second half of the cohabitation period during K. Johannis' first presidential term, revealed a different path of power personalisation, namely in the account of a "shadow president"⁵⁶, who is the leader of the political party that holds the majority in the Parliament. This type of power model may prove much more dangerous, especially when the President has no constitutional or political leverages to counterbalance the concentration of the political power in the Parliament and, in turn, the Government, which is under the political control of the Parliament. This is a tell-tale sign that the Romanian political scene does not need a weak President, just as it does not need political figures equipped with immense power privileges, which cannot be effectively checked and (counter)balanced.

We must have a head of state and we link everything to him, the balance of power⁵⁷.

Furthermore, the president's duties may come to objectively support power extrapolation by connecting to the purposes of the constitutional system and, therefore, of the political regime that does not admit power personalization in any of the three branches. For this reason, no branch can be left behind in terms of effective political expression⁵⁸.

Until 2015, the Constitutional Court seemed to use an interpretive lens that favoured the presidential power⁵⁹. However, in recent years, between 2016 and 2019, the Court appears to have changed its interpretative lenses, endorsing the Parliament via a not so covert exercise of reverse political influence⁶⁰.

Conclusions

The urgency of undergoing a constitutional reconstruction through institutions or legal textualism was highlighted in both cases.

Liberalism was one of the key topics and concerns of the international political discourse of the renewed Romanian state, whose national and international identity was tested. Domestically, the identity re-evaluation was carried on from an ethnic point of view. Thus, a state primarily devoted to the majority ethnic group was enshrined. The ethnocentric pattern of thinking hindered the transition towards the desired form of liberalism. This national epistemic circumstance created perception issues at both the national and international levels. Externally, in the eyes of others, liberalism was not fully embraced, as the Constitution and the subsequent constitutional and political praxis became heavily

ethnocentric. Internally, the aspirational constitutionalism discouraged ethnocentric tendencies by imbuing the constitutional framework with liberal values, which influenced, to some extent, the constitutional and political praxis. But, in many respects, the liberal standards got twisted to the point where a dual Romanian identity is projected. Of these identity facets only one is real or organic: the national ethnocentric avatar. The other, the liberal avatar, is false, but a desired ideal nonetheless. The latter's likelihood of genuine manifestation is heavily limited by the ethnocentric pattern of thinking, which is deeply rooted in the Romanian legal and political self.

The transplanted political regimes were expected to be effective and predictable. Hopes and trust were deposited in the prestigious Western institutions. But once transposed and exercised, they proved to be uncertain and volatile due to the host patterns of legal thinking.

In both cases, the desire to have the "unknown" which was approved by the West was strong, yet the desired results were based on anecdotic analyses only, i.e., if X obtained result A using Z, then we will obtain the same result deploying Z. The Constituents and the other political working groups were, in many respects, self-sufficient in how they handled the foreign models. They had little interest in testing and understanding their logic before implementing them. By 1991, the political class should have become aware of the fact that a legal transplant is not tantamount to transferring experience or education. A legal transplant bears only the seeds for a certain purpose. One must know what kind of seeds they plant and how to care for them. In other words, if one does not properly

understand the means of the transplant and its object, then the implied transposition is at high risk of failure. And when the transplant is biased and skewed, due to internal (e.g., culture, past trauma) or/and external factors (e.g., international pressures and expectations, the prestige of the source⁶¹), the transplant is at an even higher risk of proving an exercise in futility.

The enthusiasm for the quality of the transplanted legal formalism and the anxiety over the head of state's authoritarianism were not successfully internalised by the political and constitutional praxis. In 1991, as in 1866, the attempts to gain political experience through a new fundamental law were undone by the counter-experience of the authoritarian political past, which appears to be as influential today. One cannot graft tulips on rose roots, we may say. Legal institutions operate under certain conditions, and they depend on the particularities of the system that established them. Within this system, people exercise the functions of the institution and not the other way around. Or, to put it metaphorically, if you are the director of a political play, it is anything but wise to audition your political actors at the premiere, directly on stage, for everyone else to see.

- ¹ The text of the Convention does not enshrine directly a parliamentary regime but, rather, a political regime that shares many similarities with the democratic Caesarism of the Second French Empire (see M. Guțan, *Regim parlamentar și autoritarism domnesc în epoca lui Al. I. Cuza. O perspectivă comparativ-juridică*, in «Revista istorică», XXVIII, 2017, pp. 27-63).
- ² The distribution of powers adopted by Statutul Desvoltător al Convenției de la Paris [The Developing Statute of the Paris Convention] demonstrated differences in degree with the prior regime, as its name suggests. The Conventional regime was not abolished but reworked, especially in point of the power privileges the head of state could access directly or indirectly. For an analysis of A.I. Cuza's regime, see M. Guțan, *Avatarurile autoritarismului domnesc la mijlocul secolului al XIX-lea: între absolutism (luminat) și cazarism (democratic)*, in M. Guțan, O. Rizescu, B. Iancu, C. Cercel, B. Dima, *Șefii de stat. Dinamica autoritară a puterii politice în istoria constituțională românească*, București, Universul Juridic, 2020, pp. 213-226; Id., *Lupta pentru parlamentarism în timpul domniei lui A.I. Cuza (1859-1866)*, in «Studii și cercetări juridice», n. 4, 2018, pp. 427-489, <<http://www.rscj.ro/SCJ-4-2018.pdf>>, June, 2020.
- ³ In fact, it was suited and efficient. The ideal of creating a Romanian unitary national state was achieved, but by sacrificing a hypothetical parliamentary regime. This later issue was due to an immature Romanian political class, immersed in private interests. The incoherence of the Romanian political class was politically controlled through the head of state's authoritarianism.
- ⁴ The period after the double election of A.I. Cuza was devoted to the construction of a national and unitary Romanian state. The process of unifying the political and administrative bodies of the Romanian Principalities was possible based on the provisions of the Paris Convention, which offered, through the Central Commission, a common legislative forum for collaborative legislation in matters of general interest. In 1859, this Commission elaborated a draft Constitution, which some scholars perceive as to be the main source of the 1866 Constitution (see C.C. Angelescu, *Proiectul de Constituție din 1859 al Comisiei Centrale de la Focșani*, in «Anuarul Institutului de Istorie „A.D. Xenopol”», XVII, 1980; Id., *Izvoarele Constituției române dela 1866*, in «Dreptul», n. 30, 1920; I.C. Filitti, *Izvoarele Constituției de la 1866*, București, Tipografia ziarului Universul, 1934). We consider that the 1859 draft Constituion was not an early version of the 1866 Romanian Constitution. On the direct and indirect sources of the 1866 Romanian Constitution, see M. Guțan, *Transplant constituțional și constituționalism în România modernă 1802-1866*, București, Hamangiu, 2013, pp. 354 ff; R.C. Roghină, *Logica și efectele transplantului constituțional din 1866*, București, Universul Juridic, pp. 182 ff.
- ⁵ My translation apud I. Stanomir, *Nașterea Constituției*, București, Nemira, 2004, p. 326.
- ⁶ K.L. Schepelle, *Aspirational and Aversive Constitutionalism: The Case for Studying Cross-Constitutional Influence Through Negative Models*, in «International Journal of Constitutional Law», n. 1, 2003, pp. 300 ff.
- ⁷ *Ibidem*.
- ⁸ For the causes and dynamics of constitutional change and its role in ensuring a departure from the past in Central and South-Eastern Europe, see L. Gönenç, *Prospects for Constitutionalism in Post-Communist Countries*, Hague, Kluwer Law International, 2002, pp. 122-155.
- ⁹ Especially when it is objectified irrationally (in point of preparation, e.g., checking and analysing alternatives) and unconscious (without an analysis on the possible effects). On (i)rational and (un)conscious transplant, see M. Guțan, *Romanian Tradition in Foreign Law Import: Between Necessity and Weakness*, in «Imperialism and Chauvinism in the Law», Genève-Zürich-Bâle, colloquium - 20th anniversary of the Swiss Institute of Comparative Law, Schulthess, 2004, pp. 66-67; Id., *Forme pe un alt fond: transplantul juridic comunitar și cultura juridică românească* in «Pandectele Române», Wolters Kluwe, n. 5, 2008, p. 19.
- ¹⁰ J.M. Miller, *A Typology of Legal Transplants: Using Sociology in Legal History and Argentine Examples to Explain the Transplant Process*, in «American Journal of Comparative Law», n. 5, 2003, pp. 845-846.
- ¹¹ See B. Dima, *Sisteme de guvernare în democrațiile din Centrul și Sud-Estul Europei*, București, Hamangiu, 2015, p. 1 ff.
- ¹² A. Pencovici, *Desbaterile Adunării constituante de la 1866 asupra constituției și legii electorale din România*, București, Tipografia Statului, Curtea Șerban Vodă, 1883, p. 207.
- ¹³ G. Chiriță, *Organizarea instituțiilor moderne ale statului român (1856-1866)*, București, Editura Academiei Române, 1999, p. 19, footnote 12.
- ¹⁴ Article 7, 1866: «[...] Only foreigners of Christian rites can acquire naturalisation». Article 7 of the 1866 Constitution did not seek to show Europe who qualifies as Romanian but, rather, who does not qualify to be called "Romanian".
- ¹⁵ Pencovici, *Desbaterile Adunării constituante de la 1866 cit.*, p. 240.
- ¹⁶ *Geneza Constituției României 1991. Lucrările Adunării Constituante*, București, Monitorul Oficial, 1991.
- ¹⁷ Ivi, p. 113. See the amendments

- made by UDMR (Hungarian Democratic Union of Romania) party members Zoltan Hosszu and Karoly Kiraly.
- ¹⁸ *Ibidem*.
- ¹⁹ See M. Guțan, *Constituționalismul tendențial – o constantă a evoluției constituționale românești ante- și postcomuniste*, in Raluca Bercea, Alexandra Mercescu (a cura di), *Valori, idei și mentalități în drept de la 1918 la 2018*, Timișoara, Editura Universității de Vest din Timișoara, 2018, pp. 331 ff.
- ²⁰ D. Lăzărescu, in the meeting of the Permanent Bureaus of the two Chambers, held on December 7, 1990, where the participants analysed the Theses of the constitutional project elaborated by the Drafting Commission (File no. 28 – Transcripts of the Permanent Bureaus of the Parliament, the Archive of the Senate, inv. 128, p. 48 apud B. Dima, *Dacă nu ne lăsați să ne organizăm, nici control nu vom avea, nici organizare*, in *Sefii de stat cit.*, p. 468).
- ²¹ G. Lahovari, *In the Constituent Assembly*, 1866. See, Pencovici, *Desbaterile Adunării constituante de la 1866 cit.*, p. 51.
- ²² Ivi, p. 63.
- ²³ We believe it remains essential to understand why sometimes the wheel should not rotate or why in some cases it is required to have a bigger or a smaller wheel or to have a faster or a slower rotation mechanism and so on. A legal transplant is not just about getting hold of some information, but about understanding it and using it correctly. At the same time, we should not ignore the fact that the Romanian society always sought to appropriate, by any means, a propinquity with the so called European modernism and, thus, developed a rich experience and, as an effect, a solid bias for transplants of all kinds. All these triggered weaknesses in the organic links between society – representatives – cultural, political, legal, constitutional creation etc.
- ²⁴ In the Romanian constitutional history, voluntary constitutional transplants failed in practice. See, e.g., the Constitutions of 1866 (a faithful copy of the Belgian Constitution of 1831; see Guțan, *Transplant constitutional și constitutionalism cit.*, pp. 354 ff; Roghină, *Logica și efectele cit.*, pp. 161 ff.) and 1923 (it was nothing more than a revision of the 1866 Constitution, supplemented by other provisions, transplanted for the largest part from the Belgian Constitution as well). Apart from these two Romanian Constitutions, formally related to modern liberal constitutionalism, the constitutional history of the Romanian Principalities and Romania abounds in experiences that are incongruent with the liberal standards of their respective periods.
- ²⁵ Chiriță, *Organizarea instituțiilor moderne ale statului român (1856-1866) cit.*, p. 19, footnote 11.
- ²⁶ Golescu, *In the Constituent Assembly*, 1866, cit., see, Pencovici, *Desbaterile Adunării constituante de la 1866 cit.*, p. 207.
- ²⁷ <<https://www.presidency.ro/en/the-constitution-of-romania>>, June 2020.
- ²⁸ A. Iorgovan, in the Constituent Assembly, 1991. See *Geneza Constituției României 1991 cit.*, p. 56.
- ²⁹ V. Văcaru, in the meeting of the Constituent Assembly of 16 April 1991. See, ivi, p. 490.
- ³⁰ See Article 84 (1), <<https://www.presidency.ro/en/the-constitution-of-romania>>, June, 2020.
- ³¹ See Article 83 paragraph (3) of the in-force Romanian Constitution.
- ³² M. Guțan, *Transplantul constitutional și obsesia modelului semiprezidențial francez în România contemporană (I)*, in «*Pandectele Române*», n. 5, 2010, pp. 57 ff; Dima, *Dacă nu ne lăsați să ne organizăm cit.*, p. 470.
- ³³ L.L. Guerra, *The Application of the Spanish Model in the Constitutional Transitions in Central and Eastern Europe*, in «*Cordozo Law Review*», n. 19, pp. 1937-1952.
- ³⁴ Ivi, p. 1946.
- ³⁵ Article 56 of the Spanish fundamental law unequivocally influenced the form of Article 80 of the Romanian Constitution. Article 5 of the French Constitutional enshrines a far too dynamic role for the president, which is why the Romanian Constituent Assembly decided to resort to different formulae, whereby the Romanian president would not play a high active role on the political scene (for the role of the French President, see S. Byron, *The Constitution of France. A Contextual Analysis*, Oxford and Portland, Oregon, Hart Publishing, 2013, pp. 56 ff.) Even if the President of Romania is the first regulated in the sphere of executive power, it does not ensure his primacy within the Executive. See, B. Selejan-Guțan, *The Constitution of Romania. A Contextual Analysis*, Oxford and Portland, Oregon, Hart Publishing, 2016, p. 105.
- ³⁶ Dima, *Dacă nu ne lăsați să ne organizăm cit.*, p. 453. Most of the decisions regarding the framework of the post-communist constitution would have been already made before the constitutional debates within the Constituent Assembly. See, ivi, pp. 428-491.
- ³⁷ A. Stan, *Grupuri și curente politice în România între Unire și Independență (1859-1877)*, București, Editura Științifică și Enciclopedică, 1979, p. 293.
- ³⁸ I. Deleanu, *In the Constituent Assembly*, 1991. See, *Geneza Constituției cit.*, pp. 63-64.
- ³⁹ Within the Constituent Assembly, many prominent voices advocated the parliamentary regime (see *Geneza Constituției României 1991 cit.*, pp. 491-503), perceiving it as the only system whereby the personalisation of power could be avoided; in other words, as a deterrent to dictatorship. The desire to build a state apparatus contrary to that of the communist period was, however, stronger than any models of deeply analytical and critical thinking on the issue of separation of powers in a con-

text particular to the parameters that may prove to be functional in the politically reinvented Romanian state. The Assembly did not reject parliamentarianism as a whole, only the prospect of an indirect election of the president, as according to the legislation of the former regime, it was Marea Adunare Națională (The Great National Assembly) that elected N. Ceaușescu as president. Beyond this political sequela of the past, the main features of parliamentarianism were introduced in the constitutional mechanisms of power.

- ⁴⁰ F. Vasilescu, member of the drafting committee, in the Constitutional Assembly, 1991. See *Geneza Constituției* cit., p. 489.
- ⁴¹ See, Pencovici, *Desbaterile Adunării constituante de la 1866* cit.
- ⁴² A. Pascal, rapporteur of the Constitutional Committee, in the Constitutional Assembly meeting of 16 June 1866. See, *ivi*, p. 27.
- ⁴³ Goleacu, In the Constitutional Assembly, 1866. See, *ivi*, pp. 207–208.
- ⁴⁴ N. Blaremborg, In the Constitutional Assembly meeting of June, 28, 1866. See, *ivi*, p. 251.
- ⁴⁵ A. Watson, *Legal Change: Sources of Law and Legal Culture*, in «University of Pennsylvania Law Review», 131, 1983, n. 5, pp. 1146–1147; *Id.*, *Comparative Law and Legal Change*, in «Cambridge Law Journal», 37, 1978, n. 2, pp. 313–336.
- ⁴⁶ The Constituent Assembly, not fully aware of the potential risks, accepted the absolute veto formula under the pressure of Prince Carol. June 20, 1866: «The prince summoned a large number of deputies to persuade them to agree on the constitution. The Chamber wishes to grant the ruler but a conditional suspensive veto, such as that of the president of the United States of America, whereas the prince demands unconditional and absolute veto».
- ⁴⁷ The monarch's refusal to sanction a law was free of any legal formal-

ities (e.g., decree, message). The mere abstention was enough. See, P. Negulescu, *Curs de drept constituțional*, București, 1927, p. 429. As soon as – during the constitutional creation – the monarch's absolute veto became free of ministerial counter-signature, the Romanian political background was bound to experience degrees of authoritarianism.

- ⁴⁸ The absolute and unconditional veto was regarded as a specific prerogative of the monarch's arbitrator role, along with the right to dissolve the Parliament, which unlike the former attribute, was conditioned by Article 92.
- ⁴⁹ R.C. Roghină, *Carol I of Romania – a lord/king who reigned and ruled. The formula of the dualist parliamentary regime transplanted in 1866*, in «Studia Universitatis Babes-Bolyai. Series Jurisprudentia», Vol. 64, n. 4, 2019, pp. 119 ff.; <<http://law.ubbcluj.ro/ojs/index.php/iurisprudentia/article/view/36/76>>, July, 2020. It was a feature of the dualist parliamentary regime, not fully understood by the Romanian political class, which lost sight of the variant of the monistic parliamentary regime, evoked by the ad-hoc assemblies of 1857. See, Guțan, *Transplant constituțional și constituționalism* cit., pp. 294 ff.
- ⁵⁰ Parliament is the supreme representative body of the Romanian people, according to Article 61 paragraph (1) of the in-force Romanian Constitution.
- ⁵¹ It cannot be said that the political regime is being presidentialized, as it would mean approaching, through political praxis, a mutual independence between legislature and executive. If in a parliamentary regime or in one closer to parliamentarianism the head of state gets stronger, the political regime is not necessarily going towards a presidential formula, but rather is going back in time, to the monarchical dualist parliamentary regime. In concreto, in the above mentioned hypothesis,

the president would be *de facto* the executive's head while, *de jure*, the elements of mutual dependence between legislature and executive are preserved. Consequently, the balance of powers would become even more unstable, dangerous, and likely to be conducive to the personalisation of power, with the president possessing all power privileges – *de facto* mixed with *de jure* – at the level of both the executive and the legislative. The prime minister and the ministerial team would therefore face a double political responsibility.

- ⁵² B. Selejan-Guțan, *The Illusion of the Romanian Constitution?* in «Blog of the International Journal of Constitutional Law», December 2012, <<http://www.icconnectblog.com/2012/12/the-illusion-of-the-romanian-constitution/>>, June, 2020; *Id.*, *One Year After: How the Romanian Constitutional Court Changed its Mind*, in «Blog of the International Journal of Constitutional Law», July 2013, <<http://www.icconnectblog.com/2013/07/one-yearafter/>>, June 2012.
- ⁵³ Regarding the challenges against the judiciary in Romania, see B. Selejan-Guțan, *Failing to Struggle or Struggling to Fail? On the New Judiciary Legislation Changes in Romania*, in «VerfBlog», 2018/1/31, <<https://verfassungsblog.de/failing-to-struggle-or-struggling-to-fail-on-the-new-judiciary-legislation-changes-in-romania/>>, June 2020; *Id.*, *New Challenges against the Judiciary in Romania*, in «VerfBlog», 2019/2/22, <<https://verfassungsblog.de/failing-to-struggle-or-struggling-to-fail-on-the-new-judiciary-legislation-changes-in-romania/>>, June 2020.
- ⁵⁴ For example, in the process of appointing the chief prosecutors. On this issue, see B. Selejan-Guțan, *The Taming of the Court – When Politics Overcome Law in the Romanian Constitutional Court*, in «VerfBlog», 2018/6/06,

<<https://verfassungsblog.de/the-taming-of-the-court-when-politics-overcome-law-in-the-romanian-constitutional-court/>>, June 2020.

- ⁵⁵ Carol I, in his diary. See, C. Cristescu, *Carol I și politica României (1878-1912)*, București, Editura Paidea, 2007, p. 63.
- ⁵⁶ A similar situation is witnessed in the case of the British Government, whose active political rival, the opposition, is the Shadow cabinet. See, P. Leyland, *The Constitution of United Kingdom. A Contextual Analysis*, Oxford and Portland, Oregon, Hart Publishing, 2016, pp. 118-119.
- ⁵⁷ A. Iorgovan, chairman of the Commission for drafting the Romanian Constitution, in 1990. See, File no. 25 - Transcripts of the meeting of the Commission regarding the drafting of the Constitution of Romania, 18 September 1990, The Archive of the Senate, inv. 128, p. 32 *apud* Dima, *Dacă nu ne lăsăm să ne organizăm* cit., p. 460.
- ⁵⁸ Article 1(4) of the Romanian Constitution emphasizes that the State shall be organised according to the principle of separation and, *nota bene*, balance of powers.
- ⁵⁹ In this respect, see Decision 98/2008, 683/2012, Decision 70/1999, Decision 567/2006, Decision 147/2007, Decision 355/2007, and Decision 33/2009.
- ⁶⁰ See, e.g., Decision 504/2019 (in contrast, in part, with Decision 98/2008), Decision 358/2018.
- ⁶¹ Which does not imply universality and does not guarantee compatibility or efficacy.