

Under the Shadow of the Exception: the Romanian Head(s) of State in the Age of Extremes*

COSMIN CERCEL

1. *Introduction: Constitutional history and challenges of the present*

The ongoing crisis generated by the COVID-19 pandemic as well as the current shifts in national and international politics determined by what was described as the rise of populism¹, have brought a renewed interest in the analysis of authoritarian rule and the range of relations it entertains with the legal order. As such, it is no longer an overstatement to say that the present situation raises particular concerns about the way in which the authoritarian legacy of our constitutional and legal past is catching up with current trends in law and politics.

In their quest of grasping the inner logic of the new illiberal regimes, and the drift away from the procedural democratic liberal consensus of various polities in Europe and beyond, scholars working in the fields of politics and constitutional theory, global governance or human rights have attempted to approach these new trends by

analysing them as a distortion or an instrumentalization of the law to political ends². The theoretical insights developed so far in tackling the question of what has been rightly or wrongly termed as 'populism' in its relation to the law, have defined thus the new regimes of legality as either forms of 'stealth authoritarianism'³, or 'autocratic legalism'⁴.

The current crisis resulting from the pandemic and the legal arsenal brought in by stable democracies and self-styled or labelled populist governments has generated a new level of concern and analysis in relation to the inherent tension between the normal constitutional armature and constitutional process of our polities and the exceptional measures required to tackle the effects and the threat of the pandemic⁵. The two lines of inquiry raised by these events are of course not entirely disconnected, insofar as they point out towards a limit-situation in which the traditional status of liberal legality and constitutionalism finds itself.



Adolf Hitler greets Ion Antonescu at his arrival in Munich, 12 June 1941

Under the existing paradigms, both the political crisis and the pandemic have been discussed in terms of external threats to the legal order, thus side-lining and obscuring important jurisprudential inquiries about the way in which law and legality are developed in reaction and through integration of what otherwise escapes the limits of legality. While the ongoing reflections seem to lack in terms of jurisprudential acumen, they do lack even more in historical and historiographical insight. Indeed, most of our current constitutional theoretical background informing contemporary analysis of law and politics, seems to echo rather sketchy and at times rather less refined analysis of author-

itarianism that silence law's participation to the construction of authoritarian rule.

In doing so, a rather limited historical analysis of past constitutional regimes under threat is being read once again. Such is the case of the Weimar Republic, or more precisely of the Weimar constitution that is being rediscovered as an embodiment of the fall of democracy which resonates strongly with our current situation. There is indeed little surprise that the emergency legislation passed in Hungary has been read as nothing short of an Enabling Act⁶ and that a level of suspicion has followed various legal developments in countries such as Italy⁷ or Romania⁸. In what follows

I intend to address the existing jurisprudential and historiographical lacks and to emphasise the importance of comparative constitutional history as a discipline and a site able to refine our analysis of the present situation, by discussing both lines of continuity and disruption within the institutional trajectory of our polities. I shall do so by stating out my theoretical commitments against the background of the constitutional history of modern Romania during the 'age of extremes'⁹ and by focusing on the constitutional institution of the head of state.

My investigation into the history and functioning of this institution draws on two premises that relate to the structural role of this site of power within the structure of the modern state. Accordingly, I consider that the head of state is first and foremost the place where political power is articulated to the legal apparatus within the constitutional discourse. Moreover, as an institution that is as such both within the body of legal rules that fashion the constitutional landscape and, at least according to the liberal tradition, aim to contain sovereign power, *but also* outside it insofar as it can determine its application¹⁰, the head of state is within the framework of modern liberal state a residual structure. In this guise it is able to convey at least an important symbolic function, yet, in situations of crisis, is bound to reconstruct the traditional sovereign power and to alter fundamentally the separation of powers. In what follows, I shall focus precisely on the ways in which these alteration of the premises of modern constitutionalism operated within the period of time that opened in Romania with the first modern dictatorship of King Carol II and ended up with the national-communist dictatorship of Nicolae Ceauşescu.

My focus on Romania is certainly influenced by the familiarity I entertain with the constitutional and historiographical landscape of this country, yet it is also comforted by the specific trajectory from limited constitutional liberalism towards a series of dictatorships that offer an important insight into the role of the law, constitutional process and constitution making in the articulation of authoritarian rule. Moreover, the specificities of this trajectory from a dysfunctional democracy in the 1930s¹¹ to the royal, fascist and military dictatorships of the interwar and during the Second World War, to the dictatorship of the proletariat in the late 1940s and national-communism in 1970s, offer an important insight into the relationship between law and various ideological and rhetorical cultural tropes, that have privileged security concerns related to geopolitics, millenarian and religious tropes, revolutionary rhetoric and ultranationalist overtones in furthering the legitimacy of the regimes of legality put in place.

In approaching the matter at hand and in my attempt to capture the nexus between law and authoritarian politics that emerges in the historical structures of the head of state, I shall analyse this institution in relation to the concept of the state of exception, that I adopt and adapt for the purposes of this inquiry from the work of the Italian philosopher Giorgio Agamben¹². What guides me in this endeavour, is the possibility that the concept of exception offers to capture the merger between law and unarticulated force that is at the core of modern legal systems. When analysing a manifold panoply of authoritarian regimes, from hybrid dictatorships¹³, to communist, or national-communist ones, the analyst is somewhat forced, in order to yield to the

specificities of these regimes, to operate an erasure of the legal and jurisprudential contexts in which they function and to circumvent the legal enigma that they expose.

The countless number of analysis of modern dictatorships is indeed testimony to this specific erasure. Among the rather scarce theoretical models that have attempted to grasp the particular legal significance of authoritarianism in its rise to power and in power, the classic work of Franz Neumann and Ernst Fraenkel, stay until today as useful models of analysis. Yet, each in its own way is not able to tackle frontally the jurisprudential foundation of modern dictatorship. As such, Neumann's *Behemoth*¹⁴, as important as it is in approaching the Nazi onslaught through the lenses of illegality, resolves itself in a paradox, as totalitarian rule is deemed to be devoid of a legal framework. For its part, Fraenkel's dual state while offering a more refined and a rather exact analysis of the operation of law in Nazi context through the interplay between prerogative state and the legal state, is not able to tackle frontally the question of the legal order as such in an authoritarian context¹⁵. In what concerns communist or left-wing dictatorial regimes, we almost completely lack such a theoretical framework, even though efforts have been done within this direction¹⁶. My recourse to the theory of exception is thus twofold: on one hand, I attempt to grasp the significance of the institution of the head of state, as the locus in which legal discourse is opened to historical and political contingency, while on the other hand I shall focus on the presence of the state of exception as a formative experience for this institution.

Accordingly, I restate my position concerning Agamben's endeavour, as an ef-

fective paradigm able to capture law's instability in relation to historical crisis and convulsion. As Agamben wrote, «law is made of nothing but what manages to capture itself through the inclusive exclusion of the exception: it nourishes itself on the exception and is a dead letter without it»¹⁷. Seen under this light, the exception is both a specific historical legal institution that consists in the suspension of the legal order in times of crisis, that have existed in most modern constitutional systems since 18th century¹⁸, as it is jurisprudentially and philosophically a distinct operation through which law is applied. Indeed, what the concept of the exception, in its intellectual trajectory from Carl Schmitt to Walter Benjamin and Agamben proves, it is the question of the relation between law and the manifold social reality. In a very specific sense, it is one of the possible answers to Kelsen's unsuccessful attempt to connecting legal validity to efficacy¹⁹. In asserting this position, I consider that the concept of exception is able to grasp the specific modern tension between formal law, as a medium understood as a site of rationality and universality, and the realm of politics, economy and social demands, that are necessarily in tension with the claims of the law as well as to its formalism, under the conditions of mass democracy. In this sense, my analysis of the Romanian head of state constitutes also a contribution to an exploration of modern legality and constitutionalism in this context. According to these lines of inquiry I shall attempt to highlight the connection between the legal and political construction of modern dictatorships in Romania and the existing enacted states of exception or situations of crisis that have amounted to exceptional measures.

2. *The path to dictatorship: the interwar period*

In order to proceed, a number of preliminary clarifications seem to be needed in order to place the institution of the head of state and the uses of the states of exception in Romanian context. While the central constitutional moment that consists in the assertion of King's Carol II dictatorship can be located in a series of events in February and January 1938, these developments are the final stage of a trajectory that has built up ever since 1930 and has been influenced by particular trends in Romanian history after First World War. It is thus important to note, that at the end of the First World War, Romania found itself as a beneficiary of the Versailles Treaty, at least in terms of territorial expansion and reparations. Following the treaty with Austria as a successor state of the Austro-Hungarian Empire, Romania exercised sovereignty over Bukovina and Banat. Subsequent to the Trianon Treaty, Romania was granted sovereign rights over Transylvania, while under the Treaty with Bulgaria, Romania recovered Southern Dobruja, a territory that has acquired initially in 1913 following the intervention in the second Balkan War. In the east, Romania was in control of Bessarabia, which while guaranteed by the former Entente powers, it was not subject to any formal arrangement with the USSR, as a successor state of Czarist Russia.

These territorial gains, following a rather short and unsuccessful participation in the World War from September 1916 until January 1918, and a successful intervention aimed at quelling the Bolshevik revolution in Hungary in the summer of 1919, were of course complemented by a change in terms

of population, that has impacted both the demographics, ethnicity and overall politics of the country with long-lasting consequences through the following decades. These territorial and demographic changes were also reflected in the constitutional arrangements that supported the structure of the newly organised state. Following these developments, Romania also undertook under international law duties towards minorities on its territory²⁰, while several cultural and human rights were protected at constitutional level subsequent to the provisions of the treaties²¹.

The Constitution of 1923, yielding in many respects to the creeds of liberal constitutionalism and legality, through separation of powers, universalism of rights, and equality before the law, did hold some authoritarian features concerning the position of King, as a central political figure²² able to mitigate and unlock political blockages. The universal male suffrage introduced as early as 1918²³ and the agricultural reform of 1921²⁴, have accelerated the departure from the political stage of former central political forces such as the landed aristocracy, in the past represented by the Conservative Party and has brought to the fore new political movements, while sapping the hegemony exercised by the National Liberal Party²⁵.

Some of these new movements were specific to the new era of mass-politics, such as the National Peasant's Party, or the militarist authoritarian-leaning People's Party. Other parties and movements such as the League for National Christian Defense, or the later Legion of the Archangel Michael, were ultranationalist and staunchly anti-semitic, challenging the new constitutional status quo and especially the reform

of the citizenship granting citizen status to all Jewish subjects in the Kingdom²⁶. The forces of the left, initially organised around the Social Democratic Party, still the main parliamentary force defending the interests of the emerging proletariat, have suffered a split after the when a left-wing has embraced the Moscow-led politics and joined the Comintern²⁷. Following a period of political violence and instability, this wing was declared illegal.

The first decade of the interwar period, albeit retrospectively described as a democratic experiment, was from the standpoint of legal and constitutional theory a rather turbulent one. The main feature of this decade was, as aptly noted by Constantin Dissescu, consisting in the normalisation of the uses of exceptional measures through the wide-spread use of the institution of the state of siege²⁸. A French import that translated the French statute of 1849, it was introduced in the legislation of the Principality of Wallachia as early as 1852 under the form of an appendix of the Code of Military Justice. It had achieved a final form as a distinct piece of legislation in 1864. Prior to the First World War it was used rather sparsely, first as a basis for quelling the peasant revolts of 1907 and a second time during the Balkan wars, in 1913. Since 1916 its use has become a normal response to situation of military or political threat able to disrupt the constitutional order. Before 1928, it has been used intermittently over the whole territory, while in Bessarabia and in the regions bordering Hungary it was enacted without interruption²⁹.

The main provisions of this statute consisted in a suspension of constitutional guarantees concerning the freedom of assembly, freedom of press and the exercise

of political rights, as well as in the transfer of judicial, order-maintaining and policing functions from civil authorities to military ones³⁰. In this respect, military tribunals exercised jurisdiction in criminal matters over civilians that were either territorially or temporally connected to the enactment of the state of siege. The activity of military courts was central to reconstructing criminal law categories such as social dangerousness or political activity³¹. While, the uses of the state of siege in the main territory of the country was still limited, the general militarisation of the application of the law has soon found echo in the realms of criminal legislation.

As early as 1924, new offenses aimed at prosecuting political activities related to revolutionary socialism or communism, were drafted, by challenging longstanding principles such as individuality of punishment or by the prosecution of preliminary acts³². Moreover, the excesses of the military tribunals and of the military in the exercise of their order-maintaining functions have not gone unnoticed by public opinion. Such is the case of the Trial of 500, following an allegedly Soviet backed insurrectionary movement in Tatar Bunary in 1924³³, which has sparked controversy beyond the borders of the Romanian state and prompted an international inquiry into the activity of the Romanian government³⁴.

It is against this background, marked by political instability and the presence of authoritarian measures, of overt uses of military and executive measures that escaped judicial review of legality, that the constitutional drama of the interwar was to be played. Indeed, starting with 1926, a number of events seem to accelerate further the political, economic and social challenges

that the Romanian state was facing. It is difficult to do justice here to the whole range of extra-legal pressures that the constitution was facing, but it would be helpful to note the dynastic crisis of 1926, when the Crown Prince Carol, King's Ferdinand son was forced to renounce his succession to the throne³⁵ in favour of his son, Prince Michael following his estrangement with his wife, princess Helena of Greece.

The following year both King Ferdinand and the head of the Liberal Party, Ion I. C. Brătianu, who had served as a Prime Minister in five governments before, during and after the First World War, died. These losses left the country and the informal constitutional arrangements supporting its political stability in disarray, and a period of tensions, determined both by parliamentary and extra-parliamentary forces, followed. A regency was created until Prince's Michael come of age, and the instability ultimately seemed to have come to a halt when the National Peasant's Party emerged victorious from the parliamentary elections of 1928³⁶. It was indeed one of the promises of the newly elected government to sever its ties with the pre-existing practises of the uses of the state of siege. However, faced with the financial crisis of 1929, and the state deficit determined by the previous policies of the NLP government, the NPP government had to prepare for a new series of social and political difficulties.

The return of Crown Prince Carol in June 1930, after a life as a wanderer in the capacity of a private citizen in European capitals and a failed attempt to return, was considered by the government as a possible way out of the political crisis that was building up on the sovereign debt crisis. However, the return of the King takes place in

very ambiguous if not problematic constitutional context, insofar his renunciation to the throne was an irrevocable act, at least as deemed by the Statute of 1926 concerning the succession to the throne. His return, is indeed clandestine, as even if it was done with the agreement of the government, at the time of his entering the country was an illegal act. As I have noted elsewhere, «Carol's return with disregard to the rule of law is not a return as a constitutional monarch, but as an ideological quasi-mythical figure that is not captured or contained by modern models of legality»³⁷. Upon his return, the Parliament repealed the statutes of 1926 and declared Prince Carol to be the rightful heir to the throne, and recognised him as the new King of Romania. It was perhaps unsurprising, if not an ominous sign that the first address in this new official capacity took the form of a High Order of the Day dedicated to the Army, followed by a Proclamation in which he emphasised the need for unity «during the hard times that the country faces»³⁸, while calling for all to unite «as a bundle around the Throne»³⁹. The rhetoric used by the King is worth noting insofar as it is able to underline the first, the connection between a discourse of exceptional measures in order to protect the country against an impending disaster, and second, an allusion to the fascist imaginary of unity around state-power, the word 'bundle' being an indicator to the image of *fasces* present in ultranationalist discourse. Yet, this rhetoric of unity would have no more than a compensatory role, important as it might have been in the economy of a performative discourse.

Within the realm of material social relations, economy and ultimately politics, Carol's rise to power is actually opening an

unprecedented level of instability, in which political violence, either state-sanctioned, or anti-constitutional, would become dominant. In order to counter this tendency, the government and the state authorities would recourse once again to the legal arsenal of emergency measures and criminal law repression. The state of siege would be first re-instated all over the country in response to strikes organised by railway workers and workers within the oil extraction industry in 1933⁴⁰, against the background of the budgetary cuts imposed by the NPP following the renegotiation of state debts. Soon after the left-wing agitation was quelled, the government turned towards the main fascist movement, the Legion of the Archangel Michael which was gaining momentum and secured in 1932 five seats in the Lower Chamber of the Parliament under the denomination Codreanu Group⁴¹.

The government in place under Alexandru Vaida-Voevod and the caretaker government organising the snap elections of 1933, took harsh measure in order to curb fascist propaganda, and ended up dissolving the Legion's successor organisation, the Iron Guard. In retaliation, the fascist movement assassinated prime minister I G Duca. It is also worth noting that the King did not give his assent to the government's attempts in curbing the threat posed by the ultranationalist Iron Guard, insofar as until 1935, he considered the movement to be a possible collaborator in extending his own power-base⁴². Be it as it may, from the legal point of view, a new state of siege was declared in 1934⁴³, and a Statute for the defence of the Order within the state was passed during the same year⁴⁴.

At this juncture, we can also observe how, in response to the increasing pres-

ence of political violence, social unrest, and growing geopolitical uncertainty, the mechanism of the state of siege is not simply used as an exceptional, even if no longer sparse, framework for exercising repression and addressing unrest. On the contrary, by its repeated use, some of its features enter within the sphere of regular legislation, thus becoming part of the established legal order. The Statute for the Defence of Order offers a good example of such a form of normalisation of exceptional measures, insofar as it establishes specific crimes in relation to political activities, thus opening the possibility for state authorities and the judiciary to regulate political activities as such. But perhaps the final point in this direction of the encroachment of exceptional measures within the established legal order is best epitomised by the final form of the Criminal Code 1936 and especially by its treatment of «crimes against the state and against the constitution, which introduced new forms of criminalising preparatory acts and as well as new forms of action»⁴⁵.

This gradual insinuation of the exception within the regular mechanisms of the state takes place against the background of a turn in Romanian politics both internally and externally. Within the country, by the time of the entry of the new Criminal Code into force, the Iron Guard had turned against the King and acted now as an overt anti-constitutional movement aiming at overthrowing the existing order, albeit by both parliamentary and extra-parliamentary means⁴⁶. Following an embezzlement scandal involving the King and his *camarilla* the Iron Guard purported to take upon itself the task of eradicating corruption, and this included a stance against the person of the monarch⁴⁷. From the standpoint of

international politics, there was a slow, but nonetheless distinct shift in politics by trying to appease the re-emergence of Germany as a new hegemon, following the League of Nations' and France indecision in addressing the German remilitarisation of the Rheinland⁴⁸.

These processes have found a clear and worrying reflection in the elections of 1937 which ended up in a standstill, with no political party able to claim victory, while the fascist movement claiming the third place⁴⁹. Faced with such a result, the King chose to impose a short-lived caretaker government under the direction of Romanian celebrated poet and anti-semitic activist, Octavian Goga, the head of the National Christian Party, a pro-German and anti-semitic ultranationalist movement opposed to the fascist Iron Guard. A short period of political violence ensued, with the attempts of Goga to quell the activity of the Iron Guard through direct action⁵⁰. A legislative attempt to reverse the protections offered by the 1923 constitution to the Jewish minority by revising the citizenship⁵¹, ended up in a political fiasco both internally and externally⁵². However, it signalled to each extent the Romanian state had moved against the liberal creeds still active within its constitutional armature and the emergence of a normative consensus that was aimed against the promises of legal universalism and equality before the law. After all, the revision of Jewish citizenship and a reversal of the status of the Jewish population within the confines of the Romanian state have been the main targets of Romanian ultranationalist since the entry in force of the first interwar constitution⁵³. Romania's politics of rapprochement to Germany, as well as the protests of France, Great Britain

and the United States in front of this new turn in internal politics, have also prompted the USSR to take a menacing stand against the possibility of an overtly pro-German ultranationalist Party ruling the country. As it has been noted, there were even threats of manoeuvres at the Eastern borders.

The situation was seized by King Carol II to step in and to impose his own dictatorial regime. First, he asked a resignation of the Goga government and produced a reshuffling of the cabinet, now under the lead of Patriarch Miron Cristea, the Head of the Romanian Orthodox Church. Second, the King declared a state of siege, which was under this instance deprived of any temporal limitations. As article VI of the statute declaring the state of siege provided: «the state of siege prescribed by this decree shall end when it will be considered appropriate»⁵⁴. Within the new proclamation to the country the King explained: «Romania needs to be saved and I have decided to do it»⁵⁵.

3. *A new normality: dictatorship enacted*

As soon as February 1938 a new Constitution was brought to the assent of the country by means of plebiscite⁵⁶, once the Parliament was dissolved and the political parties have been banned. The new constitution could serve as a glaring example of the fusion between exceptional measures and the legal order. As such, we should note that the Constitution produced a blurring of the separation of powers, insofar as the King was declared to be the Head of the State, which signified according to constitutional interpretation that «the King is not only a

symbol, and that he also has a role in governing, of providing indications that have to be established under the form of binding norms»⁵⁷. Article 31 prescribed that «the legislative power is exercised by the King through the National Representation»⁵⁸, a point that was interpreted as the King being himself a «unique legislative organ»⁵⁹. Constitutionals of the time went so far as to consider the King nothing short of the guarantee of the unity of the state. As Andrei Rădulescu noted: «by his participation in all the powers of the state he reunites in his hand [...] all these powers. He represents their link and is the symbol of the organic unity of the state»⁶⁰. Moreover, in exercising his legislative and executive powers, the King was also entitled to issue decrees endowed with force of law. Accordingly, the core attributions of the King as Head of State and Head of Army, doubled by its legislative and executive attributions, erase the classical separation of powers and blur distinctions between administration, legislation and military command. It is thus significant that the Article 91 of the 1923 declaring that all the King's powers are grounded in the Constitution has been suppressed in 1938⁶¹.

Such a departure from the liberal understanding of the separation of powers is intimately connected to the exercise of the state of exception and the practice of the state of siege. It would be useful to remind here, that the old statute for the state of siege of 1864 entrusting to the Prince (and later on the King) the possibility of declaring the state of siege on the territory of the country, an act that escaped either political and legal scrutiny and restated within the framework of the modern state the remnants of monarchical sovereign power with a view

of protecting the country from an existential threat. Formally, the symbolic position of the state of exception is shifted from a circumscribed measure that was able even as such to produce a great deal of constitutional disruption, to a mechanism of government that is integrated in the very structure of the state. Before the ominous threats befalling the country – either internally or externally – the King suspends the constitution of 1923, and re-writes it as a constitution that is passed in times of danger.

This process described so far, is emblematic in many respects insofar as it is able to trace to which extent the institution of the state of siege, and the particular jurisprudential and constitutional processes it entails, are able to dismantle, under specific historical conditions marked by violent conflict, social and economic instability, the very structure of a putative liberal state and produce a re-writing of the regime of legality itself. Let us note here, that jurisprudentially the state of siege is a particular instantiation of the state of exception⁶², that in its form and function is able to suspend the application of the normative protections of a polity, and to open a space in which an unmediated, or at least, a legally unmediated force of law is exercised over subjects of power. Within the framework of these new constitutional arrangements that have already internalised the effects, logic, ideology – in a word, the grammar – of the exception, it is the Head of State who shall embody the sovereign power. Of course, the exercise of this new type of power is not linear, and indeed the regime will suffer changes and internal challenges up to its demise in september 1940⁶³. They are all important in situating further ideologically the trajectory of the regime and perhaps

even its internal constitutional ideology. But from the point of view of the trajectory analysed here, they simply reproduce the duality of the repression and constitutional reform. For instance, in June 1940 a Statute for the Defence of the Sole and Totalitarian Order of the State was passed to protect what was now deemed to be a 'totalitarian state', according to a Statute passed the same day⁶⁴. It was indeed new and stark attempt of the Romanian state to mitigate the territorial losses to the USSR and the fall of France.

However, these attempts did not prevent King Carol II to be forced to abdicate in the wake of the Second Vienna award. In his place, at the helm of the country it is general Ion Antonescu who shall be co-opted as a Prime Minister invested with 'full-powers'. The process of transfer of power is significant in itself and takes the form of a number of decrees with constitutional value that aim to articulate legally the new structure. First, a Decree n° 3051 of 5 September simply designates the general as the new head of government⁶⁵. A second Decree, n. 3052, explicitly suspends the Constitution of 1938 and dissolves the legislative body instituted in 1938, on the grounds of «state of extreme necessity in which the country finds itself»⁶⁶. A third Decree, n. 3053, vests full powers in the person of general Antonescu, and retains a limited numbers of royal prerogatives, while stating that «all the other powers of the state shall be exercised by the President of the Council of Ministers»⁶⁷. The following day the King abdicates, while a new decree, number 3067 shall re-invest the General Ion Antonescu with full powers⁶⁸. A final Decree within this series, n. 3072, shall constitute the basis of the new regime of power. According to its Article 3,

«all powers of the state shall be exercised by the President of the Council of Ministers»⁶⁹, while the royal prerogatives retain an exceptional dimension.

According to a Decree dating from 10 September, the title of the Prime Minister exercising 'full powers' is officially recognised as being Leader (*Conducător*) of the Country⁷⁰. On 14 September, a new Decree declares the Romania to be a National Legionary State, thus confirming the political turn of the polity towards a far-right stance. According to this decree, general Antonescu is declared «the Leader of the National Legionary State and the Head of the Legionary Regime», while Horia Sima is recognised as the «Leader of the Legionary movement»⁷¹. This duality of power, in which the State and the movement are brought together is useful for understanding the tensions between the normative apparatus of the state and its prerogative and ideological side, but at closer inspection reproduces once again the paradoxes brought in by the state of exception. As such, it is worth noting not only that the Legionary movement was explicitly following on a politics that aimed at a total reconfiguration of the state under the pledges of a racial and ethnic ideology with disdain for legal form, aiming for a ultranationalist revolution. In a very particular sense, what we are dealing with in this duality it is the very epitomisation of the normative dimension and the sovereign power unbridled by legality.

The tensions between Antonescu and the Legionary movement erupted in what was called the Legionary rebellion, an attempt by the fascist movement to take power that was quelled by the military under the leadership of Antonescu. On this occasion a new repressive legislation is issued with a

view of countering any form of opposition to the regime⁷². By that time Romania, under the rule of Antonescu has already joined the Tripartite Pact, had allowed German troops to station on its territory and prepared for joining the war of aggression against the Soviet Union under the stated goal of regaining Bessarabia and Bukovina. It should not come as a surprised that during this period the military figure of Ion Antonescu will rule under the guise of the Leader of the country, insofar as his dictatorial regime is a continuation of the practices of the state of siege that have become normalised during the interwar period. During the state of "extreme necessity", "full powers" are bestowed over a military leader and military authorities do take precedence in governing the country as political parties and activities have been suppressed. This period of time is also marked by wartime measures that have an exceptional character themselves. It also witnesses as a consequence of this unfettered rule, genocidal practices and policies directed against Jewish and Roma population both within the Romanian territory, as within the Romanian held territories, that found themselves both within the ambit of the legality devised by the Nazi-Allied Romanian state and outside, taking the form of either seizure of property, state-sanctioned killings and executions or acts of larceny and murder⁷³. Indeed, under the formula of "full powers" entrusted to the military *Conducător*, lies also the very amorphous sovereign power that, unbound by law imposes itself even through acts of legalised killing.

Facing the fall of the Eastern front and Romania's impending military defeat, the King, supported by a wide range of democratic actors ranging from the traditional parties of the interwar to the communist

party, decided to act. General Antonescu was toppled on 23 August and soon an Armistice was signed with the Allies, under which, *inter alia*, Romania undertook to start hostilities with the Axis powers⁷⁴. King's Michael proclamation to the country of 23 August interestingly underlines the fact that the end of war with the United Nations is «the only solution for saving the country from the total catastrophe»⁷⁵. In a rhetoric reminding that of the Proclamation made by his father Carol II, the King also calls the country to «unite around the throne and the government for saving the Fatherland»⁷⁶. Subsequent to the proclamation, a decree is passed on 31 August, reinstating the rights of Romanians under the protections offered by the Constitution of 1866 and 1923⁷⁷. Despite such a reconnection with the pre-authoritarian experience, and the real commitment to reversing the disastrous effects of the racial legislation as well as the hold of anti-semitism over the state ideological and repressive apparatuses, the constitutional regime in place acted at least until March 1945 as a species of military government that shared important features to a commissarial dictatorship of 19th century⁷⁸, insofar as its aim was to assure the military victory alongside the new allies and to guide the transition towards peace. Besides the internal aspects of the constitutional structure – as during this time the two Prime-ministers in office since 1944 until 1945 are generals of the Army – there are important institutional and legal aspects stemming from the Armistice Agreement with the Allies. By virtue of articles 3 and 4 not only did Romania undertake to dissolve all Nazi organisations on its territory, but also to prosecute and try war crimes committed during the con-

flict with the Allied Powers⁷⁹. An Allied Commission under Soviet direction was entrusted with the task of overseeing the conditions of the armistice, including the reparations and the participation to the Allied war effort.

In this sense, it appears that from a constitutional point of view the uncertainties pertaining to the actual state of exception declared in September 1940 continued to subsist, under a very different ideological setting. Not only the constitutional basis consisted in an arrangement organised by decree-laws and international agreements, but also the weight of the military in organising policies and in the acts of government continued un-upset. Moreover, the uncertain position of the country, as a state with limited sovereignty by effect of the Agreement and the precedence taken by military goals resulting from the participation to the war attest for a position that is within the realm of exceptional measures.

4. *The shadow of the exception: the communist experience*

The King's forced abdication on 30 december 1947⁸⁰ and the proclamation of the Republic⁸¹ opens a new chapter in constitutional history and apparently puts an end to the hold that exceptional measures had on the constitutional order, insofar as a new order is created by the Constitution of 1948 and indeed extraordinary measures are used sparsely over the decades of communist rule. However, there are number of important points that have to be noted, which bear on the nature of the constitutional regimes of 1948, 1952 and 1965 as

having a particular relation with the structure of the exception. Let us recall here, that the state of exception is not only about the functioning of a specific institution or set of norms, but fundamentally it designates the very possibility of the legal order to be suspended for its own application⁸².

In this sense, the state of exception brings us before the paradox of a normative order that is suspended, yet still active, in order to be efficient. Following this logic, we can distinguish within the functioning of the Constitution of 1948 a first level of split between the normative content of the constitution and its real functioning. Indeed, not only the Presidium of the Republic, is not the centre of the constitutional arrangements, but the very source of the informal, political and effective power completely escapes constitutional arrangements. The Communist Party, is thus, in a relation of absolute alterity to the legal order yet being its main source of power⁸³. Such a paradox, which strikes in terms of formal resemblance with the position of absolute monarchs in *ancient regime* systems, becomes more intelligible, if one is to take into consideration both the ideological framework in which RCP operated and the particular historical context in which its rise to power took place. Moreover, such an analysis can refine our understanding of concepts such as revolution and exception in modern context.

To put it simply, the RCP was a Stalinist party, which even if committed to a politics of revolutionary practice, was following Moscow's guidance with regards to the organisation of state power. In the context of late 1940s, the Stalinist legal orthodoxy could be easily summarised as such: «[t]he proletariat requires the state, state ap-

paratus, a definite state order – the socialist legal order, which signifies the stability of socialist relationships»⁸⁴. Even if it portrayed itself as a revolutionary Marxist-Leninist movement, the regime's aim in relation to the legal order was not to bring about its «whithering away»⁸⁵, but rather to «strengthen the state apparatus»⁸⁶. Moreover, the very nature of the so-called popular democracies remains uncertain according to Marxist lines, insofar as the nature of the transformation is reluctantly described as being a «revolutionary one»⁸⁷. Such a background is able to explain the authoritarian features of the repression put in place, such as the strengthening of the criminal law, police and security apparatus, and the exercise of an effective dictatorship of the proletariat.

The Constitution of 1952, will make things even clearer by enshrining the concept of 'popular democracy' within the text of the fundamental law as well as a specific understanding of the dictatorship of the proletariat. Accordingly, RPP is a «state of the toilers from towns and villages»⁸⁸, and the «democrat-popular state realises in a consistent manner the politics of containment and elimination of capitalist elements»⁸⁹. As constitutionalists of the time wrote, «the essence of the state is the dictatorship of the proletariat»⁹⁰. According to this internal perspective, state power functions according to the principle of unity, thus dispensing with the classical separation of powers. Significantly, the general function of the state is articulated in purely repressive terms, as «the use of state power for repressing the exploiters»⁹¹, which can be understood as three distinct operations of the force of law: «crushing the overthrown exploiting classes within the

country»⁹², «defending the country from external aggression»⁹³ as well as organising the economy and educating the people. Within such an ideological framework, it should not come as a surprise that the Party is presented as «both at the same time the heart and brain of the dictatorship of the proletariat»⁹⁴, «the leading force [...] of state organs and institutions»⁹⁵.

While according to the internal point of view of the political actors from within the Communist movement, the dictatorship of the proletariat, was considered as a necessary stage of the takeover, and was perceived as a way in which revolutionary struggle is carried through the state apparatus, it remains nonetheless true that rather than being a full overthrow of the existing legal order, the existing dictatorship of the proletariat operated a continuation with the exceptional measures from the past by a strengthening of the repressive functions of the state, that did not dispense with legal form or constitutional order.

The fragile, yet existing new consensus emerging during the late years of the sixth decade on the organisation of the state, fuelled both by the economic development of the country and the retreat of the USSR troops, has opened the possibility for a change within the RCP politics. From 1962 onwards, a 'national' path in articulating the Party's politics was taken, starting with the refusal of participating in the COMECON Valev plan and ending up with the refusal to participate in the Warsaw Pact-led intervention in Czechoslovakia in August 1968⁹⁶. The constitutional reform of 1965 already attested for a change within the ideological framework of the regime as the country changed its official denomination from the People's Republic of Romania to

the Socialist Republic of Romania, signalling its declared evolution to a new stage of development towards communism⁹⁷. The national path was also doubled by a resurgence of nationalist tropes in public discourse and state ideology, that were paradoxically consistent with the structural position that communist parties in Eastern Europe were bound to take. As Katherine Verdery observed, nationalist ideology, as a powerful pre-existing political discourse was indeed able to domesticate Marxist ideology through its process of indigenisation⁹⁸. The climactic moment in this trajectory was attained with the official rupture with the Moscow line and the denunciation of the Warsaw Pact intervention. Faced with a perceived threat of invasion, the Secretary General of the Party called for a mass rally of no less than 100 000 people, an in an act of acclamation⁹⁹ gained their support, in a direct address. The time of this exceptional moment is once again of a real, or more likely imagined, threat to the nation. The emergence of the institution of the president, both as an institution linking directly the party to the state, is thus related to a context connecting patriotic fervour, political pathos and military concerns.

This final element cannot be overemphasised, insofar as one of the first legal measures emerging from this situation was the creation of the patriotic guards, a paramilitary organisation mustering working citizens, men and women, and aimed at supporting the regular army in times of war. By means of a decree issued on 4 September 1968, enforcing a decision of the Plenary of the Central Committee of the RCP taken the day of the invasion of Czechoslovakia, there are formed «voluntary armed detachments of the toilers from cities and villages»¹⁰⁰.

In 1972, a law on national defence, passed in 1972, moves even further by introducing the citizen duty «to prepare for being able to undertake missions related to the defence of the country»¹⁰¹. Interestingly, the final point of this process consists in the constitutional change of 1974 introducing the office of the president¹⁰² finally fusing both Party and State, and connecting the real sovereign power with the normative dimension of the legal order.

Conclusion

The institution of the Head of State, epitomised either by the figure of the protofascist authoritarian King, by the fascist dictatorial leader, by the military dictator, or by the Presidium, and finally by the President of the Socialist Republic, is central to unlocking the line of continuity which exists both at the level of practice and the intellectual construction of the state. As such, this institution, in so far it can be conceptualised as a constitutional distinct set of rules defining the functioning of an office, and as a set of practices that have been materialised and enacted in relation to these practices, either by fulfilling, distorting or negating the content of this body of rules, but always in relation to this constitutional core, operated as an archive of legal and political practices that has fundamentally impacted the history of the Romanian modern state. What is crucial to note in its historical trajectory, it is its constant relation to a form of suspension of rules, that is, to a state of exception that supports it. The fact that authoritarian experience has lasted more than half a century – with various de-

grees of recourse to authoritarian practices, and various degrees of intensity – is also an important feature of Romanian constitutional history that cannot be dismissed as a simple historical accident, or a distortion from some presupposed historical path, but rather a specific part integral to the historical experience of the state.

* This article was written as a result of the research activities during the development of the Project PN-III-P4-ID-PCE2016-0013 «Șefii de stat: dinamica autoritară a puterii politice în istoria constituțională românească/Chief of states: the authoritarian dynamic of political power in Romanian constitutional history», funded by the Romanian Government.

¹ J.-W. Müller, *What is Populism?*, Philadelphia, University of Pennsylvania Press, 2016, pp. 19–20.

² See D. Landau, *Populist Constitutions*, in «Chicago Law Review», vol. 85, n. 2, 2018, pp. 521–543.

³ O. Varol, *Stealth Authoritarianism*, in «Iowa Law Review», vol. 100, n. 4, 2015, pp. 1673–1742.

⁴ K. L. Scheppelle, *Autocratic Legalism*, in «Chicago Law Review», vol. 85, n. 2, 2018, pp. 545–584.

⁵ See for instance, the Verfassungsblog country reports on the legal and constitutional reactions to Covid-19 crisis. Available at <<https://verfassungsblog.de/category/debates/covid-19-and-states-of-emergency-debates/>>, October 2021.

⁶ See K. Kovács, *Hungary's Orbánistan: A Complete Arsenal of Emergency Powers*, in <<https://verfassungsblog.de/hungarys-orbanistan-a-complete-arsenal-of-emergency-powers/>>, October 2021.

⁷ See Agamben's indictment of the legal arsenal used under the pandemic, G. Agamben, *A che punto*

siamo? L'epidemia come politica, Macerata, Quodlibet, 2020.

⁸ Romanian Constitutional Court, Decision no. 152/2020 in «Official Journal», n. 387, 13 May 2020.

⁹ E. Hobsbawm, *The Age of Extremes: The Short Twentieth Century*, London, Michael Joseph, 1994.

¹⁰ C. Schmitt, *Political Theology*, George Schwab tr., Cambridge, MA, MIT Press, 1985 (1933), pp. 5–15.

¹¹ M. Mann, *Fascists*, Cambridge, Cambridge University Press, 2004, p. 44.

¹² G. Agamben, *Homo Sacer: Sovereign Power and Bare Life*, Stanford, Stanford University Press, 1998 (1995); G. Agamben, *State of Exception*, K. Attell tr., Chicago, University of Chicago Press, 2005 (2003).

¹³ C. Iordachi, *A Continuum of Dictatorships: Hybrid Totalitarian Experiments*, in A. Costa Pinto, A. Kallis (ed. by), *Rethinking Fascism and Dictatorship in Europe*, Palgrave Macmillan, Basingstoke, 2014, pp. 233–271.

¹⁴ «we are confronted with a form of society in which the ruling groups control the rest of the population directly without the mediation of that rational though coercive apparatus hitherto known as the state», F. Neumann, *Behemoth: The Structure and Practice of National Socialism*, London, Victor Gollancz, 1942, p. 384.

¹⁵ Fraenkel recognises the limits of

his approach: «might it not be argued that the Prerogative State is nothing but an extreme case of administrative power in which the discretion of the administration is even greater than usual? If this were true [...] a systematic treatment would then be impossible», E. Fraenkel, *The Dual State: A contribution to the Theory of Dictatorship*, Oxford University Press, Oxford, 1941, pp. XIII–XIV.

¹⁶ C. Cercel, *Towards a Jurisprudence of State Communism: Law and the Failure of Communism*, London, Routledge, 2018.

¹⁷ Agamben, *Homo Sacer*, cit., p. 22.

¹⁸ Agamben, *State of exception*, cit. pp. 5–6, pp. 11–22.

¹⁹ As Kelsen writes inconclusively, «the validity of a legal system governing the behaviour of particular human beings depends in a certain way, then, on the fact that their real behaviour corresponds to the legal system – depends in a certain way [...] on the efficacy of the system», H. Kelsen, *Introduction to the Problems of Legal Theory*, Oxford, Oxford University Press, 1992 (1934), p. 60.

²⁰ *Treaty between the Principal Allied and Associated Powers and Roumania*, 9 December 1919, in *League of Nations Treaty Series* n. 5, 1921, pp. 335–350.

²¹ Article 5 and Article 7, *Constitution of Romania of 28 March 1923*, in «Official Journal», n. 282, 29 March 1923.

²² Article 88, *ivi*.

- ²³ Decree Law of 15 November 1918 on the Elections for the Representative Assembly and the Senate. «Official Journal», n. 191, 19 November 1918.
- ²⁴ Statute concerning the Land Reform in Oltenia, Muntenia, Moldova and Dobrogea, 14 July 1921. «Official Journal», n. 82, 17 July 1921 and Statute for the Land Reform in Transylvania, Crișana and Maramureș, 30 July 1921. «Official Journal», n. 93, 30 July 1921; O. Gorni, *Les réformes foncières en Europe orientale et centrale leurs causes économiques et sociales*, «Annales d'histoire économique et sociale», n. 3, 1931, 207 at 218-223.
- ²⁵ J.S. Roucek, *The Political Evolution of Roumania*, in «Slavonic and East European Review», vol. 10, 1932, pp. 602-615.
- ²⁶ Roland Clark, *Holy Legionary Youth: Fascist Activism in Interwar Romania*, Ithaca, Cornell University Press, 2015, pp. 63-86.
- ²⁷ K. Hitchins, *Rumania 1866-1947*, Oxford, Oxford University Press, 1994, p. 400.
- ²⁸ Constantin Dissesco, *L'évolution du droit public roumain in Les transformations du droit dans les principaux pays depuis cinquante ans: livre du cinquantenaire de la Société de législation comparée*, Paris, L.G.D.J., 1922, p. 301.
- ²⁹ C.S. Cercel, *The "Right" Side of the Law: State of Siege and the Rise of Fascism in Interwar Romania*, «Fascism: Journal of Comparative Fascist Studies», vol. 2, n. 2, 2013, pp. 205-233, at pp. 221-226.
- ³⁰ Romanian Statute for the state of siege of 10 December 1864.
- ³¹ C.S. Cercel, *The Enemy Within: Criminal Law and Ideology in Interwar Romania*, in Stephen Skinner ed *Fascism and Criminal Law: History, Theory, Continuity*, Oxford, Hart, 2015, pp. 101-126.
- ³² Statute repressing new crimes against public peace, in «Official Journal», n. 279, 19 December 1924.
- ³³ S. Suveică, *Tatar-Bunar 1924: procesul celor 500*, in «Analele Științifice ale Universității „A.I. Cuza” din Iași”, Seria Istorie», nn. 46-47, 2000-2001, pp. 281-292.
- ³⁴ See H. Barbusse, *Les bourreaux*, Paris, Flammarion, 1926.
- ³⁵ Statute Recognising HRE Prince Michael as heir to the throne of Romania of 4 January 1926, in «Official Journal», n. 4., 5 January 1926. *The National Assembly and the legal regulation of the renunciation to the throne: a legal controversy with political consequences*, in «Adevărul», n. 12901, 5 January 1926, 3.
- ³⁶ Roucek, *The Political Evolution of Roumania*, cit., p. 614.
- ³⁷ C. Cercel, *Reversing Liberal Legality: Romania's Path to Dictatorship, 1930-1938*, in «Journal of Romanian Studies», vol. 2, n. 2, 2020, pp. 21-50, at p. 33.
- ³⁸ Report on the ceremony of the Proclamation of H.R.E Prince Carol as King of Romania, in «Official Journal», n. 127, 12 June 1930, p. 3.
- ³⁹ *Ibidem*.
- ⁴⁰ C. Pintilescu, *Dezbatere publică privind decretarea stării de asediu*, in «Anuarul Institutului de Istorie George Barițiu din Cluj-Napoca», n. 57, 2018, pp. 303-318 at pp. 315-18.
- ⁴¹ Clark, *Holy Legionary Youth*, cit., p. 85.
- ⁴² R. Haynes, *Germany and the Establishment of the Romanian National Legionary State, September 1940*, in «Slavonic and East European Review», vol. 77, 1999, pp. 700, 705-706.
- ⁴³ Statute concerning the State of Siege of 16 March 1934, in «Official Journal», n. 63, 17 March 1934.
- ⁴⁴ Statute for the defense of order within the State of 6 April 1934, in «Official Journal», n. 82, 7 April 1934.
- ⁴⁵ Cercel, *The Enemy Within*, cit., p. 126.
- ⁴⁶ R. Haynes, *Reluctant Allies? Iuliu Maniu and Corneliu Zelea Codreanu Against King Carol II of Romania*, in «Slavonic and East European Review», vol. 85, 2007, pp. 105-134, p. 109.
- ⁴⁷ S. Payne, *A History of Fascism: 1914-45*, London, Routledge, 1995, p. 278.
- ⁴⁸ R. Haynes, *Romanian Policy towards Germany, 1936-1940*, Basingstoke, Palgrave Macmillan, 2000, p. 21.
- ⁴⁹ Hitchins, *Rumania 1866-1947*, cit., p. 420.
- ⁵⁰ PA Shapiro, *Prelude to Dictatorship in Romania: the National Christian Party in Power, December 1937 - February 1938*, in «Canadian-American Slavic Studies», n. 8, 1974, pp. 45-88, 70-71.
- ⁵¹ Royal Decree concerning the revision of citizenship of 21 January 1938, in «Official Journal», n. 18, 22, January 1938.
- ⁵² Shapiro, *Prelude to Dictatorship*, cit., p. 74.
- ⁵³ Cercel, *Reversing Liberal Legality*, cit., p. 42.
- ⁵⁴ Royal Decree n. 856, in «Official Journal», n. 34, 11 February 1938.
- ⁵⁵ *Le premier ministre Miron Cristea*, in «Bulletin périodique de la presse roumaine: du 9 février au 28 avril 1938», n. 92, 17 May 1938, p. 8.
- ⁵⁶ The Constitution of Romania of 20 February 1938.
- ⁵⁷ A. Rădulescu, *Noua Constituție*, Bucharest, Cuvântul Românesc, 1939², p. 12.
- ⁵⁸ The Constitution of Romania of 20 February 1938, cit.
- ⁵⁹ Al., Tilman-Timon, *Les actes constitutionnels en Roumanie de 1938 à 1944*, Imprimeria Cugetarea, București, 1947, p. 31.
- ⁶⁰ Rădulescu, *Noua constituție*, cit., p. 39.
- ⁶¹ A. Ionasco, *La nouvelle constitution roumaine*, in «Bulletin de la Société de Législation Comparée», n. 68, 1939, pp. 345-359, p. 348.
- ⁶² Cercel, *The "Right" Side of the Law*, cit., p. 223.
- ⁶³ C. Cercel, *The Law of Blood: Totalitarianism, Criminal Law and the Body Politic of Second World War Romania*, in St. Skinner (ed.), *Ideology and Criminal Law: Fascist, National Socialist and Authoritarian Regimes*, Hart, Oxford, 2019, pp. 345-368.

- ⁶⁴ *Decree for the Defence of the Sole and Totalitarian Order of the Romanian State*, in «Official Journal», n. 142, 22 June 1940.
- ⁶⁵ *Decree n. 3051 of 5 September 1940*, in «Official Journal», n. 205, 5 September 1940.
- ⁶⁶ *Decree n. 3052 of 5 September 1940*, in «Official Journal», n. 205, 5 September 1940.
- ⁶⁷ *Decree n. 3053 of 5 September 1940*, in «Official Journal», n. 205, 5 September 1940.
- ⁶⁸ *Decree-Law n. 3067 of 6 September 1940*, in «Official Journal», n. 206, 6 September 1940.
- ⁶⁹ *Decree-Law n. 3072 of 8 September 1940*, in «Official Journal», n. 208, 8 September 1940.
- ⁷⁰ Tilman-Timon, *Les actes constitutionnels*, cit., p. 121.
- ⁷¹ *Decree-Law n. 3151 of 14 September 1940*, in «Official Journal», n. 214 bis, 14 September 1940.
- ⁷² *Statute 80 of 6 February 1941*, in «Official Journal», n. 31, 6 February 1941.
- ⁷³ Șt.C. Ionescu, *Jewish Resistance to 'Romanianization,' 1940-44*, Basingstoke, Palgrave Macmillan, 2015; V. Solonari, *Purifying the Nation: Population Exchange and Ethnic Cleansing in Nazi-Allied Romania*, Baltimore, MD, Johns Hopkins University Press, 2010, pp. 95-117.
- ⁷⁴ R.J. Crampton, *Eastern Europe in the Twentieth Century and After*, London, Routledge, 1997², pp. 228-231; J. Rothschild, N.M. Wingfield, *Return to Diversity: A Political History of East Central Europe Since World War II*, Oxford, Oxford University Press, 2000³, pp. 105-106.
- ⁷⁵ H.M., *The King Proclamation to the Country*, in «Universul», n. 231, 25 August 1944, p. 1.
- ⁷⁶ *Ibidem*.
- ⁷⁷ *High Royal Decree n. 1626 of 31st of August 1944*, in «Official Journal», n. 202, 2 September 1944.
- ⁷⁸ C.J. Friedrich, *Military Government and Dictatorship*, in «Annals of the American Academy of Political and Social Science», vol. 267, 1950, pp. 1-7.
- ⁷⁹ *Armistice Terms for Rumania*, in «Department of State Bulletin», n. 11, 17 September 1944, pp. 289-292.
- ⁸⁰ Hitchins, *Rumania 1866-1947*, cit., p. 547.
- ⁸¹ *Message of the Presidium of RPR*, in «Official Journal», n. 1, 1 January 1948, pp. 2-4.
- ⁸² Agamben, *Homo Sacer*, cit. pp. 19-20.
- ⁸³ D. Barbu, *Republica absentă*, Bucharest, Nemira, 1998, p. 157.
- ⁸⁴ A. Vyshinsky, *The Law of the Soviet State*, New York, Macmillan, 1961, p. 47.
- ⁸⁵ V.I. Lenin, *State and Revolution*, T. Chretien ed., Chicago, Haymarket Books, 2014, (1918), p. 82.
- ⁸⁶ J.V. Stalin, *The Results of the First Five-Year Plan: Report Delivered on January 7, 1933*, in *Collected Works*, vol. 13, Moscow, Foreign Language Publishing House, 1954, p. 214.
- ⁸⁷ H.C. Skilling, *People's Democracy in Soviet Theory I*, in «Soviet Studies», vol. 3, n. 1, 1951, pp. 16-33, p. 27.
- ⁸⁸ Introductory Chapter, *Constitution of the Romanian People's Republic of 1952*.
- ⁸⁹ Art. 11, *ivi*.
- ⁹⁰ T. Drăganu, *Curs de drept de stat al Republicii Populare Române*, Tipografia Învățămintului, București, 1956, p. 22.
- ⁹¹ *Ivi*, p. 23.
- ⁹² *Ivi.*, p. 24.
- ⁹³ *Ibidem*.
- ⁹⁴ *Ivi*, p. 105.
- ⁹⁵ Art. 86, *Constitution of RPR 1952*.
- ⁹⁶ Rothschild, Wingfield, *Return to Diversity*, cit., p. 162.
- ⁹⁷ C. Cercel, *Narrating Dystopia: Nicolae Ceaușescu's Legal Career*, in «Journal of Comparative Law», vol. 6, n. 2, 2011, pp. 1-22.
- ⁹⁸ K. Verdery, *National Ideology under Socialism*, Berkeley, University of California Press, 1991, p. 139.
- ⁹⁹ C. Schmitt, *The Crisis of Parliamentary Democracy*, Cambridge (MA), MIT Press, 1988 (1926), pp. 16-17.
- ¹⁰⁰ *Decree of 4 September 1968*, in «Official Bulletin», n. 114, 5 September 1968.
- ¹⁰¹ *Statute n. 14*, in «Official Bulletin», n. 160, 29 December 1972.
- ¹⁰² *Statute of 28 March 1974*, in «Official Bulletin», n. 1, 28 March 1974.