

THE CONSTITUTIONAL FIXING OF THE PRINCIPLE OF THE DIVISION OF STATE POWER IN THE BASIC LAW OF ROMANIA OF 1866

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Annotation. Among the number of the problems which are topical today in the context of the formation and the development of the domestic science of constitutional law, we can name the aspects which are directly related to the ensuring and the realization of the fundamental principles of the constitutional system. They determine not only the purpose and the values of the modern social and political development in the Ukraine, but also point to those mechanisms that contribute to the solution of the specific problematic situations that arise in the process of the modern domestic state and legal development. The principle of the division of state power refers to such fundamental principles, which is included to the list of the base principles of the modern constitutionalism. This principle has received the general prevalence and the general obligatoriness of the principle of the division of powers as the fundamental constitutional regulations, which have its reflection in all constitutions of the modern democratic countries without exception.

The aim of the work is the characteristics of the first Basic Law of Romania of 1866 in part of the constitutional fixing of the principle of the division of state power.

The methodological basis of the study. The nature of the work with its combination of legal and state aspects has stipulated for complementary approach to the choice of the scientific methods of the research. Choosing the appropriate scientific tools, the author has taken into account its accordance with such criteria as efficiency, objectivity and reliability. The number of the approaches have been used during the research such as dialectical, descriptive, formal-legal and comparative-legal.

Results. The adoption of the Constitution has cleared the way of Romania to becoming its as the sovereign state and has contributed to the unification of the Romanians into the political nation. The evolution of constitutionalism in Romania has taken a long time from the first Law of 1866 to the current Constitution. The adoption of the Constitution of 1866 has become a fateful state legal act for all Romanian nation. The adoption has witnessed aspiration of Romania to the creation of the sovereign state with defined borders, population, the presence of state authorities, sovereignty, the ability to legislate and to conduct the international politics.

Conclusion. The Constitution of 1866 has become the progressive state and legal act for Romania. The necessity to follow the norms of the Basic Law gradually has made constitutionalism as the form of thinking, which has contributed to the further expansion of rights and freedoms and the development of the democratic views in the country.

Key words: The Constitution, parliamentarism, constitutionalism, legislative, executive, judicial branches of power.

1. Introduction.

It should be noted that the principle of the division of powers exists as the unquestionable protection from the usurpation of power, the arbitrariness of the bureaucracy and guarantees the observance of public

order and the effective implementation of state management. The founder of the principle of the division of powers was S. Montesquieu, who in his work "On Spirit of Laws" formulated the idea of the existence of three separate branches of government [7]. The mentioned principle was firstly fixed in the Constitution of the USA of 1787. The essence of the principle of the division of powers is that the unified state power is organizationally and institutionally divided into three relatively independent branches such as legislative, executive and judicial. The French thinker grounded the inadmissibility of the concentration of all fullness of state power in one hand: "Everything would perish if these three powers were combined in the same person or institution, which consisted of dignitaries, noblemen or ordinary people such as the power to create laws, the power to implement the decrees of the federal nature and the power to judge crimes or actions of private people" [7, p. 290–291]. He was convinced that if "legislative and executive powers will be united in one person or institution, there will be no freedom, because it can beware that the monarch or the senate will make tyrannical laws in order to apply them in the same tyrannical way. There will be no freedom even if the judiciary is not separated from the legislative and executive powers. If it is combined with the legislative power, then the life and liberty of the citizens will fall under the power of arbitrariness, because the judge will be the legislator. If the judicial power is combined with the executive, the judge will have the opportunity to become the oppressor" [7, p. 212].

The Constitution of Romania is the normative-legal basis of all modern constitutional process, as the political-legal and political-state-owned process of the step-by-step transformation of constitutional legislation, the development of constitutional legal relations and legal awareness, the creation of the system of law enforcement with the aim of the formation of the newest Romanian constitutionalism. Indisputably that the constitutional process itself plays the important role in the development of the democratic principles in the country and it is the consequence of the evolution of the political and the state system, which affects all aspects of the life of some society and it determines the development of the state for years to come.

The constitutional process of Romania has the significant "legacy" of its development and the formation. So, during the second half of the 19th century. The Romanian leadership, having chosen the difficult way of the creation of the sovereign state, has realized that one of the most important tasks is the formation and the development of the legal foundations of the country. First of all, it concerns the adoption of the Basic Law, which some Romanian researchers call "the preamble of the national independence and the confirmation of Romanian identity" [1, p. 27].

2. Analysis of scientific publications.

The theoretical base of writing of the article was the scientific works of the domestic and the foreign scientists and lawyers-practitioners such as A. Banciu, I. Negru, A. Ungureanu, M. Enache, M. Safta, I. Toronchuk and others. At the same time, we should note that despite their significant contribution, the issue of the constitutional history of Romania is practically absent in the Ukrainian historical and legal science.

3. The aim of the work is the characteristics of the first Basic Law of Romania of 1866 in parts of the constitutional fixing of the principle of the division of state power.

4. Review and discussion.

The evolution of constitutionalism in Romania has taken a long time in its development from the first Basic Law of 1866 to the current Constitution. During this period of time, it has been repeatedly changed and supplemented, taking into account the challenges and the historical conditions of the existence of the state. In particular, it happened in 1923, 1938, 1948, 1952, and 1965. The important meaning for the formation of the constitutional foundations and the embodiment of the principle of the division of the state power of Romania had the electoral reform of 1864 according to the results of which the age and property tax for the citizens were reduced who could take part in vote [6]. In general, the reforms were aimed at the modernization of the society and the state-management structures of that time. According

to A. Banciu, these processes “allowed the intensification of the process of the European integration of Romania” [1, p. 26].

From February 10 to 11, 1866, the state revolution of the “monstrous coalition” (Monstruoasa coalitiție – Romanian) took place in the country. Soon, Board Regents was formed consisting of N. Holescu, L. Katarzhyu and N. Kharalambie. The provisional government was headed by I. Hika. On April 28, the Chamber of Deputies was convened and ratified the election of Karl Hohenzollern-Sihmarinhen as the new ruler. On May 10 (22), he took the oath before the parliament [5, p. 6]. After the election of the legitimate monarch, the adoption of the Basic Law became as one of the most important steps in the development of Romania.

The first Romanian Constitution was adopted by the Constituent Assembly on June 30, 1866. It was written on the model of the Belgian Constitution, but adapted to the Romanian realities of the state-political and legal systems. It was promulgated on July 1 of the same year by Karl I [12, p. 133]. He also took the oath to follow the Constitution and the laws of the country [10, p. 75]. The adoption of the Constitution became the fateful state legal act for all Romanian nation, because it meant the radical change in correlation of the external and the internal factors in the state-building process of the principality. So, the Romanians demonstrated their desire to create the state with defined borders, population, the presence of state authorities, sovereignty, the ability to legislate and conduct the international policy [9, p. 123]. The constitution consisted of eight sections:

Section I: “On the Romanian territory”;

Section II: “On the rights of the Romanians”;

Section III: “Powers of the state”;

Section IV: “On Finances”;

Section V: “On the Armed Forces”;

Section VI: “Main regulations”;

Section VII: “Revision of the Constitution”;

Section VIII: “The transitional and the additional regulations” [3, p. 111].

Section I “On the Romanian Territory” contained the fundamental constitutional and state prescriptions of the creation and the development of the principality. The official name was legally fixed. Article 1 proclaimed: “The united Romanian principalities form the indivisible state called Romania” [8, p. 119]. Articles 2-4 determined that the territory of Romania was inalienable and inviolable with its own administrative-territorial division and system. The national normative and legal base had to function on all territory of principality [2].

Section II “On the Rights of Romanians” guaranteed and established the rights and freedoms of a person and a citizen. The purpose and the tasks of the proposed publication did not foresee the detailed analysis of this block of the Romanian Constitution, so we would limit ourselves to stating that they were present in the Basic Law of 1866. They could be conditionally divided into three groups:

1. The personal rights and freedoms of a person (civil, natural) were directly related to the essence of a person, as an individual (e.g., Articles 5, 7, 9, 10–15, etc.) [2];
2. Political rights and freedoms of the Romanian citizens related to the relationship between the person and the state, the person and the state authorities, the person and the political parties and other state and political institutions of the state and the society (e.g., Articles 21, 26–30, etc.) [2];
3. Rights related to the economic, socio-cultural and family rights of the Romanian citizens (e.g., Articles 17, 19, 22, etc.) [2].

In this context, we must emphasize that the fundamental idea of the unity and integrity of state power is the basis of the modern understanding of the theory of the division of powers, which reflects the organic

connection between the theory of the division of state power and the theory of national sovereignty. It foresees the presence of the single source of power such as sovereign and all-powerful people (nation), which delegates the part of its power to the state, which, in the person of its bodies (legislative, executive and judicial branches of power) implements the powers delegated to it in the interests of the people (nation).

The principle of the division of state power in the Basic Law of 1866 was directly fixed in the following sections. Section III "Powers of the State" was the biggest section of the Constitution. The base conditions of the functioning of the legislative, executive and judicial branches of government were prescribed in it. The democratic nature of the Basic Law was emphasized. It noted in Article 31 that the bearer of state power was the nation, which delegated its powers in accordance with the principles and rules established by the "current Constitution". Article 32 determined that legislative power was carried out together with the monarch and the National Representation. The last was divided into two assemblies: The Senate and The Assembly of Deputies. The important aspect of Article 32 was that no law of the country could be signed by the monarch until it had been agreed and approved by all three branches of the legislature. At the same time, the right of legislative initiative belonged to all three branches (Article 33). The right of interpretation of laws also belonged exclusively to the legislative branch of power (Article 34) [2].

Article 35 determined that the monarch was the head of executive power, which he had to carry out in accordance with the norms of the Constitution.

The Constitution declared the courts and tribunals to be the bearers of the judicial branch of power, which could be made decisions in accordance with the law and performed them in the name of the monarch (Article 36) [2]. The interests of the departments and the communes could be regulated by local councils in accordance with the instructions of the Constitution and the special laws (Article 37).

Chapter 1 of the section "Powers of the State" determined the base functions, rights, responsibilities, and powers of the members of the National Representation (Articles 38-56). The article proclaimed that the meetings should be held in open mode, except for certain issues (Article 39); some resolution could be accepted by the absolute majority of votes (Article 45); the vote procedure could take place openly orally or secretly (Article 46). It was worth emphasizing that the Constitution guaranteed the principle of inviolability of members of the Assembly, in particular, "some member of the Assembly could not be subject to arrest or persecuted for his own opinion or position" (Article 52) with the exception of the "serious offense", but with the presence of the permission sanction of the Assembly (Article 52) [2].

The requirements for the Assembly of Deputies (composition of deputy collegiums, quantitative representation, requirements for candidates, property qualification, etc.) were determined in the Articles 57-67. The term of power of members of the Chamber of Deputies was set at four years (Article 67). Articles 68-81 prescribed the peculiarities of the formation and the functioning of the Senate. As in the previous articles, requirements for candidates, quantitative representation, property and age qualification, etc. were determined. Article 74 determined that senators could be citizens of Romania from birth or naturalized; the applicant had to use all civil and political rights; lived in Romania; was at least 40 years old and had an income of at least 800 lei per year. It was separately assumed that the universities of Iasi and Bucharest had the right to delegate one elected representative to the Senate each (Article 72). The place in the Senate was also given to the descendant of the throne at the age of eighteen without the right of an advisory vote (after reaching the age of 25, such a vote was given to him) (Article 76). The same article gave the place in the Senate to the highest church hierarches [2].

Articles 82-92 was devoted to the monarch (the order of succession to the throne, issues of regency, inviolability of the monarch's person, etc.). Article 93 determined the functions of the prince as the head of the state (appointment and dismissal of ministers, the right of amnesty, the high command of the armed forces, the right to give military ranks, the right to represent the interests of Romania in relations with other states, etc.).

At the same time, Article 96 noted that “the monarch does not have any other powers, except those provided by the Law” [2]. In this context, we note that the constitutional principle of the division of state power fixed of that time in the Basic Law clearly prohibits the monarch to “interfere in the activities of the justice system” [2].

Articles 97-103 prescribed in general definitions the powers of ministers and their relationship with the legislative branch of power.

Several articles of the section were devoted directly to the justice system such as the independence of the judicial branch of government was proclaimed, the creation of extraordinary commissions and tribunals was prohibited, the Court of Cassation was created (Article 104); jury trials were restored during the consideration of criminal cases, cases of political crimes and crimes against the press (Article 105) [2].

Several articles of the Law also determined the general principles of functioning of the local authorities. In particular, the principles of “administrative decentralization” and “municipal independence” were introduced in the sphere of local authorities (Article 107).

The unchanging character of the Basic Law “The Constitution cannot be suspended in whole or in part” (Article 128) [2] was emphasized in Section VI “Main regulations” by the authors of the Constitution except approval of the state attributes and the capital of the principality.

So, in this part, the principle of the division of state power had to guarantee the country the impossibility of usurpation of all power in the future (in fact, the inadmissibility of establishment of dictatorship). The constitutional norms and regulations could be changed, supplemented or removed only by following the legal procedure (Section VII “Revision of the Constitution”) [2]. So, Article 129 granted the rights and powers as for making changes to the text of the Constitution to legislature. After passing all the procedures, the new changes and the additions to the Law could be introduced (under circumstances that at least two-thirds of the deputies and two-thirds of the votes were present) [2].

The last, eighth section, “The transitional and the additional regulations”, contained the number of the important aspects of the state building and the transformation of Romania. In particular, it was emphasized that from the date of entry the Constitution into force, all previous normative and legal acts (laws, orders, decree, etc.) were canceled (Article 130) if they conflicted with the norms of the new Basic Law; the reformation of certain state bodies was foreseen, in particular, after the adoption of the separate law, the State Council could be abolished (Article 131).

As the Constitution in many aspects of state management and life activities of the principality contained only general normative and legal prescriptions, it was predicted to revise existing or to adopt new codes and laws in the nearest future (“On administrative decentralization”, “On the responsibility of ministers and other representatives of the executive power”, “On making changes in the law on pension ensuring”, “On the development of communication routes”, “On military justice”, etc.) (Article 132) [2].

We emphasize once again that the division of powers should not be understood as the opposition of the different branches of the powers. No power cannot undertake the functions of another, but each of them cannot act independently, without taking into account the action of others. All branches of powers should mutually complement each other, between themselves they should keep the necessary connection and mutual agreement during making decisions. In this manner, the single “political organism” is created, which will function with the greatest coefficient of the useful action for the good of all society.

The constitutional division of powers in the text of the Romanian Basic Law of 1866 became the necessary condition of the development and the existence of the legal state and the civil society. Such severability foresaw and guaranteed the existence of legality and regularity in the country, guaranteed political freedom to the citizens and prevented the concentration of all fullness of power in the hands of one branch of power, the state body or the monarch directly, and this in turn ensured the proper protection of rights of human and citizen and laid the basis of the existence of pluralism in the Romanian society at that time.

So, the Basic Law proclaimed the principles of state sovereignty, succession of the throne, inviolability of the monarch, representative government, principles of the division of powers,

responsibility of ministers, etc. [9, p. 124]. According to the modern Romanian practitioners, the Constitution of 1866 should be interpreted "as the valid act of emancipation, in the sense that the nation has the exclusive right to review its fundamental law, which it has developed" [4]. The Constitution of 1866 was valid until March 29, 1923, when the new changes were made to it, in accordance with the requirements of the time. They mainly related to the organization of the activities of the higher state authorities and expanded the rights and freedoms of the Romanian citizens [11, p. 16].

We emphasize once again that the Romanian constitutionalism of the second half of the 19th century was developed in rather difficult conditions. Against the background of the weak economic power of the bourgeoisie and the middle class, which, moreover, did not have a strong parliamentary representation, there was no need to talk about the cardinal fixation of the democratic norms in the first Basic Law of the country. But even under such conditions, the Constitution was viable from the point of view of state and legal, because the significant changes were made to it only in 1923.

5. Conclusions.

In conclusion, it can be noted that the accepted Constitution in 1866 became the progressive state-legal act for the state-building process of Romania. The necessity to follow its norms gradually made constitutionalism as the form of thinking, which contributed to the further expansion of the democratic rights and freedoms and the development of the democratic views in the country. The law of 1866 established new (legal) bounds for the future development, created normative and legal grounds for the process of renewal of the principality and contributed to the gradual integration of Romania into the system of the European states of the second half of the 19th and early 20th centuries. For the Romanians themselves, the Constitution became the additional stimulus of the national unification into one state.

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