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The Human Rights and Freedoms in Constitution of Romania of 1866

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ABSTRACT

The purpose of the article is the analysis of the provisions of the first Constitution of Romania of 1866 in terms of guaranteeing of Human Rights and freedoms by the state. The article points out that the adoption of the Constitution of 1866 became a fateful state legal act for the entire Romanian people, since it meant a radical change in the ratio of external and internal factors in the state-building process of the Romanian state. To achieve this goal, general scientific and special-scientific methods of cognition were used, in particular, dialectical-legal-comparative, legal-formal. It has been determined that the accepted Constitution in 1866 in terms of guaranteeing Human Rights and freedoms has had a truly liberal character and has become the progressive state-legal act for the state-building process of Romania; the need to follow the norms of the Basic Law gradually have made constitutionalism as the form of thinking, which has contributed to the further expansion of democratic rights and freedoms and the development of the democratic views in the country.

KEY WORDS: State, Constitution, liberal-democratic reforms, Human Rights and freedoms.

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Los Derechos Humanos y las libertades en la Constitución de Rumania de 1866

RESUMEN

El propósito del artículo es analizar las disposiciones de la primera Constitución de Rumania en 1866 desde el punto de vista de la garantía de los Derechos Humanos y las libertades por parte del Estado. El artículo señala que la adopción de la Constitución de 1866 se convirtió en un acto legal estatal fatídico para todo el pueblo rumano, ya que significó un cambio radical en la proporción de factores externos e internos en el proceso de construcción estatal del Estado rumano. Para lograr este objetivo, se utilizaron métodos de cognición científicos generales y científicos especiales, en particular, dialéctico-legal-comparativo, legal-formal. Se ha establecido que la Constitución adoptada en 1866, desde el punto de vista de garantizar los Derechos Humanos y las libertades, era de naturaleza verdaderamente liberal y se convirtió en un acto legal estatal progresivo del proceso de construcción del Estado rumano; la necesidad de seguir las normas de la Ley Fundamental convirtió gradualmente al constitucionalismo en una forma de pensamiento, lo que contribuyó a una mayor expansión de los derechos y libertades democráticos y al desarrollo de puntos de vista democráticos en el país.

PALABRAS CLAVE: Estado, Constitución, reformas liberales democráticas, Derechos Humanos y libertades

Introduction

The scientific novelty lies in the fact that it has been analyzed comprehensively in it, how there has been a formation of the national legal system in terms of guaranteeing and protection of the personal rights and freedoms on the background of the historical processes of the formation of Romania as a state. It is defined that the actuality of the article is due to the main task of any democratic state to create the sufficiently effective system of the protection of human rights and freedoms, which are built on the principles of legality and equality of everybody before the law. It should be noted that the fixing in Constitution of Romania of 1866 of the socio-legal principles of the building of the state have foreseen all fullness of political, socio-economic, cultural and other rights and freedoms of human and citizen. It is, in turn, contributed to the formation and the unification of the uncoordinated Romanian ethnic group into the single state-political nation.

During the second half of the 19th century. the Romanian political leadership significantly intensified state-building processes, which, on the one hand, were aimed at the establishment of Romania as a sovereign state, and on the other hand, at the unification of Romanians into a single political nation. One of the most important tasks faced by the then ruling elite of the principality was the formation and development of the legal foundations of the state. First of all, this concerned the adoption of the Basic Law of the country, which some Romanian researchers call "a preamble to national independence and the affirmation of Romanian identity" (Banciu, 2018, p. 27).

1. Materials and methods

The aim of the study. To investigate the peculiarities of the formation of constitutionalism in Romania. To determine the system of rights and freedoms of Romanian citizens guaranteed at the constitutional level.

Research methodology. The complex nature of the work with its combination of legal and social aspects led to a complementary approach to the choice of scientific research methods. When choosing the appropriate scientific tools, the authors took into account its compliance with such criteria as efficiency, objectivity and reliability. A number of approaches were used during the research: dialectical, descriptive, formal-legal and comparative-legal.

2. Analysis of sources and recent research

A separate study that would comprehensively examine the development of the constitutional foundations of the formation of Romania during the second half of the 19th century is absent in Ukrainian historical and legal science. Certain aspects related to the study of state authorities and management of Romania at the end of the 19th and the beginning of the 20th centuries are presented in the works of I. Toronchuk. Russian historians mainly considered the state mechanism of Romania in this period superficially. In most of their works, they analyzed the historical aspects of the formation of the principality based on the results of the revolutionary events of 1848-1849. This page of Romanian statehood presents the works of V. Vynogradov. It is quite obvious that the process of development of constitutionalism has attracted and continues to attract the

attention of Romanian historians and lawyers. In particular, various aspects of the "constitutional" history of Romania are presented by the works of such authors as: A. Bancu, I. Negru, T. Maiorescu, A. Ungurianu, M. Enash, M. Safta, and others.

3. Results and discussion

The evolution of constitutionalism in Romania has undergone a long period of development from the first Basic Law of 1866 to the current Constitution of 1991 with changes in 2003. During this time, the Constitutions have been repeatedly changed and supplemented, taking into account the historical conditions of the state's existence. This happened in 1923, 1938, 1948, 1952 and 1965. At certain historical stages, in particular, during the communist regime, concepts, principles and guarantees of basic human rights and freedoms were relegated to the "second" plan in the state administration system. But the restoration of the democratic form of government in the country and the adoption of the current Constitution proved not only the existence of the Romanian constitutional identity, but also the supremacy of law and the rule of law in the direction of observing and guaranteeing basic human rights and freedoms.

Before proceeding to the analysis of the provisions of human rights and freedoms in the first Romanian Constitution, it should be briefly recalled in which internal and foreign political conditions it was adopted.

In general, the very idea of the national state revival of the Romanian ethnos was actively developed during the 18th century. A prominent role in this process belonged to representatives of the so-called "Transylvanian school" S. Miku-Klein, G. Shinkai, P. Mayor. It was they who scientifically substantiated and promoted the idea of Romanian equality and their establishment as a "historical nation" (Vinogradov 2001, 396). Gradually, the idea of a state political union of Romanians found support and supporters in the broad circles of Romanian society at that time. Moreover, as of the 1830s, all possible internal political prerequisites for the political and state unification of Romanians within one principality were laid. The "Spring of Nations" of 1848-1849, as an external factor, also contributed to unifying tendencies in the Romanian environment. In March 1849, the outstanding Romanian historian and one of the leaders of the revolutionary movement in Wallachia and Transylvania, N. Belchescu, addressed the Romanians and noted: "There can be no

happiness without freedom, there can be no freedom without strength, and we, Romanians, cannot become strong until we unite into a single political body" (Vinogradov 2001, 416). He emphasized that the Romanians faced an extremely difficult and long-term task of creating their own state. According to him, the revolution of 1848-1849 for Romanians has not yet ended, it has only begun (Vinogradov 2001, 416).

Over the time, the revolutionary slogans of the revival of the Romanians were embodied in the practical programs of various political parties and figures. One of these national leaders was M. Kogalniceanu, whose name is largely associated with the creation of Romania as a state (Padurariu, 2013). M. Kogalniceanu wrote the work "Wishes of the National Party of Moldova" in which a program of reforms and specific actions aimed at the creation of a single Romanian principality (Kogalniceanu) was outlined in 34 points.

On January 5, 1859, A. Cuza was elected as the master of Moldavia. On January 25 of the same year, he also became the master of Wallachia, thus uniting both principalities in a personal union (Negru 2014, 115). De jure, it was A. Cuza who became the first monarch of the united Romania during 1862-1866. Together with the head of the government, M. Kogalniceanu, during 1863-1865, the Romanian ruler managed to implement a number of liberal and democratic reforms in the principality. In particular:

1. An agrarian reform was carried out and a partial secularization of monastic lands took place;
2. Military and judicial reforms were carried out (criminal and civil codes were adopted);
3. Administrative management system was reorganized;
4. Changes also took place in the education system (the adopted law on education) (Negru 2014, 115-117).

The reform of the electoral system in 1864 was important for the formation of the constitutional foundations of the Romanian state, as a result of which the age and property requirements for citizens who could participate in voting were reduced (Ivănescu 2001, 315).

In general, the reforms initiated by the monarch and supported by the government were aimed at the modernization of Romanian society and the state-management structures of the time. According to some Romanian researchers, these processes of modernization of society and transformation of state institutions during the time of A.

Cuza "allowed the intensification of the process of European integration of Romania" (Banciu 2018, 26). At the same time, despite their moderate and rather limited nature, the reforms were opposed by both conservative and liberal parties and led to the emergence of strong political opposition in the principality.

It should be noted that the preparation and adoption of the first Romanian Constitution took place against the background of an extremely difficult international political situation in Europe, in particular on the Balkan Peninsula. In general, the "eastern question" or "the question of the Danube principalities", according to the expression of the eyewitnesses of those events, was similar to "... the sword of Damocles, in relation to the peace and peaceful development of European society" (Eastern question in its present phase 1864, 449). The influence of Paris on Romania was strengthened due to the fact that in his reform of public administration, A. Cuza took the model of the French Empire as a basis.

Instead, the Austrian Empire negatively perceived the processes of Romania's integration into a single state. Firstly, Vienna sought to extend its influence on navigation on the Danube waterway through Romania. Secondly, a significant part of Romanians lived in the territory of Transylvania, which at that time was an Austrian province, and therefore the Romanian unification movement could also cover other lands of Austria.

England perceived the changes in the territory of the Principality more cautiously, since directly opposing the Romanians in their desire for independence would mean acting in favor of Austria and Russia. On the other hand, the existence of a strong and unified state in the Mediterranean basin with the potential to have a fleet was not included in the plans of the English monarchy.

For the Ottoman Empire, the process of creating a unified Romania posed a direct threat to state interests, as other peoples enslaved by the Ottomans could take it as a model for their own national revival. The Russian monarchy perceived the integration processes on the territory of the principality in the same ambiguous way. Fearing to lose influence on the territory of the Danube principalities, the tsarist government wanted the Moldavian-Wallachian revolution to be suppressed by the Turks. That is why Emperor Nicholas I and Minister of Foreign Affairs K. Nesselrode repeatedly offered the sultan to restore "lawful order". In turn, the Ottoman Empire also hoped to use the revolution to undermine the position of the Russian monarchy in the region (Vinogradov 1990, 213). As a result, according to the words of the modern Russian historian V. Vinogradov, the gradual

destruction of the Ottoman state did not lead to a strengthening, but rather to a weakening of Russian positions in South-Eastern Europe (Vinogradov 2003, 7).

In general, a combination of both internal and external factors caused drastic changes in the country. On the night of February 10-11, 1866, the so-called "terrible coalition" (Monstruoasa coalitiie - Romanian) staged a coup d'état. On the morning of February 11, the Monitorul Oficial published A. Kuz's resignation from power. The former ruler soon left the territory of the principality (Mairescu 1925, 8). Soon, a three-member Regency Council was formed in Bucharest - one representative from liberals, conservatives, and the army (Drozdov 2009, 91). The council included N. Gulescu (representative of Muntenia), L. Katarzhiu (representative of Moldova) and artillery commander Colonel N. Haralambie. The interim government was headed by I. Hick (Sulyak 2009, 33).

It is worth noting that the changes in the political leadership of the country did not affect the desire of Romanians to create a sovereign state. On the initiative of I. Hick, a parliament was convened, which declared Philip the Belgian Count of Flanders as the prince of Romania, but the latter refused the proposal. On April 28, the Chamber of Deputies was convened and ratified the election of Karol Hohenzollern-Sigmaringen as the new ruler of the principality (Drozdov, 2013, p. 240). On May 10 (22), he took an oath before the Parliament of Romania (Giurescu, 1939, p. 6) (*in October 1866, Karol I received a firman from the Ottoman Empire recognizing him as the prince of Romania - author*). This act confirmed the determination of the intentions of the Romanian political elite to intensify the process of creating an independent state, relying on a monarch who came from Western European dynasties. On the other hand, according to the expression of V. Vinogradov, at that time political situation in the principality, "constitutional monarchy as a state system that ensured social stability, "order" in society and excluded the struggle and threat for the highest position in the country was attractive" (Vinogradov 2016, 15).

Looking ahead, it will be appropriate to note that Karol I lived up to the expectations placed on him by the elite of the principality. The famous Romanian statesman T. Mairescu characterized the ruler as follows: "The tenacity with which the prince pursued his goal, his persistence and patience, unwillingness to flatter, steadfast performance of daily duties, refusal of intrigues and services of henchmen, from any interference in personal life, exemplary family life - all these character traits sharply

distinguished him from previous rulers, they were his personal qualities" (Podgoreanu 2006, 9).

So, in such historical conditions, the Basic Law of the Principality was adopted. 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 (Safta 2018, 123). The Basic Law was promulgated on July 1 of the same year by the ruler of the United Principalities of Wallachia and Moldavia, Karol I (Ungureanu, 2009, p. 133). He took an oath to abide by the Constitution and laws of the country (Ștefan 2020, 75).

The adoption of the Constitution became a fateful state legal act for the entire Romanian nation, as it meant a radical change in the ratio of external and internal factors in the state-building process of the principality. By adopting the Basic Law, the Romanian political leadership clearly demonstrated its desire to create a sovereign state with defined borders (territory), population, the presence of state authorities and management, sovereignty, the ability to issue laws and conduct international policy (Safta 2018, 123). The first Romanian Basic Law consisted of eight chapters (Curpăn 2014, III).

Chapter I of the Basic Law "On the Romanian Territory" contained fundamental constitutional and state prescriptions for the creation and development of the country. Legally, the official name was fixed. Thus, Art. 1 proclaimed: "The united Romanian principalities form an indivisible state and is called Romania" (Negru 2014, 119). Art. 2-4 of the Basic Law determined that the territory of Romania is inalienable and inviolable, with its own administrative and territorial division and organization. Only the national regulatory framework (Constitutiunea Romaniei din 1866) was to function throughout the territory of the principality. Thus, the legal fixation of such foundations of state building became a kind of Romanian response to the foreign political opposition, which sought to keep the principality either in its immediate "zone of influence" or to preserve the "status quo" in the arrangement of forces in the region (Enache, 2016).

Section II of the Constitution entitled "On the Rights of Romanians" deserves special attention, since that the constitutional rights and freedoms of a person and a citizen of Romania at that time were enshrined there (Andia 2005, 510). At the same time, it was noted that the Constitution and other laws of the state in terms of guaranteeing political

rights to citizens are a necessary condition for the existence and realization of the corresponding rights (Article 6).

Therefore, the rights and freedoms of Romanian citizens, which were provided for by the Basic Law of that time, can be conditionally divided into three groups.

The first of them is the personal rights and freedoms of a person (civil, natural) directly related to the very essence of a person as a natural person:

- 1.1. The right to freedom of conscience (Article 5);
- 1.2. The right to acquire and renounce Romanian citizenship (Articles 7, 9);
- 1.3. It was noted that there are no class and social differences on the territory of the country, all Romanians are equal before the law, but are obliged to work for the benefit of the state (Article 10);
- 1.4. All foreigners who lived on the territory of Romania were guaranteed protection of both personal and property rights by the state (Article 11);
- 1.5. All former privileges, benefits and class monopolies were abolished (Article 12);
- 1.6. Individual freedom was guaranteed (no one could be held criminally liable, except in the cases provided for by law; no one could be detained or arrested, except in cases of a reasoned court order, which should have been notified at the time of the arrest or no later than 24 hours after the arrest (Articles 13-14);
- 1.7. The inviolability of the home was declared (invasion of the premises, searches had to be duly formalized according to the procedure defined by law) (Article 15);
- 1.8. The death penalty was abolished (Article 18), with the exception of certain cases provided for by the current Criminal Code (Toader 2017, 207);
- 1.9. The Constitution guaranteed every citizen freedom of thought and speech; the concept of censorship was abolished; publication of materials in the press did not require permission from the authorities; no publication could be banned. At the same time, it was stipulated that each author/publication should be responsible for its material" (Article 24);
- 1.10. The right to secrecy of correspondence and telegraphic messages was proclaimed (Article 25).

The second group is the political rights and freedoms of Romanian citizens, related to the relationship between a person and the state, a person and state authorities, a person and political parties and other state and political institutions of the state and society:

2.1. The right to freedom of press and assembly was proclaimed (Article 5);

2.2. Only Romanian citizens could hold state, civil, and military positions (at the same time, it was allowed that foreigners could also hold relevant positions, but in exceptional cases provided for by the current legislation) (Article 10);

2.3. Freedom of conscience and religion was guaranteed (Article 21). The state undertook not to interfere in the internal affairs of the Romanian Orthodox Church. In this context, it should be noted that it ment "pastoral component" of its activity, since at the same time the state leaders of Romania were actively secularizing church-monastery lands in order to solve the "peasant" issue (Kurganov 1899, 238). On December 4 (16), 1872, a new law was adopted on the structure of the Romanian church, which was to be under the administration of the General National Synod (Kurganov 1899, 666–672);

2.4. The right to peaceful assembly (without weapons) was proclaimed. In some cases, such actions had to be agreed with state authorities and relevant law enforcement structures (Article 26);

2.5. Romanian citizens were guaranteed the right to association (Article 27). The specific mechanism for the formation of political parties or political organizations was regulated by the relevant legislation;

2.6. Citizens were given the right to individually or collectively appeal to state authorities by submitting petitions (Article 28);

2.7. All civil servants were subject to administrative or criminal liability for committed offenses (Article 29);

2.8. The Constitution prohibited the extradition of political refugees who were on the territory of the principality (Article 30).

The third group is closely related to the economic, socio-cultural and family rights of Romanian citizens:

3.1. Illegal confiscation of property was prohibited (Article 17) (Negru, 2014, p. 121);

3.2. Private property was declared inviolable (Article 19). The constitution defined that all property is "sacred and inviolable". No one could be subject to expropriation, except in cases of public useful necessity on legal grounds and after fair prior compensation (Constitutiunea Romaniei din 1866). The "reasons" of expropriation for public needs were the laying and maintenance of communications and sewerage, the construction of defense complexes (Banciu 2018, 26). In the same article, it was determined that only "special laws

were supposed to regulate the very procedure and order of expropriation" (Safta 2012, 109). It is worth noting that in the context of the new agrarian reform announced in the country, this article primarily protected the interests of large landowners;

3.3. Financial compensation for lost land or other property was guaranteed (Article 20);

3.4. Documents certifying the marital status of the spouses had to be drawn up by state authorities (Article 22);

3.5. The state guaranteed its citizens free education (Article 23) (Ungureanu, 2009, p. 133). It should be emphasized that at the same time, a state program for opening primary schools throughout the territory of the principality was announced (education in state schools was supposed to be free, primary education was compulsory, all "educational" issues were to be regulated by a special law) (Article 23).

In general, the Basic Law of the principality proclaimed the principles of state sovereignty, hereditary succession, inviolability and exemption from responsibility of the monarch, representative government, principles of separation of powers, responsibility of ministers, etc. (Safta 2018, 124). According to modern practicing Romanian judges, the Constitution of 1866 should be characterized "as a valid act of emancipation, in the sense that the nation has the exclusive right to revise its fundamental law, which it has developed" (Enache, 2016).

Conclusions

Romania's constitutionalism dates back to 1866. Over the period of its existence, the basic law of the state has been repeatedly amended and supplemented, which had a significant impact on the development of civil society.

Countries that had their own geopolitical interests in this territory had a significant impact on the formation of Romania as a separate state. These countries include: France, the Austrian Empire, England, Russia, and the Ottoman Empire. Nevertheless, Romania became an independent state, and an important element of this was the adoption of the Constitution of 1866. It is worth noting that Constitution of 1866 was valid until March 29, 1923, when new changes were made to it, in accordance with the requirements of the time. They mainly related to the organization of activities of higher state authorities and

expanded the rights and freedoms of Romanian citizens (Toronchuk, 2009, p. 16). According to V. Vynogradov: "The Constitution of 1866 was not designed for the growth of Romanian society, but, as events have shown, it was designed for growth. The development of society flowed into a ready-made legal norm" (Vinogradov, 2016, p. 16). We emphasize once again that the Romanian constitutionalism of the second half of the 19th century developed in rather difficult conditions. For example, against the background of the weak economic power of the bourgeoisie and the middle class, which, moreover, did not have strong parliamentary representation, there was no need to talk about the radical adoption of democratic norms in the first Basic Law of the country. But even under such conditions, the Constitution of 1866 proved to be viable from the point of view of state law, since significant changes were made to it only in 1923, that is, in 57 years.

The Constitution of Romania, at the highest level, enshrined, in order to guarantee, first of all, personal human rights and freedoms (civil, natural), directly related to the very essence of a person as an individual. Another novelty for the society of that time was the consolidation of political rights and freedoms of citizens related to relations between an individual and the state, an individual and public authorities, an individual and political parties and other state and political institutions of the state and society, and the definition of their list. The third group of citizens' rights at the constitutional level includes economic, socio-cultural and family rights.

The Basic Law of 1866 established new (legal) boundaries for future development, created the regulatory and legal basis for the process of renewal of the principality and contributed to the gradual integration of Romania into the system of European states of the second half of the 19th and early 20th centuries. For the Romanians themselves, the Constitution became an additional incentive for national unification into one state.

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