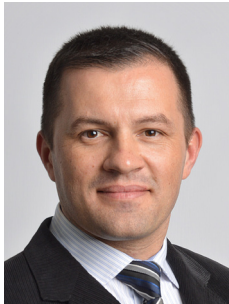


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THE 1938 CONSTITUTION – THE NEW POLITICAL AND TERRITORIAL-ADMINISTRATIVE REALITY IN ROMANIA

During the 1930s in several countries of the world, dictatorial regimes were established. At the same time, international relations began to tense up. In Romania, the rise of right-wing extremism had determined King Carol the Second to establish an authoritarian regime. It was a result of the coup d'état on the night of February 10-11 in 1938. Afterwards the royal decree no. 856 has been issued, which had established a curfew to restrict citizens' freedom and rights. Soon after, on February 24 followed the adoption of the new Constitution in a plebiscite. It was an unconstitutional situation. The new Constitution, which was valid for almost two and a half years, established the authoritarian nature of the new political regime. The King held both legislative and executive power. Separately, through an administrative organization law (entered into force on August 14, 1938), was carried out a new territorial-administrative division of Romania. It was the last division from the interwar period. The authoritarian character of the regime was reflected also in the new law, so that a Royal Resident controlled the ten regions, into which Romania was divided.

Keywords: Constitution, Romania, Carol the Second, territorial-administrative reform, authoritarian regime.

CONSTITUȚIA DIN 1938 – NOILE REALITĂȚI POLITICE ȘI TERRITORIAL-ADMINISTRATIVE DIN ROMÂNIA

Pe parcursul anilor '30 ai secolului trecut, în mai multe țări ale lumii s-au instaurat regimuri dictatoriale, iar relațiile internaționale au început să se tensioneze. În România, ascensiunea forțelor de extremă dreaptă l-au determinat pe regele Carol al II-lea să instaureze, în urma loviturii de stat din noaptea de 10 spre 11 februarie 1938, un regim autoritar. Atunci a fost emis decretul regal nr. 856, care a instituit starea de asediu în toată țara, cu limitarea drepturilor și libertăților cetățenești. La scurt timp, în ziua de 24 februarie, a urmat adoptarea noii Constituții prin plebiscit, ceea ce era anticonstituțional. Noua Constituție, care a fost valabilă aproape doi ani și jumătate, a consfințit caracterul autoritar al noului regim politic. Regele deținea atât puterea legislativă, cât și puterea executivă. Separat, printr-o lege de organizare administrativă (intrată în vigoare la 14 august 1938),

a fost realizată o nouă împărțire teritorial-administrativă a României – ultima din perioada interbelică. Caracterul autoritar al regimului s-a văzut și în noutatea acestei legi, și anume în cele zece ținuturi în care a fost împărțită România, fiecare în frunte cu câte un rezident regal.

Cuvinte-cheie: Constituție, România, Carol al II-lea, reformă teritorial-administrativă, regim autoritar.

1. INTRODUCTION.

The interwar period was one of the most politically and diplomatically destructive periods in history. The first interwar decade was marked by intense diplomatic activity - creating the League of Nations, holding international conferences, concluding non-aggression pacts. The initiative was held by the victorious powers, who promoted collective security. On the domestic level, in most European countries, liberal-democratic principles were implemented. In the 1930s, the initiative in the arena of international relations was taken over by the revisionist countries, and the Versailles system began to falter. Authoritarian regimes have been installed in several European countries (Italy, Hungary, Germany, and Spain). This political-diplomatic transition was largely determined by the world economic crisis of 1929-1933, which, in addition to negative socio-economic effects, generated instability and a radicalization of political life in a number of countries of the world. Among them also was Romania, where King Carol the Second established the regime of personal authority.

2. METHODOLOGIES.

Taking into account the degree of research on the topic, when preparing the article we were guided by the principle of objectivity, in other words, the events were analyzed impartially and without subjectivity in presentation and interpretation. When using documentary sources, we applied the principle of ranking the sources – ancient documents had a special importance, priority, compared to the other historical sources - memoirs, testimonies, etc. In addition, the principle of dialectics was applied – processes, events, facts were examined in the sequence of their production, explaining cause and effect.

3. RESULTS.

3.1. Establishment of the regime of King Carol the Second.

Towards the end of the 1930s, the political situation also became complicated in Romania. "Democracy appeared as an outdated form of government" [10, p. 228]. At the end of January 1938, one of King Carol II's closest advisers, Armand Călinescu, told him that "the country is sick" and the solution was "to put the parties on vacation", by the immediate establishment of a royal dictatorship. Other leaders proposed to the king the establishment of a government of national union [11, p. 100-101]. The rise of extreme right-wing forces, but also the inability of the democratic parties to govern, led King Carol the Second to establish an authoritarian regime, following the coup d'état from the night of February 10 to 11, 1938. Thus, the regime of parliamentary democracy was replaced by that of authoritarian monarchy.

Immediately, the government headed by Patriarch Miron Cristea was inaugurated and there has been issued a royal decree no. 856 of February 11, 1938, establishing a state of siege¹ throughout the country, having the purpose to restore order ("the higher necessity to ensure public tranquility and State order"); institutionalization of the new regime and the establishment of absolute control over the entire society and political organizations, primarily targeting the Iron Guard. In art. II of the decree it was mentioned that "all the powers assigned by laws and regulations, in everything related to the maintenance of public order and the se-

¹ After the strike at the Grivița Workshops in Bucharest, the "Law for authorizing the state of siege" was promulgated (February 4, 1933). According to it, the government could decree, if necessary, a state of general or partial siege, for a period of six months. After the intensification of the activities of the extreme right, the new laws regarding the establishment of the state of siege were adopted (on March 16, 1934 and on March 15, 1937).

curity of the State, pass entirely into the hands of the military authorities. The police and general security duties of the State will be exercised under the orders of the Ministry of the Interior". The military courts acquired powers to judge much more crimes and misdemeanors provided by the Criminal Code. The military authorities had the right: to conduct "searches wherever and whenever it is necessary"; to order "the deposit of arms and ammunition and to proceed with their search and recovery"; to censor the press and stop the appearance of any publications, news or articles; to prohibit or dissolve any gathering, regardless of the number of participants and the place of the meeting. Art. IV provided that the state of siege would be lifted only when deemed necessary [5, p. 2].

New county prefects were immediately appointed from among senior officers (active) and the convening of the electoral body was revoked [9, p. 42].

In specialized literature, the regime established by Carol the Second is called "regime of monarchical authority" [10, p. 228], royal dictatorship [11, p. 101], and in communist historiography - royal dictatorship, equivalent to "the establishment of fascist rule in Romania" [12, p. 191].

3.2. The 1938 Constitution.

Considering the political situation created, in the meeting of the council of ministers on February 12, 1938, chaired by Carol the Second, it was decided, among other things, to draw up a new Constitution of the country [3]. The king appointed a commission to draft the Constitution, which included Istrate Micescu, Armand Călinescu, Constantin Argetoianu, Gheorghe Tătărescu and Mircea Cancicov [2, p. 75]. Already on February 20, 1938, the king issued a proclamation by which he presented the new Constitution to the Romanian people [8, p. 2-10], and on February 24, the draft Constitution was submitted for approval by plebiscite (it was the first Romanian Constitution submitted to a plebiscite): of the 4,303,064 voters, 4,297,581 were "pros" and 5,483 "cons" [6, p. 2]. Participation in the vote was mandatory (ab-

sence was fined by 1,000 lei), and the citizens' vote was not direct and secret, but expressed by raising their hands in public meetings or by verbal declaration in front of the polling station. Consequently, the result of almost 99% of the votes in favor of the Constitution was obtained; which was specific to authoritarian and totalitarian regimes. The act of organizing the plebiscite was unconstitutional, because it was not provided for by the 1923 Constitution [2, p. 76-77].

Thus, on *February 27, 1938, the Constitution has been promulgated* in a ceremony held at the Royal Palace, in the presence of all members of the government [2, p. 76], and on the same day it entered into force, being published in the "Monitorul Oficial" [6, p. 5-25].

From a structural point of view, the Constitution was similar to the previous ones - it had eight titles and 100 articles (with small exceptions, even the names of the titles were similar).

Title I contained provisions similar to those in Title I of the 1923 Constitution, with the exception of the article on the administrative organization of the country (by counties and communes), which was previously missing. The authors of the Constitution left to the future administrative organization law (entered into force on August 14, 1938) the administrative division of Romania, the type, number and size of the territorial-administrative units, the attributions of the administrative bodies, etc.

Already in title II - "On the duties and rights of the Romanians" - one could see the authoritarian character of the Carlist fundamental law, considering that the "Rights of the Romanians" (chapter II) were placed after the "Duties of the Romanians" (chapter I). According to art. 4, all Romanians, regardless of ethnic origin or religion, were obliged "to consider the Motherland as the most important basis of their purpose in life" and to contribute to the defense of its territorial integrity and independence, to fulfill all the obligations established by law. No one could be absolved from his civil and military obligations, public or private, for religious or other reasons. The equality of all citizens before the law was declared, but the

citizens, in turn, were obliged to obey and respect it. No social discrimination, propagation of the change in the form of government, class struggle, sharing or distribution of other people's wealth was allowed. Political propaganda through the church (regardless of religion), the activity of political associations based on religion, the taking of oaths, apart from those provided by law, were prohibited. Any citizen who entered the service of another state, without the approval of the Romanian government, or benefited from the protection of another state, was losing his Romanian citizenship. These last provisions were directed against the Legionary Movement.

Art. 10 provided for freedom of conscience (widely regulated in art. 19), work, education (primary education was compulsory and free in state schools – art. 21), press, assembly (in public places this freedom was subject to police laws – art. 24), of association (without the right to be legal entities – art. 26) and others, which stemmed from the laws in force. In separate articles, individual freedom was guaranteed (art. 11), the inviolability of the domicile (art. 14), freedom of expression, within the limits established by law (art. 22), confidentiality of correspondence (art. 23), of petitioning (art. 25). The death penalty could only be applied during wartime, according to the code of military justice. But here it came with an addition, namely that the government was vested with the right to decide the application of the death penalty in peacetime, in the case of attacks on the king, members of the royal family, foreign dignitaries, as well as in cases of robbery with murder and political assassination (art. 15).

Property of any kind was declared inviolable and guaranteed. The punishment with the confiscation of wealth (another innovation of the Carlist fundamental law) could only be applied in cases of high treason and embezzlement of public funds. Expropriations could only be made for reasons of public utility and only after prior compensation (art. 16). Mining deposits and any underground resources were state property (art. 17).

Only Romanian citizens could hold public, civil and military dignities, considering the

“majority and state-creating nature of the Romanian nation” (art. 27).

Title III contained provisions regarding the powers in the state. The king was declared the “Head of the State” (art. 30). The legislative power was exercised by the king, through the bicameral Parliament (Senate and Assembly of Deputies) and not together with the Parliament, as provided for in the 1923 Constitution. The king sanctioned and promulgated laws (without the royal sanction the law was not valid), but only after it was discussed and voted by the majority of deputies and senators. The legislative initiative belonged to the king, the Parliament having the right to propose “only laws in the public interest of the State” (art. 31), which constituted a considerable restriction of the Parliament's right of legislative initiative. Executive power belonged to the king, which he exercised through the government (art. 32). The authorized bodies exercised judicial power. Court decisions were pronounced by virtue of the law and executed in the name of the king (art. 33).

Art. 34-47 contained provisions regarding the king, which were broadly similar to those in the 1923 Constitution. An additional prerogative was that the king could issue decrees with the force of law between sessions of Parliament or when Parliament was dissolved, and the decrees that had to be ratified by Parliament at its first session (art. 46).

Art. 48-64 contained provisions regarding the legislative power. Art. 61 and 62 established new conditions for voters and candidates for the Chamber of Deputies: they had to be at least 30 years old, and the voters had to practice an activity in agriculture or “manual work”, commerce or industry, “intellectual occupations”. On the other hand, no condition was provided for the candidates who had to be elected to the Senate. It should be emphasized that raising the age of voters and candidates to 30 was, first of all, an anti-legionary measure, aimed at excluding youth from political life and, respectively, the annihilation of the Legionary Movement and its electoral weight [2, p. 77].

According to the Constitution, a new electoral law had to be adopted, which would

establish the electoral constituencies, and the deputies to be elected based on the uninominal ballot (which was a first in the history of Romanian electoral law), for a six-year mandate. Thus, the law established the number of deputies for each constituency.

The Senate was made up of senators appointed by the king (a new category of senators), senators by right (the heir to the throne, from the age of 18; all princes of the royal family, who have reached the age of majority; the patriarch, metropolitans and bishops of the Romanian Orthodox churches and Greek-Catholic; one leader of the confessions recognized by the state; senators by law in office until the promulgation of the Constitution) and senators elected by mandatory, secret vote, expressed by uninominal ballot. The proportion of appointed senators was half of the elected senators. The mandate of the senators was for 9 years. *De jure* senators were losing their mandate with the termination of the respective quality or dignity. The seats of the elected senators were renewed once every three years, in the proportion of 1/3.

Art. 65-71 contained provisions relating to the government (called the "council of ministers"). It was made up of ministers and state undersecretaries. Ministers exercised power on behalf of the king and were politically responsible only to the king. Only the person who held Romanian citizenship for at least three generations could be appointed to the position of minister. Exceptions to this condition were the people who earlier were ministers. Likewise, ministers could not be members of the royal family.

The king and each of the two chambers of the Parliament could demand the investigation and prosecution of the ministers. The Court of Cassation and Justice could only judge ministers, for crimes and misdemeanors committed in the exercise of their duties; outside the exercise of the function, they were judged according to the rules of common law. The start of the prosecution of the ministers had to be approved by the Senate and the Assembly of Deputies, with 2/3 of the votes of those present.

The former ministers of justice could not

practice law for one year after resigning from office, and the other resigned ministers, for the next three years, could not be part of the boards of directors of the companies with which they concluded contracts.

Art. 72 referred to the Legislative Council, which had to function based on the organic law in force. Art. 73-78 contained provisions regarding the judicial power. It was emphasized that no jurisdiction could be established outside the law; it was not allowed to establish extraordinary commissions and tribunals for civil or criminal trials, or for the trial of certain persons. Instead, the juries were abolished. The reason was that the jury had acquitted political assassination cases in the past. For example, members of the Legionary Movement were several times acquitted in such cases, of assassination. The jury at that time did not condemn the intention of the assassination, but only the act, did not condemn the initiator, but only the perpetrator [2, p. 71].

The provision regarding the existence of a single Court of Cassation and Justice, which was the only one in law to judge the constitutionality of laws, remained valid. Judges were immovable, but immovability was to be regulated by a special law (which was to be adopted no later than six months after the promulgation of the Constitution). Until then, they were to be disciplined only by royal decrees.

A single and short article (art. 79) referred to the county and communal administration, which stipulated that "Administrative institutions are established by laws". The other provisions - "Regarding the Finances", "Regarding the Army", "General Provisions", "Revision of the Constitution", "Transitional and Final Provisions" - were almost the same as those in the previous Constitution, from 1923. The exception was the fact that, in the chapter "Regarding the Finances", in addition to the Court of Accounts, a higher control body was established, subordinated to the prime minister. Another exception was that the revision of the Constitution could only be done at the initiative of the king and with the prior consultation of the two chambers of the Parliament.

At the end of the text of the Constitu-

tion, published in the "Monitorul Oficial", the document was inserted, verifying the results of the national plebiscite of February 24, 1938, for the adoption of the Constitution: out of the 4,303,064 voters, 4,297,581 voted "pros" and 5,483 "cons" [6, p. 23].

The constitution was valid for almost two and a half years. Carol the Second suspended it on September 5, 1940, by royal decree no. 3,052, and the Legislative Bodies were dissolved [7, p. 2].²

3.3. Other political and legislative regime strengthening measures.

In order to keep the prominent personalities of the country close to the throne, the idea of setting up a council next to the king, which would oversee the government's activity, was launched. Thus, on March 30, 1938, the decree establishing the Crown Council was published, as a permanent body with an advisory role, made up of members ("royal advisors") appointed by the king [10, p. 240]. King Carol the Second categorically declared for the prohibition of political parties and on March 30, 1938, the decree-law on the dissolution of party organizations was adopted. Thus, a fundamental element of the democratic regime and modern society was liquidated. Alternatively, the sovereign decided to establish a single party, made up of the former groups that supported him before February 10 [10, p. 241] (among them there were: The Agrarian Party of C. Argetoianu, The Romanian Front of Al. Vaida-Voivod, N. Iorga's Nationalist-Democratic Party, The Liberal Group of Gh. Tătărescu, The National-Peasant Group of A. Călinescu, etc. [10, p. 245]). On December 16, 1938, the National Renaissance Front was established, as "the only political organization in the state". [10, p. 255] The king allowed the operation of political organizations belonging to ethnic minorities, which changed their name from "party" to "community" [10, p. 245]. Although the histori-

² On the same day, September 5, 1940, by royal decree no. 3.051, General Ion Antonescu was appointed president of the Council of Ministers and was charged with the formation of the new government. Based on the royal decree no. 3,053 of the same day, September 5, 1940, General Ion Antonescu was appointed President of the Council of Ministers, with full powers to lead the Romanian state.

cal parties – the National-Peasant Party and the National-Liberal Party – were against the Carl-ist regime, they were not subjected to repression because the king knew that they had real political influence [10, p. 245]. Propaganda was mobilized against the old political parties [10, p. 241], to denigrate the Legionary Movement [10, p. 245] and to praise the king and the new regime [10, p. 247].

Following the adoption of the 1938 Constitution, there was a new territorial-administrative reorganization of Romania, decreed on August 14, 1938 [4, p. 2-32], being the last important territorial-administrative modification of the country from the interwar period, including Bessarabia. The law came with territorial and administrative changes.

Along with the old territorial-administrative units - the commune, the locality, the county -, the novelty of the reform consisted in the division of Romania's territory into ten regions (art. 53), each headed by a royal resident, appointed by royal decree for a period of six years. The regions were: Olt (with residence in the city of Craiova), Bucegi (Constanta), Dunărea de Jos (Galați), Dniester (Chișinău), Prut (Iași), Suceava (Cernăuți), Mureș (Alba Iulia), Someș (Cluj) and Timiș (Timișoara).

The largest part of the territory of Bessarabia formed the Dniester region. It included the counties of Lăpușna, Orhei, Tighina and Cetatea Albă: the Bessarabian counties of Ismail and Cahul were part of the region Dunărea de Jos, Bălți and Soroca counties – from the Prut region, and Hotin county - from the Suceava region. Grigore Cazacliu was appointed royal resident of the Dniester region.

After the reform of 1938, there followed a series of mergers and separations of communes, changes of toponyms, establishment and dissolution of networks, relocation of residences, etc.

The law of August 14, 1938 marked the last territorial-administrative transformation of Romania until the territorial losses suffered in the summer of 1940.³ The subsequent re-

³ In 1940, Romania lost the counties of Bessarabia, northern Bucovina and Herța region, the counties of Durostor, Caliacra, Maramureș, Satu Mare, Sălaj, Someș, Năsăud, Ciuc,

organization of Bessarabia took place after its liberation from the Soviet occupation, based on Decree-Law no. 790 of September 3, 1941 "For the Organization of Bessarabia and Bucovina" [1, p. 169-182], by which the administrative "dismantling of the old centralism" was carried out. The old administrative organization by counties, localities and communes was returned, with some territorial changes: parts of Cetatea Albă and Ismail counties formed a new county - Chilia county, with the capital at Chilia Nouă, and Hotin county was included in Bucovina province.

The Carlist regime fell following the territorial losses suffered by Romania in the summer of 1940. Carol the Second abdicated on September 6, 1940, in favor of his son Mihai I. Previously, on September 4, 1940, Carol the Second authorized General Ion Antonescu to form the government, and the following day he invested Ion Antonescu with full powers [7, p. 2]. Thus, Romania continued to remain under a dictatorship regime (then followed by the communist one).

4. CONCLUSIONS.

The rise of far-right formations, as well as the inefficiency of political parties in governing the country, led King Carol the Second to establish a regime of personal dictatorship. Under the pretext of order ensuring, but in re-

ality to establish and keep the situation under control, a state of siege was instituted, which limited citizens' rights and freedoms, instituted censorship. Along with the establishment of the new regime, it was necessary to adopt a new Constitution. It was quickly drawn up and approved (with 99% of the votes), in an anti-democratic way, by a national referendum organized on February 24, 1938. Under the Constitution, the king assigned legislative, executive and judicial power. A new electoral law had to be adopted, according to which the deputies were to be elected based on the uninominal ballot, which was a novelty for the Romanian electoral system. A new category of senators was those appointed by the king. Another novelty of the regime was the establishment of the Crown Council, with an advisory role, made up of prominent personalities of the country, with the title of "royal advisers". Multipartyism was liquidated and the *National Renaissance Front* was established - the only legal political formation. Propaganda was mobilized to denigrate far-right formations and praise the king. The regime also resorted to a new territorial-administrative reform - the last until the territorial losses in 1940 -, the novelty of which was the division of the country into ten regions, each headed by a royal resident, appointed by the king.

Odorhei, Trei Scaune, most of the counties of Bihor, Cluj and Mureș, as well as several villages from Târnave and Brașov; the territory that remained from Cluj county and several villages from Mureș were joined to Turda county, forming Cluj-Turda county (Ion Agrigoroaiei, Gheorghe Palade, Bessarabia within whole Romania (1918-1940). Universitas Publishing House, Chișinău, 1993, p. 12). After the liberation of Bessarabia and northern Bucovina in 1941, the old territorial-administrative organization was returned, with some changes: parts of Cetatea Albă and Ismail counties formed a new county - Chilia county, with the capital at Chilia Nouă; Hotin county was included in Bucovina province.

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