

# **TOTALITARIANISM AND CONSTITUTIONAL INVOLUTION DURING THE COMMUNIST REGIME IN ROMANIA\***

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## **1. From the European spirit of the Romanian constitutional life to the constitutions of the totalitarian regime**

The destiny of Europe, especially the modern one, was determined by the fight of asserting the individual rights and liberties to constitute the nations and the national states governed by the ideas of legality, legitimacy, justice and social fairness. As "the Declaration of the Human Rights" from 26<sup>th</sup> of August 1789 declared that "forgetting or neglecting the human rights are the only causes of the public misdeeds and the governs corruption." To fulfill these grievances meant a very long process, which was not carried out simply and peacefully but brought a series of disfunctional and contradicting moments for many European states and nations. These appeared as violations of the fundamental human rights ignoring the ideas of justice, social fairness and proclaiming the principle of a total obedience of the individuals to the state and the state right.

In this context, the history evolution of the Romanian political and juridical life shows that the forced change of the government in Romania developed improperly the country against the democratic spirit and constitutional and juridical traditions of the Romanian people. It is known that Romania had a democratic-parliamentarian government for a century (1866-1948) but its political power was forcedly and totally imposed by the communist party and considered as "the will of the workers class risen up to the law level". This change decisively brought profound inequalities at the social legal and ethnic level, whose effects have been still observed by the Romanian society until today, owing to the democrat-parliamentarian and constitutional traditions that never disappeared from the Romanian spirituality but rooted and experimented along the national history. The Romanian people have been living a life among the Europe's nations history even if the communist regime marked a certain political, economic, moral-juridical and cultural "distance" from our society in front of the most European countries.

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It is doubtlessly known that the Romanians built a legitimate state and a proper constitutional law in its past bringing in their legal system as in the public and private law, the most known principles and doctrines of the time. They were adapted to their own economical social and cultural specific life and valued, at the same time, the most important traditions that belonged to their usual right, while they permanently asked the national and international right of the nations. Besides, the right is a result of historical and cultural circumstances and conditions of a nation, a “historical product”, and not a “supra-temporal” reality. The right could evolve the space and time and adapts or takes the form of particular various situations becoming a “plurality of national and local rights”<sup>1</sup>. After the law is adapted to different particularities and historical, geographical, social, cultural and national circumstances, it passes from a generation to another by help of traditions and customs. But, at the same time, the **imagination** and **spirituality** of each people as well the features of each historical age print some specific features to the right, which finally show the **legality** of the various national and local rights.

Besides the borrowings and mutual influences among different national law systems, specifically to Europe during the 19<sup>th</sup> century, the existence of a valid “supra-temporal and universal right” could not be accepted as justified during all the social cultural ages and zones. But it could be accepted the existence of a “corpus” of rules, practices and customs that are common for all the national rights (e.g. justice, common-sense, social fairness, rights etc), as well as the general principles regarding the organisation and functioning of the society, the state, the institutions, the protection and guarantee of the individual rights. This “corpus” of rules and legal practices could be met in the constitutional field and the European constitutional life, where each nation uses its imagination and originality to complete the whole picture.

At the same time, we should not neglect the fact that the birth and development of the law and its institutions could not be peacefully fulfilled, but it requires “fight” and an endless struggle. It is the result of the clash of interests and goals followed by different social and political groups that form the society. Consequently, “the fight in the right” and “the goal in the right” are the two vectors that characterise and give a direction to the life of the right, affirmed Rudolph von Ihering, one of the successors of the historical school of right. We can say that the organisations and legal institutions, as well as the political constitutions (which represent only a part of general juridical organisation of a society) are not born and developed peacefully but by conflict, being the result of all the forces that exist in the society framework

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<sup>1</sup> V. G. V. – Right and Life. Notes about the vitality principle of the right. The Foundation for Letters and Arts.



at a given time in history.

The entire history of our constitutional life shows both the values and the traditions of juridical and executive institutions, as well as the limits of their working within the gradual process of developing and declaring the democratic structures of the Romanian society, beginning with the modern age up to the present one. The constitutional life in Romania<sup>2</sup> has carried out as a very sinuous process with **synchronic** functional and evolving elements that lead to settle the democratic-parliamentarian regime with many parties, on the one hand, and, on the other hand, **diachronic** dysfunctional and involving elements that made the democratic regime gradually being replaced by a monocratic totalitarian regime for fifty years. At present, the structures of constitutional democracy have been revived since December 1989.

The constitutional systematisation and encoding, which were previous to the elaboration and adopting of the fundamental constitution from 1866, reveals the roots and the deep traditions of our modernisation and integration inside the European democratic nations. They have significant consequences for the actual evolution of Romania regarding its own historical syncretism. The Romanian society was badly affected by the oriental trauma, especially the Phanariot one, and its modernisation in the synthetic form - begun since the 19<sup>th</sup> century - consisted of an Europeanising mechanism. This phenomenon was firstly developed on the political institutional way. That is why, since the beginning of the modern age, the Romanians have showed their interest for elaboration of some constitutional projects and establishing a constitutional system according to the occidental one. During the long process of our constitutional manifestations, the forms characteristic to the European parliamentary regimes acquire gradually a proper content which is specific for the Romanian realities. Thus, for the Romanians the constitutionality has become a **way of fight** for the national unity and independence.

Thanks to the fundamental document from 1866 which naturally came to continue a link to the previous constitutional evolution<sup>3</sup>, the Romanians achieved a real opening characterised by **liberality**, Romania being the first constitutional state in the South Eastern Europe, while it was still under the Ottoman power, which represented a great national political success. The Constitution from 1866 introduced us among the European states that had a real modern liberal bourgeois regime. It offered Romania the historic role and mission of the Romanian bourgeoisie in order to create democratic governing forms and democratic

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<sup>2</sup> Angela Banciu – The History of the Constitutional Life in Romania (1866-1991). The Press Publishing House, SANSA, Bucharest, 1996.

<sup>3</sup> ICF – The Springs of the Constitution from 1866 (the origins of the Romanian democracy), Bucharest, The Printing House of "Universul" Newspaper, 1934



institutions built on the creative capitalisation of our traditions in this field. The Romanian liberalism, representing the main way of thinking and social politics that brought a dynamic power to the Romanian social life during the 19<sup>th</sup> century, it is vitally integrated into the European liberal trend, which defined and characterised a creative age of ideas and practice to affirm the democracy progress and humanism. Although there are numerous connections and influences or even similarities in the evolution of different forms of the Romanian liberalism, it could not be appreciated as being only a face of the European liberalism, even if since the beginning, as the European one, it appeared and was deeply marked by the idea of liberty along its historical evolution. To Romanians the idea of liberty has a special meaning that has been manifested as the national liberty. That is why the Romanian liberalism had a significantly powerful European feature and its evolution was correlated with the process of the national rebirth of the modern Romania.

Consequently, our integration into the European nations (as it was called at that time) was firstly a spiritual and cultural integration and secondly a political and economic one. Even if during the modern age Romania had somehow a remote position within the plan of the European economic life, as our main theoreticians of the Romanian liberalism Stefan Zeletin and Mihai Manolescu mentioned, the culture and especially its institutions were in strong connection with the European ones. This connection was especially visible in the methods of the legal territorial and institutional organisation. That is why we consider unfair and indefeasible a series of criticism brought to the Romanian liberalism, especially in the legal constitutional field, related particularly to the borrowing feature or even “imitation” which our constitutional settlements would have (as it is the case of the Constitution from 1866) and that would represent a mechanical imitation of those occidental features having as a consequence the birth of some “hybrid” forms of constitutionality and parliamentary, but emptied by any social and political support.

The well-known theory of “form without content” was broadly discussed and frequently mentioned in the cultural and political circles during the last decades of the 19<sup>th</sup> century. Because of the almost backward stage of Romania in comparison with the European states and the rising of huge social problems that were urgently to be solved, it seemed to exist a **contradiction between form and content** between the “legal” country and the “real” one. This view was emphasised by the maintenance of some Balkan-Phanariot practices of fraud and corruption inside our local administration which differ from the valuable and democratic account of the fundamental laws of the organisation and function of the essential European state and administration.



The theory “form without content” had a large meaning according to the literary and artistic movement at the end of the century, but in exchange its action was quickly and shortly undervalued in the political and legal field being gradually abandoned since the first decade of the 20<sup>th</sup> century. The Romanian liberalism could assume a great effort that succeeded in the development of modern Romania, which we might name “the theory of the form creating the content”. According to this theory, adopting and keeping the constitutional structures, the principles of the parliamentary regime, dedicated and experimented in the Western Europe but adapted and stuck to the Romanian specificity, represented the “sine qua non” conditions for the democratic development in Romania. In this light, the economic relations, unlocked by the feudal restrictions that impeded the social modernisation, could only be extended within the frame and with the help of modern political and legal institutions. They were required to play an active role in the transforming and later creation of an economic social account proper to these institutions.

We scientifically rely on the concept that changing of the state’s institutions according to an occidental pattern should have played a vital role in the social and economic progress. Obviously the legal liberalism created the Great Romania, organised our Romanian territory from the legal and lawful point of view comparative with the European one. We could not ignore the **Romanian specific local background** that offered a proper content to the chosen pattern if we think indubitably the fact that the modernisation of the Romanian society was slightly influenced by the European juridical and institutional forms. The **Romanian specific and original** background, which characterised the juridical and institutional infrastructure of the modern Romania and could be found in the form and content of the Constitution from 1866, resulted from this mutual and permanent influence and integration. It appeared some legal “a-cultural” forms that let their print in some Romanian political legal institutions. Otherwise, after the Great Union was fulfilled in 1918, the discussion about the “forms without content” would not have raised within the political legal field because the new democratic structures as the modern institutions too, will be integrated organically into the Romanian society. The liberalism greatly succeeded to settle the universal vote and the agricultural reform in the Constitution of 1925<sup>4</sup> and offered Romania a well-deserved place in the Europe of the Nations.

The Constitution of 1923 was in the structure of the inter-wars democratic spirit after

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<sup>4</sup> A. Banciu – The Constitution Role from 1923 to Consolidate the National Unity (the Evolution of the Constitutional Problem in the inter-wars Romania), Bucharest, The Scientific and Encyclopaedic Publishing House, 1988



it took and developed a series of principles and rules of the parliamentary regime from the juridical Constitution of 1866. The European constitutions after the World War I represented a stable point of view to its elaboration, which was reflected into the ideas debates in the newspapers at that time and into the programme of the different parties and political groups in the enlarged Romania. The “anti-legal” survey activity carried out by the Romanian Social Institute, which organised some public debates on the new state settlement framework, had the role to give the new Constitution powerful juridical foundations. They appeared from the Romanian social political and economic realities, as Nicolae Iorga said “the constitution does not create a society but it is the rightful philosophic expression of development of a whole society”<sup>5</sup>. The political people that achieved the Great Romania were aware of the fact that, besides the juridical system, it was needed a hard working activity of reforming and changing of the mentalities and individual psychology, of education and civic spirit and individual responsibilities. “It is not enough for a constitution to be voted so that a country become a constitutional state and morals rise”<sup>6</sup>.

The Constitution of 1923 played the role of **legal tool** of organising the inter-wars territorial and political life and had a major contribution to the completed unity of the **economic territorial politic and spiritual** systems of the Great Romania. The process of the harmonic consolidation of the whole economic social organism of the Romanian State enlarged on the basis of applying of this constitutional settlement was quickly achieved. At the same time, the fundamental document of 1923 led to the affirmation and consolidation of a **democratic parliamentary liberal regime** which helped the Romanian State to develop in the direction of liberalism and social progress. Romania could be written among the European states with a political system of a long democratic tradition, able to face, for a long time, the right authoritative trends risen in Europe during the ‘30s.

After the elimination of the Constitution of 1923, the territorial settlement of 1938, elaborated by the direct indications of the monarchy, raised mainly the urgent idea of “saving the country” and “preserving the state” but It abandoned most of the part of the democratic principles regarding the organising of the state and society and the practice of the human liberties and rights. The Constitution of 1938 created the first “break” of the normal evolution of the Romanian constitutionality and represented a slightly “back step” concerning the liberal democracy. It little contributed, maybe not at all – in spite of its proposed and propagandistic

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<sup>5</sup> N. Iorga – The Evolution of the Idea of Liberty (accurate edition, introductory study and notes by Ilie Badescu), Bucharest, Meridiane Publishing House, 1987, p. 297.

<sup>6</sup> D. Gusti – The Science of the Nation in Encyclopaedia of Romania, vol. I (the State), Bucharest, The National Printing House, 1938, p. 25



declared goals – to the defending and protecting the country, which was threatened seriously by the fascism and revisionism, territorial claims, conflicts and finally by the war. This constitution cancelled the previous one that tried to express and consolidate the Great Romania, to give it an honourable status among the European democratic countries. The Constitution of 1938 was practically the beginning of governing Romania without a constitution between 1940 and 1944.

Though the events related to the document of 23<sup>rd</sup> August 1944 opened the opportunity of a real rebirth of the Romanian constitutional life, **the external and internal factors** were not favourable for Romania during that period. They were powerfully acting as more and more soviet communist pressures appeared inside our domestic politics, which favourably occurred from the “tolerance” and “understanding” of the Allied Powers concerning our country’s “entrance” under the soviet influence power. In spite of this unfavourable circumstance, Romania had the chance through the Constitution of 1923, which was enforced, to hope in the reviving of democratic values. It considered this settlement as the main legal way to decrease the soviet domination trends. Even if the constitution did not have a good fate in the history of the Romanian society, because it **was broken for the second** time by the external and internal events, finally, it also proved its **value and validity** between 1944-1947 in our political life after World War II. It was the last “frontier” of defending the human liberties and rights. Otherwise, only after it was abrogated by the communist regime and after the king’s leaving the country, under known circumstances, the human rights and liberties were abusively broken, the political parties were put against the law and all the opponents of the communist regime were brutally destroyed without a fair justice.

The installing of the communist regime by the coup d’etat on the 30<sup>th</sup> of December 1947 meant the destroying of the constitutional democracy in Romania piece by piece. There were installed and experimented **totalitarian methods** of political economic and social government helped by violence, force, intimidation and manipulation in order to ensure an “unconditional conformity” of the individuals to the collectivist values of the socialism.

## **2. The Constitution and the Totalitarian Communist Regime**

During the totalitarian age, there were elaborated three constitutions in Romania (1948, 1952 and 1965). The most powerful in the Romanian society was that of 1965, which was enforced for twenty-five years, up to the memorable events of December 1989 that ended the communist regime. The constitutions of the socialist age had the role to prove the “legality” and even the “legitimacy” of the political regime in Romania, especially after some



elections where most of the citizens participated. For this reason, the communist regime apparently respected the rules of democracy and legality but overbore their “legitimacy”. It presented them as a spontaneous and unconditioned adhesion of the individuals to the socialist rules and values, which allowed to achieve the proposed goals. This substitute of “legitimacy” was accompanied by the permanent calling of the communist regime to a set of collectivist rules and values as the motherland, the party, the nation, the socialist property, the work and the conscious ignoring of the individual ones (their freedom, propriety, dignity, competence). These will be seen in the manner of elaboration of the socialist constitutions. Beyond the imperfections of the legal techniques and contradictions among the used concepts, their analysis showed that constitutions overbore **the social** and neglected the individual and deliberately identified the society with the state. It attributed to the state the role of a legal instrument of imposing the dictatorship and domination of the communist party. The socialist constitutions were considered as representing “the workers’ will and later the people’s will, which was reinforced as a fundamental law of organising the society and the state”. At the same time, the socialist constitutions represented the main method to “build and generalise the socialist relationships” within all the social life fields. These methods were: a) institutionalising the social order rules and establishing the communist party as a leader; b) promoting and protecting the socialist property of the state and co-operation by using special legal methods; c) destroying very seriously any transgression of the socialist values and rules of work and life and trying to uniform and “standardise” the individuals behaviour and actions; d) politic economic and administrative centralism; e) manipulating the individuals by using the utopia concept, ideology and communist media, which was doubled by a mechanism based on intimidation, force and fear<sup>7</sup>.

The socialist constitutions abdicated from the parliamentary democracy traditions and represented a legal method for the social obedience (even the state itself) to one unique political power that was represented by the communist party. The absolute **monopoly** was raised to the most powerful degree which meant that the decision belonged to a unique political party and was used by the constitutional praxis as a ritual of dictatorial expressions of the communist government. These constitutions were lacking their core efficiency and legitimacy and could not achieve a true adequate and rational institutionalisation to control the social change processes. It generated social and political motionless and conservatory forms. The individual initiatives were stopped and a low level of social and individual wish of better

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<sup>7</sup> The Role and the Functions for Building the Multi-developed Socialist Society, Bucharest, Academiei Publishing House, 1974



appeared in the Romanian society.

The process of decreasing and gradually eliminating the constitutional parliamentary regime in Romania began with the abolishing of the historical parties, of the monarchy and the proclaiming of the popular republic (which became later "socialist"). It was intensified when the Constitution of the 13<sup>th</sup> of April 1948<sup>8</sup> was adopted, which was the typical product of applying of the communist ideology in the Romanian society according to the soviet pattern after there were taken the "constitutional documents of the soviet state, beginning with the statements of October up to the Constitution of the USSR since 1936"<sup>9</sup>. Although this constitutional document was settled into a stage in which "the revolutionary process of socialist changing of our country was at the beginning"<sup>10</sup>, it represented the main instrument for achieving the state dictatorship in all the fields of the social life, that led to the elimination of the civil society and which brought very negative consequences for the future Romanian democratic life.

The Constitution from 1948 was structured in ten main titles and had one hundred and five chapter. For the first time in our constitutional evolution it presented a series of principles that were considered by its thinkers "revolutionary", which brutally and definitely stopped the Romanian constitutional traditions. Here are the most important principles: the popular sovereignty, the unique powers in the state, the people represented by a unique political force responsible and revocable in front of the people's will, the leading role of the workers class that had the workers' party as the central power (which lately became communist one), the democratic centralism, the popular legality, the material guarantee of the fundamental human rights. Beginning with the first title there were detailed the principles of organising **the popular democratic** state (statement that contains an obvious redundancy). It considered as a result "the fight against the fascism, reaction or imperialism of the people together with the workers as their leaders" (art. 2). In this way any kind of continuation of the historical national society and the state was denied. The document of 1948, which brought the republican government, deliberately forgot that the state was not considered **inseparable** with an **inalienable** territory as in the previous constitutions of 1866, 1923 and 1938 were mentioning, even if the unity and independent character of the Romanian state was legally written. This deliberate omission occurred because of the political considerations at that time

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<sup>8</sup> The Constitution of the Popular Republic of Romania published in the Official Monitor, no. 87 bis, since 13<sup>th</sup> of April 1948.

<sup>9</sup> D. Ionescu, Ghe. Tutui, Ghe. Matei – The Constitutional Development of the Romanian State, Bucharest, Scientific Publishing House, 1957, p. 358

<sup>10</sup> Ibidem



which had to recognise the Molotov-Ribbentrop pact. The consequence was that some lands belonging to the Romanian state (North Bucovina, Basarabia, Hertza Land and later the Snake Island in the Black Sea) were brutally taken away by the USSR. This omission also gave the opportunity of making some "territorial adjustments" among the countries inside the socialist system according to the Moscow economic political interests (for example, the Celesu plan from 1964, regarding the economic dividing regions of the socialist countries).

The constitution from 1948 built an economy of a socialist kind and proclaimed the principle of state property supremacy and the collectivist principle in front of the private one (even if it recognised the three kinds of property: state, collectivist and private). It required the special protection of the state property that consisted of the wealthy core of the earth, woods, rivers, natural energy springs, ways of communications and transmission. These were mentioned formally as "common goods of the people". Each citizen had to protect and develop them as his duty. When the Constitution was elaborated these goods belonged to private people and they were to be passed later in the state property according to law. These laws will be the juridical way of brutal nationalisation of most industrial companies, banks, mines, transport, and insurance companies. The socialist economy and industry were created. The Constitution of 1948 formally recognised the right of legacy of the private property but it brought a distinction amidst the real and patrimony rights because the land was considered to belong to the "people that work it". The state protected the peasant property and engaged to support the villagers' collectivity. These provisions will form the juridical basis for the socialist collectivisation of the agriculture and gradual elimination of the individual peasant household and property.

The Constitution of 1948 was interested in presenting and promoting some collectivist values over the individual ones and proclaimed the "revolutionary" principle according to which "the work is the main activity of an economical life of the state" (art. 22). Which meant that each citizen's duty is to work and the state itself supports the people that work, It "defends them against abuse and rises their living level". In this theory it the confusion between work, as principle of universal existence along the societies, and the rationality of work, as an instrumental way of action where individuals achieve their goals according to the available means, is deliberately made. Thus, there were promoted the socialist collectivist values, according to which the work represented an "honour" in the socialist society though it would have become a "punishment" for those against these principles. The socialist society ignored the principle of the rationality of work and since the economy was full of irrationality it led to economic failure which was "out of the normal order of life".



The Constitution of 1948 introduced the principle of planning of the national economy. This principle became a legal constancy and would be presented during one-year or five years programmes and it would be adopted together by the National Great Congress, Government and the Central Committee of the communist party. In this way a forced mixture between political and juridical field was achieved because the laws and orders were doubled by political and ideological decisions of the communist party in order to achieve the planned economy. It was declared that the foreign and domestic trade will be supported and led by the state that became the main and later the unique business partner. The state became the only one that planned the national economy in order to "develop the economical strength of the country".

For the first time in the Romanian history, with the Constitution of 1948 the principle of separation of the powers inside the state was eliminated. The main force of taking decisions was the National Great Congress, which was represented by a **single chamber** institution (the Senate was eliminated) and became the unique legal power and had a series of competence: forming the government, voting the budget, deciding if some ministers could appear, condense or eliminate, taking the decision regarding the problems of war and peace. In fact the role of this power institution was decorative as the most juridical and administrative documents will be elaborated and applied by the government, which was declared the most important power in the state and had to plan and co-ordinate the national economy, achieve the budget, assure the public order and the state security. At the same time the government was able to lead the general politics of the state in the international relations field. In Romania the **executive power** will gradually become the only real power that will acquire a supremacy after the state institutions will be doubled by the political powers by gathering the state high positions and combining them with the party ones<sup>11</sup>. The local and central administrative functions became political. At the local level the **popular councils** appeared which represented local forces of the state power with elements of the communist party whose politics will be applied in all the social political and economic fields. Even if the Constitution of 1948 kept the old administrative territorial division of Romania - parishes, small towns and counties, it provided a new division: the **region** (and later the district), that led to the complete elimination of historical and national traditions in the administrative territorial field as the **centralism** and the political leadership of the communist party was applied.

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<sup>11</sup> It is significant that Gheorghe Gheorghiu Dej was present at the adopting of the Constitution from 1948, the report of the constitutional committee noticed. He was the minister of economy and the chief of the government being the secretary of the communist party, too. (formally the president of Ministers Council was dr. Petru Groza between the 13<sup>th</sup> April 1948 and the 2<sup>nd</sup> of June 1952)



There were created huge opportunities of mixing the executive power in justice and legal system thanks to the Constitution of 1948. Thus, it was created the institution of **people's assessors**. They worked at every level excepted the Supreme Court and were elected or named by the communist party and had to apply the justice and make "the popular legality". It was stipulated that judges should obey only to the law and they had to apply the law equally for all citizens but the Constitution of 1948 did not keep the principle of **irremovability** of the judges which was present in the previous constitutions. This was a serious harm to the justice fact itself. This constitution also did not respect the **administrative dispute claims office** any longer. Thus, the people that suffered because of an abusive and illegal administrative document concerning their rights could not call the justice for moral and financial defending. This opens the path for abuses against the individual made by the administrative authorities.<sup>12</sup>

Concerning the fundamental human rights and liberties, they were formally accepted by the Constitution of 1948 but there were brought numerous restrictions and interdictions regarding their application and a visible discrepancy was created between the principles and the political legal realities. For example, the right of all the citizens to elect and to be elected in the state powers was provided and guaranteed, without any difference related to sex, nationality, cultural or professional level (art. 18). But there was a series of interdictions and electorate incompatibilities regarding the "forbidden people, without civil and political rights". These interdictions represented a "legal form" of political isolation of some individuals used by the socialist "assessor" upon political and ideological criteria. Although the Constitution provided the individual liberty, no one could be arrested for more than 48 hours without a warrant or sentenced without a trial, this was only formally and without any legal guarantees. The constitution provided and guaranteed the liberty of the press, speeches and meetings but overtly showed that "practising of those rights is obviously ensured by the socialist party and state with the means of printing, paper and the meeting places, which are available for people that work".

The Constitution of 1948, in its political and ideological structure, represented the main **juridical instrument** of achieving the political and socialist constitutional order. The economy was abusively taken by the state and more powerful frameworks were created for the party dictatorship in all the social life fields.

The Constitution of 1948 that was in force up to 1952 when the national economy changed into nationalisation and its economic statements seized upon the political ones. There

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<sup>12</sup> The administrative dispute claims will be formally represented into the laws of the totalitarian regime by the law 1/1967 from 1967 that refer to the courts for judging the claims using legal administrative papers.



was a stage in which the socialist process of changing the society was at an initial stage that should have been continued and completed by a new constitution which would let the communist party and the state to have “legally” the monopoly of the political decision. For this reason, since March 1952, a constitutional commission elected by the National Great Congress elaborated the project of a new constitution. After its debating and approving by the unique legal power, it became the second constitution of the Popular Republic of Romania on the 27<sup>th</sup> of September 1952.<sup>13</sup> After summing political economic social cultural changes, the constitution of 1952 was considered “the Constitution of building the socialism and happiness of those who work”<sup>14</sup>. It proved unequivocally the leadership of the communist party (still workers’ party) in the social and state order of Romania, which was represented by the popular democracy regime that meant “the power of the working people”. Article 86 of the Constitution shows that “The Romanian Workers Party is the leader force both for organisations of those who work and state institutions. All the organisations of the working people in the Popular Republic of Romania gather around this party”.

As the previous one, the Constitution of 1952 keeps the definition of the Romanian state (redundant one) as “popular democratic” with its attributes of unity, sovereignty and independence, but no mention of its inseparable feature. For the first time in the Romanian constitutional history, there appeared a series of untrue things carried out by the Constitution of 1952 itself. They declared that Romania is a state that “was born and reinforced as a result of liberation from the fascism system and imperialist domination with the help of the USSR powerful army. Another result was breaking the landlords and capitalists power by the popular masses from villages and cities” (art. 3). The political military and economic addiction to the USSR was considered as a vital fundament for the Romanians. It was overtly stipulated that not only “friendship and alliance” but “its brotherly support” too with this country could ensure the “independence, state sovereignty and the developing and blossoming of the Popular Republic of Romania” (the fourth paragraph from the introductory chapter). On the other way, a recognition of the fact that socialism and communism were placed in Romania by the force of soviet tanks was suggested. They were an “export freight” brought to the Romanian society but not a “logical and normal continuity” of its historical development.

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<sup>13</sup> The Constitution of the Popular Republic of Romania, published in the “Official Bulletin” no. 1 from the 27<sup>th</sup> September 1952

<sup>14</sup> Gheorghe Gherghiu Dej – Articles and Speeches, the 4<sup>th</sup> edition, Bucharest, ESPA, 1955, p. 514



The constitutional statements that refer to the state order of Romania led to the changing of the communist state into the **main instrument for achieving the proletarian dictatorship** because it received large attributes in all the social economic and cultural fields (art. 17).

The state organises and plans the national economy and ensures the reinforcement and development of the production instruments, elimination of the economic technical and cultural back step, the socialist change of the agriculture upon the free consent of the working peasants. The state had the monopoly of the banking system and the leadership of the state industrial agricultural and economic institutions. It controlled the public education system because it ensures the development of the Romanian people's culture and the ethnic groups as well. The culture was "socialist in its content and national in its form". The Constitution of 1952 gave these attributes to the state – as an impersonal institution and an entity above the individuals and society – and estranged sensibly from the constitutional and classical parliamentary traditions, where such attributes were given to specific institutions of the executive and legislative field. Lacking the right meaning they wanted that the communist party would fulfill these attributes, not the state. This would happen during the totalitarian age into the evolution of the relations between the state and the party.

The Constitution of 1952 gives a new administrative territorial division of Romania, which began since 1950 and the main territories are changed: **region, district, city and commune**. The division of the country was motivated by "economic" reasons that would let the state to be extended to the entire territory level, as well as to efficiently control them from the centre. 16 regions<sup>15</sup> that enclosed 200 districts were established. These consisted of a series of towns (put on a hierarchical scale regarding their republican regional and township obedience) and communes. The Self-governing Magyar Region was created and organised (the residence at Targu Mures) in Romania and it represented "practising of the Marxist-Leninist teaching principles in our national problem". This region was inhabited by a majority of Magyars, whom were given a local administrative self-governing thus in Romania, which was declared constitutionally a territorial unity, being artificially created an administrative "enclave" based on ethnic criteria.

The Constitution of 1952 reconfirms the working of the institutions of **popular assessors**. They equally participated besides the professional judges in the justice system and achieving the popular legality. The popular assessors were elected among "the best successful

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<sup>15</sup> The 16 regions were Bacau, Baia Mare, Bucuresti, Cluj, Constanta, Craiova, Galati, Hunedoara, Iasi, Oradea, Pitesti, Ploiesti, Stalin (Brasov), Suceava, Timisoara and the Self-governing Magyar Region.



working people, activists for the society's well-going proposed by the working people, party and trade unions and youth organisations and cultural associations"<sup>16</sup>. They worked at all the levels of the law system (enclosed the Supreme Court) and had all the judges rights (although they had no professional juridical experience) and sometimes during the trials the two assessors could take the decision of the trial instance just against the president opinion. The legal power obeyed to the political and executive decision and was emphasised by the total rejection of the irremovability of the judges. It was replaced by the **eligibility** principle (the judges at the special instances were named). Although the constitution stipulated the guarantee of the legality of the justice practice when the trial was to be made public, this principle was broken in the numerous trials taking place during the totalitarian age because they were secretly carried out. The constitution provided "the independence of the judges" and their obedience only in front of the law but deliberately lost the fact that this principle could not be practically achieved regarding the conditions of the judges election or naming, who were mostly the communist party members too. We can obviously see how the juridical system was broken: limit the trial guarantees regarding the pursuing of the defending right of the citizens, forbid the access to the trial files, impede to delivery proofs and examinations, take the accused declaration as the "proofs' queen" (the declaration was taken using fear and terror).

The Constitution of 1952 imitated the soviet experience concerning penal pressure and terror and settled the way of creation and working of a **prosecuting institution** (which already existed under the law no. 6/1952). It was designed to ensure "supervision of the popular legality". It strictly controlled all the territorial locations and was totally independent in front of the local authorities (they were directly subordinated to the General Prosecutor of the Popular Republic of Romania). In this way, the prosecution was placed out of the traditional legal system and became gradually an institution that would sensibly influence the trial and the fair delivery of the justice instead of abiding the law by the state powers, clerks and ordinary people.

This organisation and work of the state institutions settled by the Constitution of 1952 would know some successive changes; the most significant one was in 1961 when the entire chapter no. 3 concerning the "Supreme powers of the state" (art. 22-41) was changed.<sup>17</sup> It was created the **State Council** inside the legal and executive structure of the country which

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<sup>16</sup> D. Ionescu, Ghe. Tutui, Ghe. Matei – The Constitutional Developing of the Romanian State, quoted edition, p. 414

<sup>17</sup> "The Official Bulletin" no. 9/25<sup>th</sup> of March 1961, concerning the Law no.1/21<sup>st</sup> of March 1961, as the chapter no. 3 of the Constitution of the Popular Republic of Romania was to be changed.



replaced the board of the Great National Congress but was independent of the supreme legal power and acquired a series of very large attributions concerning the achieving and leading of the Romanian society. The articles no. 44 and 75 in the constitution were also changed, articles that declare both Ministers Council and the General Prosecutor are responsible for their activity in front of the supreme legal organisation and in front of the State Council when there are breaks among its sessions. The State Council consisted exclusively of the executive committee members of the Romanian communist party, which after these changes will concentrate the most important attributions of the executive and legal power and will become the main institution with a decisive role in the political legal and administrative field.

The relations between the state and the individual were changed in the state's favour and the individual was to represent the middle when expressing and guaranteeing the fundamental human rights and liberties enclosed in the Constitution of 1952. During the inter-war constitution and the socialist one of 1948 these rights and liberties were provided in the first chapters; in the constitution of 1952, they are called "fundamental rights and responsibilities" and placed in the eighth chapter after the articles regarding the country territory. The constitution provided the equality of all the citizens in front of the law; it was guaranteed the right to work, rest, retirement, social insurance, education, culture and the liberty of conscience as well. For the first time, in the constitution was mentioned that "school is apart from the church" (art. 84). The citizens were also permitted the liberty of speech, press, meetings, street gathering and marches but they were to be practised "according to the interest of those who work and reinforce the system of the popular democracy" (art. 85). But there was mentioned a series of restrictive provisions that impeded the effective achievement of the rights mentioned above and emphasised the chaos of the private life that characterised the Romanian society's opinion during that age. The people needed to adopt "conformist" behaviour and show a "formal" integration in front of the values and rules forcibly imposed by the communist party and state.

During 1948-1958 the Romanian society adopted and tested the soviet pattern (Stalinist) to build the socialism based on a rigid authoritarian and brutal politics. But between 1958 and 1964, Romania evolved to an "emancipation" and gradually detachment under the political and military tuition of the Soviet Union. The regime was still communist but "national", it was concerned about the "liberalisation" acquired out of the territorial borders<sup>18</sup>

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<sup>18</sup> The order 199/15<sup>th</sup> of July 1957 ("The Official Bulletin" no. 17/15<sup>th</sup> of July 1957) offered the opportunity to Romania favourably establish the juridical status of soviet troops accommodated along the country, which later were "expatriated". Romania escapes relatively from the political hegemony and the Moscow ideology through the Declaration of the Romanian Workers Party from April 1964.



which should find a “substitute” of liberalisation and “normality” inside.

There was elaborated and adopted another Constitution on the 21<sup>st</sup> of August 1968<sup>19</sup> when Romania was proclaimed a “socialist republic”. It considered that Romania had a socialist economy generalised by the socialist production relations too which could be noticed in all the social life fields. The socialist order tried to be “completely and definitely” imposed. In the light of the constitution of 1965 that ensured “the sovereignty, independence and unity” of the Romanian state, whose territory became again “inalienable and inseparable” after a long period (1948-1966) (art. 1).

Differently from the previous socialist constitutions, the one of 1965 mostly emphasises the **political monopoly** of a unique political party, which was represented by the communist party. It was characteristically to be “the highest organisation of the workers class” which is “the political force that leads the whole society” (art. 3) and has “the role of the leader in all the socialist construction fields” and advises “the activity of the mass and community organisations, and the state powers, as well” (art. 26, paragraph 2). The main instrument for practising of the communist party politics was the **socialist state** that, according to the constitutional provisions, organises, plans, leads the national economy, defends and develops the socialist property, ensures conditions for development of the education system, science and culture. It protects the socialist legality and the right order, organises the military defence of the country and development of the Romanian army (art. 13).

The Constitution of 1965 overbite the role of the law and legislation as instruments of “shaping” and changing of the social reality. It had an instrumental function of consolidation of the totalitarian regime and achievement of a total “conformity” of the individual obeying to the socialist party and state. The Constitution succeeded to make a real “legislation inflation” when it was applied as it dedicated formally the democracy principle of the fundamental law in front of the other legislative documents. This inflation was noticed in an endless printing of texts and disposals of the rules and in the “over-wrapping” of the juridical regulation machinery. This inflation overbite “the collectivist social” and ignored the individual and could not achieve a real justice but a preferentially ideological one. It gradually became the instrument of wrong and unfair practice of the punishment system and “measurement” of the adhesion and faith of certain categories of people toward the socialist party and state.

The constitutions between 1948-1989 established the total obedience of the state’s powers to a unique political force, which has the absolute monopoly of the political decision. They succeeded to have the unconditional obedience of the people toward this will “raised at

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<sup>19</sup> The Constitution of the Socialist Republic of Romania – in the “Official Bulletin” no. 1/21<sup>st</sup> of August 1968



the level of the supreme law". At the same time these constitutions sensibly loosened the **civic sense** of the citizen, created the feeling of **fatalism** and submission met at a large numbers of Romanians, who adapted from various reasons to "the socialist life style and became gradually addicted to the paternalist restrictions". The socialist state ensured a slight economic benefit and the people did not have the capacity to "innovate" another life style.

After a half of a century of totalitarian regime (1947-1989) the democracy and democratic institutions had to re-appear. In the legislative field that meant elaboration and assuming the Constitution of 1991. It is noticed that the **constitutional democracy** came again in force and it is created the pluralist political regime. An adequate parliamentary life can be carry out in the Romanian society according to the changes taking place after December 1989. The Constitution of 1991 was characterised by a real **modernity** from the editing point of view of the constitutional text and juridical techniques of systematisation of different provisions and rules because it gave the power to the fundamental institutional structures of the Romanian state. The Constitution of 1991 represents an important source of the law and a juridical instrument necessary to political economic social and cultural reforms even if there are contradictions and imperfections. Its validity and efficiency will be proved in time after the evaluation of the modalities which it could be imposed to the Romanian society. The citizens could rely on it and this constitution could prove its benefits regarding the goals and the social and political functions we follow.