

CONSTITUTIONAL INNOVATIONS IN THE ROMANIAN PRINCIPLES: THE ORGANIC REGULATIONS – THE SEPARATION OF POWERS PRINCIPLE

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Abstract. *The Organic Regulations established, for the first time, a state organization that had as a fundamental law the separation of powers principle. The Romanian Principalities were given elected rulers and Assemblies, ministers and bureaucratic bodies, having as a result the administration of a domain that belonged directly to the ruler. But, they also had a contradictory character, because, on one side, they created the background favourable for the modernization of the Romanian society and, on the other side, they strengthened the economic and political power of the great boyars and the Tsarist protectorate.*

Keywords: *Romanian Principalities, modernization, Organic Regulations, state organization, separation of powers principle.*

The Organic Regulations were meant to create the conditions necessary for the acceleration of the modernization process into the Romanian society, and to put into practice a program for the transformation of the internal structures, on the same side with the spirit of that age. With few differences from one country to another, these fundamental laws legislated, for the first time, the state powers, defining, in the same time, the connections between these.

In the subsequently pages, we will try to present the stimulated modernization and the orientation imprinted by the Organic Regulations to this process, accentuating, in the necessary measure, the mixture of anachronism and reformation, with beneficial changing effects, but also with harmful consequences as regarding the conservatory content from foundation of these reforms.

The Organic Regulations¹ were elaborated according to the instructions received from Sankt-Petersburg, for the political provisions and under the supervision of Pavel Kiseleff, for the administrative stipulations². The dispositions encompassed in the two Organic Regulations, were put into force on the 1st of July 1831 in Wallachia, and on the 1st of July 1832 in Moldavia.

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¹ *Regulamentul organic*, Bucharest, 1832; *Regulamentul organic. Interpretat cu legiurile din anii 1831, 1832 și 1833 și adăugat la sfârșit cu legiurile de la anul 1834 până acum, împărțite pe fiecare an, precum și cu scară deslușită a materiilor*, Bucharest, 1847; *Analele parlamentare ale României*, part I, volume I *Obșteasca Extraordinară Adunare de Revizuire a Regulamentului Organic a Țerei Românești. 1831*, Bucharest, 1890.

² See: Andrei Rădulescu, *Centenarul Regulamentului Organic al Țării Românești. 1 iulie 1831-1 iulie 1931*, Bucharest, 1932; Andrei Oțetea, *Geneza Regulamentului organic*, in „Studii și articole de istorie”, II, 1957, p. 391-393; Gh. Ungureanu, *Despre manuscrisul original al Regulamentului organic moldovean*, in „Studii și cercetări științifice. Istorie”, VIII, 1957, I, Iași, p. 129; Anastasie Iordache, *Contrastul dintre anacronic și modern în Regulamentele organice ale Principatelor Române*, in *Principatele Române*, in „Revista istorică”, 2, no. 7-8/1991, p. 351-368; P. Păltănea, *Contribuția lui Costache Conachi la redactarea Regulamentului Organic*, in „Anuarul Institutului de Istorie „A.D. Xenopol”, Iași, volume XXXIV, 1997, p. 39-50.

It was established, for the first time, a state organization that was based on the separation of powers principle: *the executive power* – belonged to the ruler, elected for life by the Extraordinary Assembly; he had the right of Legislative initiative and governed with the help of the law-decrees; *the legislative power* – was exercised by the Extraordinary National Assembly, the body that elaborated laws and handed in the reports to the ruler; *the judiciary power* – there were created the county Court Houses, the instances and The High Royal Chair.

The Ruler was elected by the Extraordinary National Assembly, made of: the metropolitan (the president); bishops (3 in Muntenia, 2 in Moldavia); 50 first rank boyars in Muntenia and 45 boyars in Moldavia, chosen from the almanac of the nobility according to their hierarchy, from *vel ban* (great ban) to *vel cămăraș* (tresurer), from *vel logofăt* (great chancellor) to *vel agă* (great agha), all born Romanian and living in the country; 73 second rank boyars, from *clucer* (Lord Steward) to *comis* (Equerry) in Muntenia, 30 from *agă* to *ban*, in Moldavia, sons of boyars and estate owners in Moldavia; 27 deputies from the city guilds in Muntenia and 21 in Moldavia³. In Moldavia, there was also a deputy “elected among the people from the academies”⁴.

The necessary presence for the election of the ruler had to be $\frac{3}{4}$ from members of the Assembly. The ruler was elected from the first voting, if he gathered $\frac{2}{3}$ of the votes or a simple majority from the 10 preferred candidates, in case of a second ballot⁵. The election of the ruler by the Extraordinary National Assembly had to be communicated to the Ottoman Porte through a written statement, signed by all the deputies. The same deputies had also to sign an official note to the Petersburg Court⁶.

According to art. 26 from the Organic Regulation of Wallachia, the candidates should be at least 40 years old and should come from a boyars' family⁷. The ruler was elected for life and could be dismissed from his position by the suzerain and protector Courts, on the basis of an enquiry. He could abdicate, on the condition that the abdication was accepted by the two Courts.

In case the ruling ceased or vacancy, the ruler's power was exercised by the temporary government of kaymakams, made of 3 members, elected among the heads of different high-offices: the president of the High Royal Chair; the ministry of affairs and the minister of justice, who filled the position the moment the vacancy occurred.

³ *Regulamentele Organice ale Valahiei și Moldovei*, edition by Paul Negulescu, George Alexianu, Bucharest, 1944, p. 1 and p. 173(it is further quoted as: *Regulamentele Organice ale Valahiei și Moldovei*).

⁴ I. C. Filitti, *Principatele Române de la 1828 la 1834. Ocupația rusească și Regulamentul organic*, Bucharest, 1934, p. 98-103.

⁵ Cezar Avram(coord.), Ion Bitoleanu, Roxana Radu, Ion Vlad, Elena Paraschiv, *Introducere în istoria dreptului*, Bucharest, Editura Fundației România de Măine, 2007.

⁶ *Regulamentele Organice ale Valahiei și Moldovei*, p. 179.

⁷ *Ibidem*, p. 5.

The Ordinary National Assembly from Wallachia was made of 42 members and that from Moldavia, of 35 members. The metropolitans and the bishops were rightful members in the two Assemblies. According to art.45 and 46 from the Organic Regulation of Wallachia, and art. 48 and 49 from the Organic Regulation of Moldavia, the deputies were elected among the boyars and the electoral body was made only of boyars. The county deputy electors were boyars and sons of boyars, of at least 25 years old, estate owners and living in that county. The President of the Assembly was the Metropolitan of the country. The members were: the bishops; 20 boyars of the first rank in Wallachia and 6 first and second rank boyars in Moldavia, 30 years old, native or naturalized, according to the old custom, and only in the capital elected by their fellows; 19 deputies of the counties from Wallachia (one from each county and one from Craiova), 16 deputies from Moldavia, landlord boyars, sons of boyars, who were at least 30 years old⁸.

The Assembly bureau was made of two secretaries and two substitute secretaries. The ministers in function did not have the right to be elected in the Legislative Assembly. They participated to the meetings of the Assembly to respond and report to the ruler. The deputies were appointed in any other positions, without losing their mandate.

Among the Ordinary National Assembly attributions, we can mention: the establishing of the budget and the control over the income and expenditures; sending written reports to the ruler and the two Courts, in which there was described the situation of the country and the discovered dissatisfactions, proposing, in the same time, measures in certain fields. The misunderstandings between the ruler and the Assembly were solved by Turkey and Russia⁹.

The law initiative belonged to the ruler who sent the bills to the Assembly through a decree or an order. The bills were voted with an absolute majority, entirely or with certain modifications. The result of the voting was communicated to the ruler through a letter, signed by all the deputies who participated to the meeting. The law entered into force only after the law had been sanctioned by the ruler. He had the right to re-bring the law into the Assembly's debates, to propose changes or to refuse the sanctions without motivating. Although the Assembly did not have law initiatives, it had the possibility to express some wishes or to present information regarding the deficiencies noticed in the state administration.

In certain situations, there were also mentioned some restraints concerning the activity of the Assembly. Thus, according to art. 52, 53 and 54 from the Organic regulation of Moldavia, the decisions of this Assembly were subordinated to the treaties and decrees in force, and to observing the

⁸ *Ibidem*, p. 9 și p. 181-182.

⁹ *Ibidem*, p. 10-11, p. 182-183, E. Cernea, E. Molcuț, *Istoria statului și dreptului românesc*, Bucharest, Editura Universul, 1993, p. 167.

“rights of the suzerain Court and of the defending Court”¹⁰. For example, the provisions regarding the finances could not be modified or completed without the agreement of the two Powers. Therefore, the Assemblies had a consultative role, meaning that they debated without deliberating, the sanctioning of the result after these debates held in the Assembly being due to the ruler.

The ruler had the obligation to convoke the Assembly on the 1st of December, the session being of 2 months, with the possibility for prolonging. For validating the debates, it was necessary the presence of 2/3 from the total number of the Assembly’s members.

There were founded, for the first time, *the departments (the ministries)*, for which there were mentioned the administrative attributions, being removed the judiciary ones, because the Royal Chair had been suppressed. It had been replaced by the *Ordinary Administrative Council* that had as a main task the counselling of the ruler and the preparing of the Assembly’s works. It was made of: internal affairs and finance ministers and the state secretary, under the presidency of the ruler or the Ministry of Internal Affairs. It was to meet twice a week to elaborate bills. After the bills were approved by the ruler, they were subjected to be deliberated by the Ordinary National Assembly.

It was the ruler who appointed and dismissed his collaborators, without considering other aspects than those in which he had an interest. According to art. 149 from the Organic Regulation of Wallachia, the six ministries were: the Ministry of Finance or the treasurer, the Ministry of Internal Affairs or the Great Magistrate, the Ministry of Foreign Affairs or the State Secretary, the Chancellor or the Ministry of Justice, the Chancellor or the Ministry of Ecclesiastical Affairs, the Sword Bearer of the Ministry of Defence¹¹.

After an amendment proposed by the sword bearer Al. Dim. Ghica in Wallachia, it was constituted an *Extraordinary Administrative Council* that debated the extremely important problems. It was made of the members of the Ordinary Administrative Council and of the heads from the departments: police, ecclesiastic and justice.

According to the norms stipulated in the Organic Regulations, there were created¹²: *the department of internal affairs* – it handled the internal affairs, the education, the health, the public works and the social instance sectors; *the department of finance* – it supervised the income and the expenditure, the commerce and the industry; *the state secretariat* – led by the Ministry of Foreign Affairs, who was the head of the ruler’s chancellery and who informed about the ruler’s ordinances; *the great chancellery of justice*, led by the Great Chancellor of Justice, who presided the supreme instance and supervised that the sentences of the courts were taken according to the laws and

¹⁰ *Regulamentele Organice ale Valahiei și Moldovei*, p. 11 and p. 183.

¹¹ *Ibidem*, p. 70.

¹² *Istoria dreptului românesc*, vol. II, part I, Bucharest, Editura Academiei Române, 1984, p. 127.

regulations in force; *the great chancellery of faith and ecclesiastic affairs* (in Muntenia), through which was accelerated the mixture of the state in the church issues.

For the separation of powers principle, the justice was also organized according to some modern principles: the hierarchic organization of the judicial instances; the separation of the juridical activity from the administrative one; the recognition of the authority as concerning the definitive decisions. Although the provisions that referred to the ministry responsibility institution were not clearly mentioned and complete, the separation of powers brought forward the idea of restraining the rulers' power¹³.

There were also created new instances: The High Royal Chair (in Wallachia), the Royal Chair (in Moldavia – as the third and the highest instance, able to judge the civil, commercial or criminal actions at law). The judicial instances were ordinary (civil) and extraordinary (military and ecclesiastic). The judges were appointed by the rulers for three years, with the possibility to extend the period of the mandate with other three years. It was also created the position of attorney near the courts and the solicitor offices.

The Organic Regulations prepared the field for a radical change in the Romanian Principalities. They assured the passing from the feudal era to the capitalist one, announcing, essentially, the modern organization of the Romanian state, for the following period. They represented a characteristic pattern of legislative identity, because they established, in the two Romanian principalities, the same state organization, formally built on the principle referring to the separation of powers.

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¹³ Ioan Stanomir, *Nașterea Constituției. Limbaj și drept în Principate până la 1866*. Bucharest, Editura Nemira, 2004, p. 19.

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