

PRELIMINARY PROJECTS OF THE CONSTITUTION OF ROMANIA SINCE 1923

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Abstract: *In the evolution of Romanian law, the essence of legislative norms was the protection of agricultural land as a social asset and not as a private right. Starting with the Constitution of the United Romanian Principalities of June 30, 1866 and until the entry into force of the Romanian Constitution of 1923, the right to private property was regulated according to legislative norms adapted to political ideologies, in relation to the historical stages of the Romanian state, corresponding to the needs of the Romanian people to own agricultural lands in private ownership, from the exploitation of which they can ensure their daily existence.*

Key words: *constitution, political power, property rights, historical evolution.*

1. Introduction

Property is the basis of the development of human society and represents one of the fundamental problems of individual existence and human society (Bîrsan, 2007, p. 27) representing the premise of any economic activity, the premise of the operation of the engine of any society (Chelaru, 2000, p. 14).

The right to private property is a fundamental civil right alongside the right to life, the right to freedom, the right to equality before the law, the equality of rights between men and women (Enache, 2022, p.7).

However, in the evolution of Romanian law, the rules governing property rights were strictly determined by "the social policy specific to each historical stage of development and economic consolidation of the socialist system with its economic and political purpose of structure or essence: abolishing exploitation and increasing the material and spiritual well-being of those who work". (Buga, Păunescu, Marica, 1980, p. 11).

The essence of the legislative norms was to protect the land and, in particular, the agricultural land, producer of social and economic well-being, collective, under the strict coordination of the state powers, and not the form of private property rights, in which sense in this paper I will reproduce some of the most important legislative regulations regarding the legal regime of private property rights over agricultural land in particular, in relation to the historical stages of the Romanian state, starting with the first

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normative act of the United Romanian Principalities represented by the Constitution of 1866 and up to the Constitution of Romania of 1923 .

2. The Constitution of the United Romanian Principalities of June 30, 1866 and the drafts of the 1923 Constitution of Romania

The Constitution of 1866 was adopted during the reign of the Romanian ruler Alexandru Ioan Cuza and represented the first normative act of the United Romanian Principalities regarding property rights and regulatory legal norms.

Art. 1 of the Constitution of 1866 stipulated that the United Romanian principalities constitute a single indivisible state, under the name of Romania, being consecrated, from a historical and social point of view, the indivisible character of the Romanian state.

This Constitution had as its source the 1831 Constitution of Belgium, being characterized by the historians of the time as the most liberal constitution in Europe.

According to the 1866 Constitution, Art. 19, property of any nature, as well as all claims on the state, are sacred and inviolable. No one can be expropriated except for a cause of legally established public utility and after fair and prior compensation.

In 1918, with the Great Union, the political framework in Romania imposed the need to adopt some legislative changes, by repealing the Constitution of 1866 and by drawing up a new constitution from the perspective of the agrarian reform and of the universal suffrage.

Thus, before the promulgation of the Constitution of 1923, in the period 1919-1922, several drafts of the future fundamental law of the country called Draft Constitutions, which were brought to the attention of the public for debate, in the context of the end of the First World War, were subjected to public debate.

The preliminary drafts of the Constitution reflected the position of the National Liberal Party, the National Party of Transylvania and the Peasant Party, in the context of the Romanian Kingdom reunited in 1918, but also of the fundamental rights and freedoms that were to be enshrined by the new leadership, in the context of a real opposition generated by the policy visions adopted with regard to the further development of the country.

Among these, in the order of publication, we mention: the Preliminary draft of the Constitution prepared by the Study Circle of the Liberal National Party, with an exposition of principles – Bucharest, March 1921, authored by the liberal parliamentarian Dimitrie Ioaniţescu; the Draft Constitution for the reunited Romanian State with a brief statement of reasons, Cluj, August 17, 1921, authored by Professor Romul Boilă, close to Iuliu Maniu; the Draft Constitution drawn up by the Studies Section of the Peasant Party, with a statement of reasons - Bucharest, 1922, authored by Bessarabian professor Constantin Stere; The new Constitution of Romania. Reflections and pre-project, Chernivtsi, 1922, authored by Professor Constantin Berariu and the project entitled Organization of New Romania. The Draft law to amend the Constitution, Iaşi 1919 was authored by the engineer Constantin Guran.

3. The Project for the Organization of New Romania to amend the Constitution, Iași, 1919

Within the project Organization of new Romania the 1919 Draft law for the amendment of the Constitution put forward in Iași and prepared by the engineer Constantin Guran stipulated that foreigners could acquire the right to property if they proved to the Romanian authorities that they owned capital, that they exercised a profession and that they had the intention of establishing their domicile in Romania, being forced to live in the country for 10 years and to prove the usefulness of their presence in the Romanian country. Persons with special merits in agricultural and commercial investments in the country and those who were raised by their parents in Romania without owning property abroad were exempted from the 10-year internship.

Romanians and Romanian naturalized persons could acquire rural real estate in Romania, the ownership of land being established by special laws.

Art. 19 stated that no law can establish the penalty of confiscation of assets, but property of any nature not worked by the owners as well as assets acquired through dishonest means or speculation - exaggerated earnings through any work - were to be confiscated and handed over to the Public Assistance House.

Art. 21 regulated the inviolability of property rights earned through honest work and claims on the state, with the co-existence of the obligation to make use of these rights for the prosperity of the national economy.

The situation of expropriation for the cause of social or public utility was also foreseen, as well as the right to a prior and fair compensation, provided by special laws that were to be adopted.

For example, the property owned by Crown Domain, Rural House or other public officials on agricultural lands were expropriated by the state to be later sold to the peasants who cultivated the land.

The compensations for reasons of national utility were to be established by the Courts of Appeal in the last instance, payment could be made in annuity bonds issued by the State bearing amortizable interest of 5% per year, and the guarantee of the peasants' property rights to be realized later by rural law.

4. The draft constitution drawn up by the Study Circle of the National Liberal Party, with an exposition of principles

Regarding the preliminary draft of the Constitution drawn up by the Study Circle of the National Liberal Party, with an exposition of principles - Bucharest, March 1921, authored by the liberal parliamentarian Dimitrie Ioanițescu, in Chapter II on individual rights, provisions were made regarding the guaranteeing of property rights and regarding expropriation determined only by certain conditions established according to the general needs of the country (Ionescu, 2023, p. 123).

As a principle, it was established that expropriation could only be carried out by law, following a just compensation, only for reasons of public utility and always through the

courts, requiring constitutional legislative support. The constitutional text thus provided enumeratively what are the causes of public utility. At the same time, the expression of national utility was abandoned, the phrase public utility being used (Ionescu, 2023, p. 165).

The provisions of art. 132-134 of this constitutional project were dedicated to the guarantee of property rights and patrimonial rights, stipulating at the same time the fact that expropriation could only be carried out by judicial means, after fair and prior compensation and only for reasons of public utility established by law.

It is also due to art. 133 that no law could establish the punishment of property confiscations, with the following exception: the state in time of war had the right to confiscate the property of enemies.

Regarding the delimitation of the property right on land, in art. 134 it was stipulated that the property of the land includes only the property of the surface, as the subsoil and the atmospheric space belong to the public domain, subject to the right of the owners to carry out the necessary constructions and works on the surface according to the provisions stipulated by laws and regulations. As for the underground deposits, it was stipulated that they belong to the state, with subsequent special laws regulating the way of exploitation.

Unlike the project Organization of New Romania, according to the 1919 Draft law to amend the Constitution, devised in Iaşi by the engineer Constantin Guran, foreigners and foreign legal entities could not acquire the right of ownership over rural land, according to art. 135, but according to art. 156, it was stipulated that foreigners can acquire Romanian citizenship by renouncing their citizenship from another country, after fulfilling the conditions of a 10-year residency in the country.

Also, persons with special merits for the benefit of the country were exempted from this internship.

5. The draft constitution for the reunited Romanian state with a brief statement of reasons

From the perspective of the Draft Constitution for the Reunited Romanian State with a brief statement of reasons, Cluj, August 17, 1921, by professor Romul Boilă, the right to individual property was seen as being of particular importance, being an obligation of the state in ensuring its professional interests, unlike the communist conception of property.

In the statement of reasons for the projects, the author emphasized the individual nature of the right to private property, but which cannot be absolute, as it must be subject to the restrictions drawn by the higher public interest of the state. A clear demarcation is made between the state's interest in immovable property, to the detriment of movable property.

The idea was launched that not all underground wealth justifies the public interest to become the property of the State.

The view on expropriation for public utility included the subsoil of the land, mining deposits and atmospheric space, showing that an extension of expropriation beyond

these limits would amount to confiscation, in the absence of a proportional compensation (Ionescu, 2023, p. 203).

The property right was regulated under Chapter II *On the rights of Romanian citizens*, through article 29.

Thus, the right to property of any nature was guaranteed, and expropriation for reasons of public utility was also carried out only by judicial means and after fair and prior compensation.

Cases of public utility were defined as only those that concerned immovable property, with special laws regulating the related procedure.

The principle was also enshrined that no law could establish the penalty of confiscation of assets or requisitions for housing.

6. Before the draft constitution drawn up by the Studies Section of the Peasant Party

In the Draft Constitution prepared by the Studies Section of the Peasant Party, Bucharest, 1922, the Bessarabian professor Constantin Stere, as author, dedicated articles 26-29 to the right to property, a right defined as the foundation of social utility, expressly provided by law, proclaiming the need to guide the evolution of the country's agrarian structure, through labor-based ownership and the imposition of the landowner's duty towards society for the rational exploitation of the soil.

It also supported the idea that the subsoil and natural energy-generating resources should be the property of the state.

With regard to expropriation for reasons of public or social utility, a fair and just compensation was pleaded for, under the conditions provided by the special law.

As a result, within the project, in art. 26, provisions were made regarding the right of property, guaranteeing both the individual property and collective property of associations, autonomous bodies and other institutions.

The principle that no law will be able to establish the penalty of confiscation of assets was also enshrined.

In Article 27 it was provided that the land is the capital value of the state, which is subject to the state function of control, so that the rational exploitation of the soil is carried out towards the agrarian evolution of the country and the notion of property based on work, for the benefit of society. The guarantee of the right of ownership of the land owners from among the former tenants or those re-appropriated based on the expropriation laws was stipulated. It was also stipulated as a condition for the alienation of land to the plowing peasants up to the surface that can be worked by a peasant family without the use of wage labor, otherwise all the acts would have been declared null.

Regarding the provisions of art. 28, we note that they referred to the fact that the ownership of the land did not include the subsoil, the right to dispose of the natural resources belonging exclusively to the state, for the purpose of developing the national economy without affecting the owner's right to build on it.

7. The New Constitution of Romania project. Reflections and draft

Within the project *The New Constitution of Romania. Reflections and draft*, Chernivtsi, 1922, drawn up by professor Constantin Berariu, it was provided for in art. 15 that no law could establish the penalty of confiscation of property, except for the state which had the right to confiscate the property of enemies in times of war.

Art. 25 provided that property and all patrimonial rights are guaranteed by the state, and expropriation can only be carried out for reasons of public utility, this time the reasons for public utility were to be ascertained administratively, and not exclusively judicially, according to the rules provided by special laws, by granting a compensation, only in the absence of an agreement of will, the compensation could be established by a court.

It was also recommended that the special law should provide for the causes of public utility, and that these should not be regulated by the country's Constitution.

Like in the other projects, with regard to the ownership of the subsoil, atmospheric space, mining and other deposits, it was stipulated that they belong to the state as a public domain and that they will be exploited according to the special rules provided in special laws, the citizen having the right only to the surface of the earth, namely the right to carry out the works necessary for its use, according to the provisions of special laws and, as the case may be, of other regulations.

Art. 42 also provided that foreign citizens or foreign legal entities cannot acquire the right of ownership over rural immovable property in the country. In situations where foreigners became owners of rural lands through inheritance, they were expropriated by law for a fair compensation, established either by voluntary agreement or by a court. It was also provided that the public utility could be declared not only for the benefit of the state, but also for the benefit of the other heirs, and the person who would be obliged to pay compensation was to be determined.

From all these constitutional projects it can be noted that the proponents wanted to emphasize the paramount importance of the social principle and the power of the state ranking higher than the individualistic principle of the citizen, the political will being the one that dictated the constitutional norms that were to be adopted in relation to the state's interest in achieving the necessary social, agrarian and economic changes in order for the consolidation of the Romanian unitary state to unfold.

The regulations regarding the right of private property and expropriation for reasons of public utility were enacted in favor of the Romanian citizens, but also in favor of the state, which had as their aim the agrarian development based on the cultivation of the surfaces by the Romanian ploughmen.

All these projects presented the guiding principles of the political powers of the time regarding property rights and state organization, hence in 1923, during the government led by Ion I. C. Brătianu, by Royal Decree no. 1360 of March 28, 1923, King Ferdinand promulgated the new Constitution of Romania.

8. The Constitution of Romania from 1923

Art. 15 of the Romanian Constitution of 1923 stipulated that no law can establish the penalty of confiscation of assets.

Also art. 16 stated that no law can establish the penalty of confiscation of assets, except in cases of high treason and embezzlement of public money. No one can be expropriated except for the cause of public utility and after a fair and prior compensation established by justice according to the laws. By cause of public utility it can only be understood that which is of the nature to benefit anyone and everyone at the same time in an actual or eventual way.

Art. 17 stipulated the provisions regarding the right of ownership, consisting of the following: the right of ownership of any kind as well as the claims on the State were guaranteed; the public authority, was entitled to use the subsoil of any immovable property, with the obligation to repair the damage caused to the surface of the existing buildings and works; the compensation could be determined by court; no one could be expropriated except for the cause of public utility and after a fair and prior compensation established by justice, according to a special law.

It was also stated that only Romanians and naturalized Romanians can acquire and own rural real estate in Romania with any title, foreigners being granted the right to equivalent compensation (art. 18); and mining deposits as well as underground wealth of any kind were the property of the state (art. 19).

These new legislative provisions protecting private property were similar to the provisions of the 1866 Constitution.

However, in an opinion it was shown that the right to property was no longer a sacred and inviolable one, as it was mentioned in the Constitution of 1866, the right of property in the Constitution of 1923 acquired a function of social utility, so that the state had property rights over mining deposits and underground wealth (Popescu-Slăniceanu, Stancea, 2012, p.30).

The 1923 Constitution was repealed following the entry into force of the 1938 Constitution of King Carol II.

The 1938 Constitution regulated property rights as inviolable rights and guaranteed as such, any person being able to freely dispose of their assets.

The provisions were maintained that no law could establish the penalty of confiscation of property, except in cases of high treason and embezzlement of public money. The causes of expropriation were for public utility and after a fair and prior compensation established by justice according to the laws.

These regulations were short-lived, until September 1940, when King Carol II abdicated, and on August 30, 1944, after the regime of Marshal Ion Antonescu had been removed from power, the regulations of the 1923 Constitution reentered into force, with certain modifications, specific to the communist political regime.

This legislative approach was not lasting as three other constitutions were adopted by the political regime, namely: the Constitution of the Romanian People's Republic of April 13, 1948, the Constitution of the Romanian People's Republic of September 24, 1952 and the Constitution of the Socialist Republic of Romania of August 21, 1965, as other

laws and decrees which have almost forcibly abolished the right of private property, in the absence of any prior and just compensation due to the rightful holders.

9. Conclusions

The foundations of private property rights in Romanian legislation began to take shape with the formation of the Romanian unitary state, the form of government imposing a set of regulatory norms in which the land belonging to each citizen is protected.

The evolution of the government system also required the legislative adaptation of the right to private property, so that no owner is deprived of a proportional compensation, in the situation where the general interest of the state required the extinguishment of the right for common use, the decreed constitutions being the main legislative form of regulation that took the form dictated by the political ideologies of the time.

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