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Political and Legal Studies

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**ARTYKUŁY**

ARTICLES

CTATTI

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Melitopol, Ukraine

## The Rights and the Proxies of the Monarch in Romania According to the Constitution of 1866

### The Rights and the Proxies of the Monarch in Romania According to the Constitution of 1866

**Abstract:** The article is devoted to the analysis and the characteristics of the rights and the proxies of the monarch in Romania according to the Constitution of 1866. The adoption of the first Basic Law was the fateful act in the history of the state-building processes of Romania and contributed to its development as the sovereign state. The Constitution had the contractual nature and established the compromise between the young bourgeoisie and the large landowners in the form of the constitutional monarchy. The king in Romania for a long time remained the person who was «above» of all the state and political leadership of the country. This status and the proxies of the monarch were delegated with the first Basic Law. The legal fixing of such legal status of the monarch at the level of the Constitution made it possible to establish full-fledged royal power, which was an extremely important state-political step for the development of Romania as the independent country.

The constitutional foundations, the functions and the limitations of the institution of the monarchical power in the principality were fixed in the number of the articles of the Constitution of 1866. At the same time, the important

state-constitutional aspect was the clear fixation that all proxies of the monarch could be done based on the interests of the Romanian nation.

The Basic Law of 1866 established the proxies of the monarch such as in the legislative branch of power (the right of legislative initiative, the right of the interpretation of laws, Articles 32–34); executive power (had to implement it in the manner determined with the Constitution, Article 35) and partially in the justice system (the right to declare amnesty on the political issues, the right to postpone or to mitigate punishment in criminal cases, Article 93).

For strengthening of the foundations of the statehood, the Constitution officially established the principle of the hereditary power of the monarch (Article 82). His person was declared inviolable. Herewith, the Romanian constitutionalists fixed that the monarch did not have any other proxies, except those granted to him with the Basic Law (Article 96).

Adopted in 1866, the Basic Law approved legally the democratic aspirations of the Romanian nation. It defined directly the most important principles of the state functioning as the principle of the national sovereignty, the principle of the division of powers, the principle of representative government, the principle of hereditary monarchy, the principle of the responsibility of the state officials, the principle of

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the Rule of law, etc. The Basic Law definitely contributed to the gradual democratization of the state-governing and public structures, the formation of the concept of the civil personality and untouchability, foresaw the presence of the political and legal pluralism in the country, etc.

Due to the introduction of the institution of the constitutional monarchy, that ruler in the person of Karl I could establish and hold the certain political balance in the country between the liberals and the conservatives, which opened the possibility to potentially strengthen the two-party system and laid the foundations of the civil society and the future constitutional life of Romania.

**Keywords:** executive power, legislative power, principality, constitutional monarchy, National representation, Basic Law, parliament, succession to the throne, judicial power

## Introduction

The methodology of the research. The interdisciplinary nature of the scientific article with its combination of historical, managerial, social and legal aspects has led to the complementary approach to the choice of the methods of the research. Choosing them, the author took into account their accordance of such criteria as the efficiency and the reliability. The number of the approaches have been used during the research as dialectical, descriptive, historical, formal-legal and comparative-legal.

The scientific novelty lies in the fact that the legal foundations of the establishment of the institution of the constitutional monarchy in Romania based on the provisions of the first Constitution of 1866 have been considered in the article comprehensively.

The purpose of the article is the analysis and the characteristic of the legal foundations of the royal power in Romania according to the Basic Law of 1866.

## The main analysis

**The analysis of the sources and the research.** The scientific works of the domestic and the foreign scientists and the legal practitioners were the theoretical basis of the writing the article as A. Banciu, M. Guțan, S. Marton, M. Safta, E. Ștefan, I. Piddubnyi, and others. At the same time, it should be noted that despite their significant contribution, the issue of the constitutional history of Romania needs further research in the con-

text of the formation of the modern democratic and constitutional state.

## The prerequisites and the adoption of the Constitution of 1866

The king in Romania for a long time remained a person who was «above» of all the political leadership of the country. Such status and proxies were delegated to the Romanian monarch by the Basic Law of 1866. It has been noted that the legal «increase» of the legal status of the monarch at the level of the Constitution gave the opportunities to establish full-fledged royal power, which was an extremely important state-political step for the development of the Romanian sovereignty. Such step was fully justified, despite the extremely difficult internal and external situation of the country in which it was located as the result of the revolutionary changes of 1848–1849 in Europe.

According to M. Guțan, «the birth of the modern Romanian constitutionalism in the middle of the 19th century was the difficult process that was almost completely subordinated to the ideological import» (Guțan, 2011, p. 229). The draft of the Constitution was developed with the State Council and adopted with the Council of Ministers. It was presented to the Constituent Assembly for the discussion (Marton, 2009, p. 87). After long debates, the first Basic Law was adopted with the Constituent Assembly on 30 June, 1866. The adoption of the Constitution became the fateful state legal act for the nation, as it meant the radical change of the correlation of the external and the internal factors in the state-making process of the principality.

So, the Romanians demonstrated their desire to create the state with outlined borders and the defined territory, population, the presence of the state authorities and management, sovereignty, the ability to develop and to implement laws and to conduct the international policy (Safta, 2018, p. 123). According to A. Banciu, «The Constitution of 1866 became the preamble of the national independence and the establishment of the identity among the Romanians» (Banciu, 2018, p. 27).

The implementation of the constitutional codification contributed to the rapid and the natural penetration of the ideas of the European liberalism and the

constitutionalism into the Romanian society. In this context, we couldn't agree with A. Banciu, who noted that the establishment of the constitutionalism gave the Romanians the opportunity to break the principles of the Eastern despotism and to join quickly the values of the liberal democracy (Banciu, 2018, p. 23). Herewith, in 1866, the Romanian constitutional opinion hesitated «between imitating the West and defining one's own identity» (Marton, 2009, p. 95).

The important factor in the progressive modernization of all state-legal mechanism of Romania at that time was the fact that all processes were actualized and supported with the local political and the intellectual elite, which had far-reaching socio-political consequences for the country.

The text of the Constitution was published on 1 July of the same year. Over time, the researchers noted that the Romanian Constitution of 1866 was «the most specific imitation of the Belgian Constitution of 1831» (Marton, 2009, p. 86). Previously, on 28 April, the Chamber of Deputies was convened, which ratified the election of Karl Hohenzollern-Sigmaringen as the ruler of Romania, who on 10 (22) May took the oath before the parliament to follow by the Constitution and the laws of the principality. He entered the constitutional history of Romania as the ruler of the United Principalities of Wallachia and Moldavia (Popenko, 2022, p. 121).

The personality of Karl I, as the ruler of Romania, became the kind of consensus among the Romanian parliamentarians in 1866. They sought to consider it as the symbol of the national sovereignty and the state (Marton, 2009, p. 392). It should be also noted that the Romanian constitutionalists understanding the importance of the personality of the monarch as the guarantor of the stability of all constitutional system of the state, it was not without reason that they made bet on the foreign dynasty. The new monarch was not associated with the local political and the economic elites and had to put the end to the long internal political rivalry in the principality (Sbârnă, 2012, p. 13).

In this context, it would be appropriate to pay attention to the fact that the parliamentary «tradition» in the principality in the second half of the 19th century was still weak. As M. Guțan noted, the new monarch had to balance between the political dream of Romania as the parliamentary regime called to fill

Romania with the values of the modern constitutionalism, and the Romanian reality as the monarchical authoritarianism, which was imagined as the pragmatic solution of the urgent needs of the country (Guțan, 2013, p. 383).

The constitutional foundations, the functions and the limitations of the institution of the hereditary monarchical power in the principality were noted in the number of the articles of the Constitution of 1866, in particular in The Section III «Proxies of the State» (Constitutiunea Romaniei din 1866). The extremely important state-constitutional aspect was Article 31 of the Basic Law, which fixed that all proxies of the state came from the interests of the nation, which could do them only by delegating proxies in accordance with the principles and the rules established by the current Constitution (Sbârnă, 2012, p. 153). Thus, all branches of the authority, including the monarch as the head of the principality, had to act exclusively in the interests of the Romanian nation and the state. Article 32 foresaw that the legislative branch of power was exercised jointly by the prince and the National Representation, which was divided into two assemblies as The Senate and the Assembly of Deputies.

At the same time, the article contained the limitations of the legislative initiatives of the monarch himself: «Each law requires the consent of the three branches of the legislative power». Only after the procedure of free discussion and the agreement of two assemblies, the law could be submitted to the monarch for the final approval (Constitutiunea Romaniei din 1866). At the same time, Article 33 foresaw that the right of legislative initiative belonged to the monarch. According to Article 34, the ruler had the right to interpret laws. Article 35 declared that the executive power belonged to the prince, who had to realize it in the manner determined by the current Constitution (Constitutiunea Romaniei din 1866).

The Constitution declared courts and tribunals as the bearers of the judicial branch of power, which made their decisions in accordance with the law, but were executed on behalf of the monarch (Article 36). Herewith, in the justice system, the certain rights were established for the monarch. In particular, Article 93 secured for the prince right to declare amnesty on the political issues and the right to postpone or to mitigate punishment in criminal cases, with the exception of those which were approved as for the ministers.

At the same time, the same article contained the limitations of the monarch's jurisdiction in the justice system. He could not suspend the course of the judicial proceedings or the execution of court decisions, and also in any other way he couldn't interfere with the system of justice (Constitutiunea Romaniei din 1866).

### **The fixing of the principles of heredity of power of the king**

It should be noted that in the Basic Law of 1866, the principle of hereditary power of the monarch was officially fixed. Succession of the throne played the important role in all socio-political and state-legal spheres of the country's life (Piddubnyi, 2019, p. 616).

The special attention should be paid to this aspect, as it is extremely important from the point of view of the development of its own national constitutionalism in Romania.

The official fixing of the principle of hereditary monarchy in the Constitution of 1866 directly contradicted the provisions of the Convention as for the System of the Danube Principalities from August 7, 1858, the document signed as the result of the Paris Conference (the participants were France, England, the Ottoman and Russian Empires, etc.). This act foresaw for the establishment of the elected monarchy (masters) «from persons of local origin» in Romania (Drozдов, 2012).

So, the Basic Law of 1866 did not lead to the tactical (situational) change of the form of the government from the elected monarchy to the hereditary monarchy. At the highest state-legal level, it established and emphasized the country's sovereignty in the right to independently solve all issues of its own state formation. It should also be noted the fact that the issue of the installation of the elective or hereditary monarchy at the level of the Constitution was quite actively discussed in the Romanian political environment itself. This difficult search for the researching the compromise for the country is not the subject of the proposed publication, but if for the desire, with the course of parliamentary and extra-parliamentary debates and the discussions can be found in the relevant work of S. Marton (Marton, 2009).

Thus, Article 82 proclaimed the establishment of the hereditary monarchical power in the country,

which was carried out in the ascending direct and the legitimate line of King Karl I. Only men were supposed to be heirs, and women or their descendants were not considered as such (Muica, 2018, p. 70). All the heirs of the king could be christened in the Orthodox faith of the Eastern rite. In the case of absence of heirs of Karl I, the eldest of his brothers or one of their sons should come to power. If during the lifetime of the monarch, he had no brother or son or they refused to take the throne later, the prince had the right to name his successor from among the members of any European dynasty. However, in this case, the consent of the Romanian National Representation was required (Article 83 of the Constitution).

Separately, in Article 83, it was noted that in case of the refusal of all possible applicants, the throne remained vacant. In such case, Article 84 foresaw the individual procedure of the selection of the successor. In particular, the deputies and the senators had to decide on the appointment of the representative of one of the Western European dynasties as the king within eight-day period. The procedure was considered legal if at least three fourths of the members of each chamber of the National Assembly were present and if two thirds of those present voted (Piddubnyi, 2019, p. 616).

In the presence of the vacant throne, the Chamber of Deputies could appoint the regency consisting of three persons who could temporarily exercise the authority of the head of state. Separately, Article 84 foresaw that during all the necessary procedures of the appointment of the new monarch, voting was conducted exclusively in secret (Sbârna, 2012, p. 159).

Article 85 determined that in the case of the monarch's death, the National Assembly could get together without convening within ten days after the official announcement of the prince's death. The deputies and the senators could perform their duties until they were replaced by the new composition. For ensuring of the continuity of the legal functioning of the state apparatus, Article 86 foresaw that from the moment of the prince's death until taking the oath by his successor, the constitutional proxies of the monarch were could be exercised on behalf of all Romanian people by the ministers under their personal responsibility (Constitutiunea Romaniei din 1866).

Article 87 deserved the special attention, because it proclaimed the constitutionality of the monarch's power. After reaching the age of majority (18 years),

he could not take possession of the throne until he took the oath before the National Assembly. The new monarch in the solemn atmosphere had to announce: «Swear to adhere to the Constitution and the laws of the Romanian people, to protect national rights and the integrity of the territory» (Ștefan, 2020, p. 66). The Constitution foresaw the possibility of the monarch during his lifetime to independently appoint the regency, which in the event of his death performed monarchical functions during the minority of the heir. The appointment of the regency necessarily required the consent of the National Representation. The regents, before taking office, were also required to take the solemn oath, the text of which was contained in Article 87 of the Constitution.

The institution of regency could also be used in the event of the incapability (non-ability) of the valid monarch to perform his state functions. The fact of such condition could be legally fixed by the ministers, to convene the National Assembly, which could appoint the regents (Article 89 of the Constitution).

### The state-legal proxies of the monarch

Article 90 became as the kind of legal «guardian» of the inviolability of the principles of constitutional monarchy in the country, which fixed that no changes to the Constitution could be made during the regency (Constitutiunea României din 1866). At the same time, the prince could not be the head of another state without the consent of the National Representation. Herewith, none of the assemblies could discuss this issue unless at least two thirds of its members were present. Accordingly, the decision could be adopted only by two thirds votes of the present of the members (Article 91).

The person of the king was declared inviolable by the Constitution, while the ministers were responsible. Herewith, the royal act took effect only after it was signed by the relevant minister (Article 92) (Muica, 2018, p. 70).

Above, in the text of the article, it had already been said about the separate proxies of the Romanian monarch in the sphere of justice, granted and guaranteed to him by the Constitution. In addition to them, Article 93 endowed the prince with the following functions and proxies as

1. The right of appointment to the position and dismissal of ministers.
2. The right to sanction and to make public laws (could refuse his sanction).
3. The right to appoint or to approve applicants for all government positions.
4. He hadn't the right to create new state departments without the special law.
5. He established the rules which were for the implementation of laws, but he could neither change nor suspend the effect of the laws themselves, nor refuse their implementation.
6. He was declared as the commander-in-chief of the Armed Forces of the country.
7. He had the right to grant military ranks, in accordance with the law.
8. He had the right to be awarded with Romanian state awards, following the special law.
9. He had the right to mint money in accordance with the special law.
10. He had the international conventions and the treaties with other states, but they had to be approved by other legislative bodies (Constitutiunea României din 1866).

Article 95 of the Constitution regulated the relationship between the prince and the National Representation (Muica, 2018, p. 71). The parliament convened annually on 15 November, if the prince convened it earlier. The duration of each session was three months. At the beginning of the session, the prince had to describe the state of the country, and the parliament had to give the answer. The prince had the right to call the Assemblies out of line, had the right to dissolve them (one or both), had the right to postpone the sessions (no more than a month) (Marton, 2009, p. 61–62).

So, on the one hand, establishing the principle of the balance between the branches of power and parity, the authors of the Basic Law defined the supremacy of the executive branch of power in which the monarch played the particularly important role.

Article 96 noted that the prince of Romania «had no other proxies than those granted to him by the Constitution» (Banciu, 2018, p. 28). Articles 100–103 determined the legal nature of the relationship between the Romanian ruler and the ministers (appointment, responsibility, impeachment).

The Section IV «On Finances» of the Constitution foresaw the separate general proxies of the prince in

the financial sphere of the country's life. In particular, Article 113 foresaw that only after the final positive sanctioning of the monarch, budget revenues and expenses were considered to be adopted. In direct cooperation with the other legislative body, the National Representation (both assemblies), the right of the revision of the articles of the current Constitution (Article 129) was established for the Romanian ruler (Constitutiunea Romaniei din 1866).

## Conclusions

The Basic Law is the normative-legal basis of all modern political-legal and political-state constitutional process. The Constitution determines the step-by-step transformation of all legislation as it promotes the development of constitutional legal relations and legal awareness, it promotes the reforming of systems of justice and regularity, it acts as the guarantor of the preservation and the development of the democratic foundations in the state. The main purpose of these changes is the formation of constitutionalism, in accordance with the requirements of modern times. It is definitely that the constitutional process itself plays the important role in the development of the democratic foundations and it is the consequence of the evolution of the political and the state system, which affects all aspects of the life of any society and it determines the development of the state for years to come.

The constitutional process of Romania has the significant historical experience of its development and the formation. So, during the second half of the 19th century, the Romanian leadership, having chosen the difficult way of the creation of the sovereign state, has realized that one of the most important tasks is the formation and the development of the country's legal foundations. First of all, it has been concerned the adoption of the Basic Law in 1866.

In the second half of the 19th century, the Romanian nation faced the extremely difficult strategic task as the construction of its own state. In addition to purely internal issues and the problems, the foreign policy factor continued to exert considerable pressure on the principality. Romania continued to be the European problem, moreover, no state was willing to risk for help to implement «golden dream» of the Romanian

people directed to the unification within the national state (Berindei, 1979, p. 72).

Adopted in 1866, the Basic Law of the country legally approved the democratic aspirations of the Romanian nation, establishing particularly important at that time principles of the functioning of the state and its bodies, such as:

1. The principle of priority of rights and freedoms of human and citizen;
2. The principle of separation of state power;
3. The principle of sovereignty of state power;
4. The principle of the rule of law;
5. The principle of hereditary monarchy;
6. The principle of openness and transparency;
7. The principle of control and responsibility of the state apparatus;
8. The principle of professionalism of the state apparatus;
9. The right of citizens to free access to service in state bodies;
10. The principle of changeability;
11. The principle of electability and appointment;
12. The principle of hierarchy, etc.

The Constitution contributed to the gradual democratization of the state and the public structures, the development of the concept of the civil personality and the inviolability, allowing at the same time public pluralism in the political views both at the level of the parliamentary debates and in the mass media.

Due to the introduction of the institution of constitutional monarchy, the ruler in the person of Karl I managed to install and to maintain the certain political balance in the country between liberals and conservatives, which allowed potentially strengthening the two-party system and laying the foundations of the civil society and the future constitutional life of Romania.

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