

# ROMANIAN LEGISLATION: PAST, ACTUALITY AND CHALLENGE

## THE LEGISLATIVE UNIFICATION OF THE ROMANIAN PRINCIPALITIES (1859–1866)

Sevastian CERCEL\*

**Abstract:** In the period 1859-1866, the Romanian Principalities carried out an ambitious program to endow the new state with modern institutions. The legal system was organized in accordance with the needs of a European state, and the adopted legislation is fundamental to modern Romanian law. The elaboration and adoption of the major codes are noticeable: the Civil Code, the Civil Procedure Code, the Criminal Code and the Criminal Procedure Code.

During a reign of only seven years, through an extraordinary political will, completed by a special vision of the needs of Romanian society, Alexandru Ioan Cuza managed to lay the normative and economic bases of modern Romania<sup>1</sup>.

**Keywords:** Romanian Principalities; legislative unification; Calimach Code; Caragea Code; Romanian Civil Code; Romanian Criminal Code; Procedural Codes.

### INTRODUCTION

In the history of Romanian law, the legislative work of Prince Alexandru Ioan Cuza (1859–1866), fundamental to modern national law, was preceded by the “*era of the Calimach and Caragea codes*”, named after “*the laws that lasted the longest*”<sup>2</sup>. In turn, the era of the codes of the early 19<sup>th</sup> century had as a starting

---

\* Professor, Ph.D., Faculty of Law, University of Craiova/ Scientific Researcher I, Ph.D., “C.S. Nicolăescu-Plopșor” Institute for Research in Social Studies and Humanities from Craiova, of the Romanian Academy; E-mail: sevastiancercel@yahoo.com

<sup>1</sup> The translation of this study into English was performed by Assoc. Prof. Simina Badea, PhD, University of Craiova, Faculty of Law.

<sup>2</sup> A. Rădulescu, *Cultura juridică românească în ultimul secol*, speech delivered on 3 June 1922 in the solemn session under the chairmanship of His Royal Highness Prince Carol, National Culture, Bucharest, 1923, p. 27. For the evolution of Romanian law under the Turkish-Phanariot regime, E. Cernea, E. Molcuț, *Istoria statului și dreptului românesc*, revised and supplemented edition, Bucharest, Universul Juridic Publishing House, 2006, pp.190–203; L. P. Marcu, *Istoria dreptului românesc*, Bucharest, Lumina Lex Publishing House, 1997, pp. 167–178; Val. Al. Georgescu, V. Șotropa, in *Istoria dreptului românesc*, vol. I, Part I, volume coordinators: Dumitru Firoiu, Liviu P. Marcu, Bucharest, Publishing House of the R.S.R. Academy, 1984, Title I – *An overview*, chap. III – *Structure and sources of law*, pp. 65–93; Elena Tereza Chilom, *Istoria dreptului românesc*, Craiova,

point the publication of the Legal Handbook of Andronache Donici, in 1814. Donici's work, entitled "*A brief collection of the rules contained in the royal books to help those who are engaged in learning them, with reference to the book, title and beginning of the royal rules*", although lacking official recognition, had special importance. It was drafted in Romanian, being "the first major legislative work written in Romanian" (A. Rădulescu), with advanced regulations and a modern structure<sup>3</sup>.

It is estimated that the period ended when the Romanian Civil Code was drafted and entered into force, ie on 1 December 1865. This normative act was voted, decreed and promulgated under the title *Civil Codex*, and later named the *Alexandru Ioan Codex*, proposed by the Minister of Justice, who argued that the new Code was "the result of the regenerative ideas" of the prince (of 29 December 1864)<sup>4</sup>.

The development of legal culture in the two Principalities, during this period, "*appears in much the same way*" and we find here a "*mutual influence*" and a real

Universitaria Publishing House, 2002, pp. 171–177. For the problem of legislative unification, A. Rădulescu, *Unificarea legislativă, Memoriile Secțiunii Istorice*, session of 2 June 1927, series III, tome VII, Bucharest, National Culture (also available at [www.digibuc.ro](http://www.digibuc.ro), pp. 3–7, accessed July 2020); Idem, *Puterea judecătorească*, 10 March 1922, in *Constituția din 1923 în dezbaterile contemporanilor*, Bucharest, Humanitas Publishing House, 1990, pp. 278–314; Idem, *Dreptul românesc în Basarabia*, presentation in the public session of the Romanian Academy of 3 July 1942, republished by Universul Juridic Publishing House, Bucharest, 2017; D. Gusti, President of the Romanian Social Institute, *Cuvânt de deschidere, în Constituția din 1923 în dezbaterile contemporanilor*, Bucharest, Humanitas Publishing House, 1990 – which reproduces the New Constitution of Romania, 23 public speeches organized by the Romanian Social Institute, published by the National Culture Print, Bucharest, no year, pp. 19–23, dated 18 December 1921; Vintilă I. Brătianu, *Nevoile statului modern și Constituția României Mari*, in *Constituția din 1923 în dezbaterile contemporanilor*, pp. 54–72; M. Dușu, *Un secol de stat unitar și drept național (1918–2018). Perspective istorice culturale-științifice*, Bucharest, Romanian Academy Publishing House, Universul Juridic Publishing House, 2018; S. Popescu, T. Prelipceanu, *Unificarea Codului civil și a celui de procedură civilă, un remarcabil rezultat al conlucrării fructuoase dintre membrii și consilierii temporari ai Consiliului legislativ interbelic*, in "Revista de drept comercial", no. 4/2008.

<sup>3</sup> For the life and work of Donici, A. Rădulescu, *Juristul Andronache Donici*, National Culture, Bucharest, 1930, who reminds that although approved by "Prince Calimach to be printed and implicitly allowed to be used in Moldavia, it was only a guiding manual, a kind of Institutes" (p. 25). Published in Iași in 1814, Donici's book was also applied in Bessarabia – translated into Russian, "with many omissions and errors" – for 114 years, until 1 June, 1928, when "this book was replaced by our civil code" (pp. 27–28); Sorin Radu, *Vespasian Erbiceanu (1865–1943). Studiu monografic*, Târgoviște, Cetatea de Scaun Publishing House, 2014, p. 89 and 184, which mentions the translation of Donici's book into Russian.

<sup>4</sup> Paul Cosmovici (coord.), *Tratat de drept civil*, vol. I, General part, Bucharest, Publishing House of the Academy, 1989, p. 33. On the change of name in the "Civil Code", at the proposal of the Council of Ministers of 16 June 1866, arguing that the new Civil Code is, with minor modifications, the French Civil Code, which cannot be designated by any other name than that of its "glorious and immortal author" Napoleon I, see A. Rădulescu, *Izvoarele dreptului civil*, in *Pagini de istoria dreptului românesc*, op. cit., p. 186, who emphasizes that the decision also concerned the other codes and was approved by Prince Carol and published in the Official Gazette of 23 June 1866.

“*competition in achieving the same goal*”, so that “the sister country soon replied to a rule, an institution, a measure with another almost similar one”. A true “*legal unity, not included in the texts, but in principles and other cultural manifestations, a unity that becomes full at the end of this epoch*” is now established between the two Principalities<sup>5</sup>.

At European level, by the end of the 18<sup>th</sup> century and the beginning of the 19<sup>th</sup> century, under the influence of the principles of the French Revolution, a strong trend of codification manifested itself, “a kind of mysticism of codification”<sup>6</sup>. In Bucharest, in the work published in 1842 and entitled “*Interpretation of the commercial code, according to the method of Bravard-Veirier, for the use of judges, lawyers and merchants*”, Gh. A. Manu and A. Roset-Bibica reminded that this “*bending towards codifications seized the whole Europe and the whole new world*”. This trend also includes the Romanian Countries, and “Wallachia... cannot remain outside this spirit of codification”<sup>7</sup>. The Caragea Code is drawn up, promulgated on 1 June 1818 and in force on 1 September 1818. Written from the beginning in Greek and Romanian, published in an official edition in both languages in 1818, it has as its sources Roman and Greco-Roman law, especially Justinian’s law, certain rules of the law of the country and, to a lesser extent, Western law<sup>8</sup>. It was the civil law of Wallachia for 47 years and 3 months, with the mention that some texts were amended or repealed by other regulations, before 1 December 1865. Under art. 1415 (regarding hereditary leases, known as “*emfiteuze*” or “*embatic*”/ “*emphyteusis*”) and art. 1912 (which repealed the Caragea Code, but only in what did not comply with the rules provided in the new civil law) of the Romanian Civil Code of 1864, it was admitted that this code was also applied after 1 December 1865 in certain cases<sup>9</sup>.

In Moldavia, Scarlat Calimach, assisted by Christian Flechtenmacher, Anania Cuzanos, Andronache Donici and others, succeeded in drafting the *Civil or Political Code of the Principality of Moldavia*, promulgated on 1 June 1817 and in force on

---

<sup>5</sup> A. Rădulescu, *Cultura juridică românească în ultimul secol*, Bucharest, National Culture, 1923, p. 27, which divides this era into three periods: a. The period preceding the Organic Regulations; b. the period of the Organic Regulations; c. The period of the Paris Convention and of the State.

<sup>6</sup> Ripert et Boulanger, *Traté de droit civil*, Paris, 1957, t. I, no. 321; for aspects regarding the drafting, description and appreciation of the French Civil Code, Ambroise Colin et Henri Capitant, *Curs elementar de drept civil francez*, translation by Victor G. Cadere and Ioan Miloae, Bucharest, Central Printing House, 1940, no. 17–18, pp. 24–29.

<sup>7</sup> A. Rădulescu, *Primele încercări de doctrină comercială în Țara Românească*, in Irina Rădulescu-Valasoglu (ed.), *Pagini de istoria dreptului românesc*, Bucharest, Publishing House of the Academy, 1970, p. 170.

<sup>8</sup> A. Rădulescu, *Izvoarele dreptului civil*, in *Pagini de istoria dreptului românesc ...*, pp. 172–179; *Legiuirea Caragea*, critical edition, Publishing House of the Academy, 1955, drawn up by the Collective for the old Romanian law of the R.P. R. Academy, coordinated by A. Rădulescu.

<sup>9</sup> A. Rădulescu, *Introducere*, în *Legiuirea Caragea*, critical edition, Publishing House of the Academy, 1955, pp. V–XXVI; Idem, *Pagini despre Legiuirea Caragea*, in Irina Rădulescu-Valasoglu (ed.), *Pagini inedite din istoria vechiului drept românesc*, Bucharest, Publishing House of the Romanian Academy, 1991, pp. 77–102.

1 September 1817, one year before the Caragea Code in Wallachia. The Calimach Code was written in Greek and printed in three parts. The first part included an introduction about political laws in particular and about the law of persons, being printed in Iași, in 1816, in the Greek printing house at the monastery of the Three Hierarchs. It was translated at the end of 1831 and printed in Romanian two years later. On 5 December 1833, the Minister of Justice Costache Sturdza presented to the Ordinary Public Assembly a copy printed “for the first time in the language of the country”<sup>10</sup>.

Considered “*the most important civil law of our past*”, appreciated by foreigners – recommended to the Greeks by Zachariae von Liendenthal to be adopted as the law of their state –, the Calimach Code had as its source Roman, Greco-Roman law, in particular the Basilica, parts of the previous law of the country and certain provisions of the European laws of the time<sup>11</sup>. The civil code of Moldavia governed the social relations that formed its object of regulation, until the adoption and entry into force of the Romanian Civil Code of 1864. Due to the urgent need for legislative unification, it had to be replaced by it, before reaching half a century of applicability. It is important to note that the Organic Regulation of Wallachia (art. 241) recommended, in 1831, the composition of a modern civil code and criminal code. Following this recommendation, on 31 March 1831, a commission was set up to draft a political and criminal code, but it did not go any further. There is no such recommendation in the Organic Regulation of Moldavia, because the Calimach Code and the Criminal Code (1820-1826) regulated separately the matter of civil law and, respectively, the matter of criminal law and criminal procedure. The Caragea Code was mainly a civil code (first four parts), but it also included some rules of criminal law (part 5), criminal procedure and civil procedure (part 6).

### **THE PROBLEM OF THE ROMANIAN PRINCIPALITIES IN PARIS FROM MARCH 1856 TO AUGUST 1858**

Internationally, the conflict of interests between the Great Powers for the control of the Eastern Mediterranean Sea and the Straits – the Bosphorus and the Dardanelles –, triggered the Crimean War in 1853. On the scene there are, on the one hand, Turkey, supported by France, England, Sardinia and, indirectly, Prussia

---

<sup>10</sup> Idem, *Introducere, în Codul Calimach*, critical edition, Publishing House of the Academy, 1958, drawn up by the Collective for the old Romanian law, pp. 3–34, as well as Annex I A, point 9, p. 868; Idem, *Izvoarele Codului Calimach*, in *Pagini de istoria dreptului românesc ...*, pp. 133–154.

<sup>11</sup> A. Rădulescu, *Izvoarele dreptului civil ...*, p. 177, who emphasizes that the view according to which the Calimach Code is a mere copy of the Austrian Code is unfounded and considers that the resemblance to the Austrian Civil Code in terms of the plan and in many parts of the wording – which contributed to this view – is explained by the fact that both codes have the same main sources: Roman law and Greco-Roman law (p. 178).

and Austria, and on the other hand, Russia. The historical context offered by the defeat of Russia by the Ottoman Empire and the European allies, brings to the fore the problem of the state organization of the Romanian Principalities.

The Paris Peace Treaty of 18/30 March 1856, which ended the Crimean War, decisively influenced the political development of Wallachia and Moldavia, as it included important clauses regarding the Principalities. On the one hand, some parts of the three southern counties of Bessarabia (Cahul, Bolgrad and Ismail) are returned to Moldavia. This situation would increase the tensions already existing in the Russian-Romanian relations, because, although the respective area represented only 5000 km<sup>2</sup> and had modest economic importance, Russia lost access to the Danube, and the tsar felt the loss of this territory as a personal humiliation, being determined to regain it<sup>12</sup>.

On the other hand, the “Principalities of Wallachia and Moldavia” remained under the suzerainty of the Porte, with the collective guarantee of the signatory Powers. This meant the maintenance of Ottoman suzerainty over the Principalities and the replacement of the protectorate of Tsarist Russia, established by the Treaty of Adrianople of 2/14 September 1829, with the collective guarantee of the six European Powers: France, Great Britain, the Habsburg Empire, Prussia, Russia and Sardinia. In this matter, art. 22 of the Treaty provides that “none of the Guarantor Powers shall exercise exclusive protection over them. In this respect, no special right of interference in their internal affairs is provided”<sup>13</sup>. The Treaty, which establishes the freedom of navigation on the Danube<sup>14</sup> and the neutrality of the Black Sea, also brings an international legal confirmation of the autonomous existence of the Principalities and the special relations they have with the Ottoman Empire. In this sense, art. 22 expressly mentions their “*privileges*” and “*immunities*”, and art. 23 stipulates that the Sublime Porte undertakes to maintain “*an independent and national administration, as well as the full freedom of culture, law, trade and navigation*”.

---

<sup>12</sup> The documents of the Commission for the delimitation of borders in Bessarabia recorded the discussions between the commissioners of the Great Powers (Austria, France, Great Britain, Russia and Turkey) on the issues of the gradual incorporation of the territory ceded to Moldavia by Russia. Minister Constantin Negruzzi, who participated in the proceedings as a representative of the Moldavian government, requested information necessary for the fulfilment of this mission, see Protocols Nos X and XI of the Commission, in Ioan Aurel Pop, Ioan Bolovan, Ioana-Mihaela Bonda, Ana Victoria Sima, Teodor Laurențiu Popescu (coord.), *Construind Unirea cea Mare*, vol I, *De la Revoluția pașoptistă la formarea Partidului Național Român (1848-1881)*, volume edited and prefaced by Mircea-Gheorghe Abrudan, Cluj-Napoca, Școala Ardeleană Publishing House, 2018, points 100 and 101, pp. 419–426.

<sup>13</sup> For the text of the provisions in the Treaty on the situation of the Romanian Principalities, Ioan Aurel Pop, Ioan Bolovan, Ioana-Mihaela Bonda, Ana Victoria Sima, Teodor Laurențiu Popescu (coord.), *op. cit.*, vol. I, point. 93. 1856, March 30, Paris. Fragment from the Paris Peace Treaty, pp. 402–405.

<sup>14</sup> The Principalities have a modest role in this matter, even if their section of the Danube is the longest, arguing that they were not sovereign states.

It is very important that, in order to know the wishes of the Romanians, through a radical change in their usual way of treating the Principalities, the Powers provided for the election of special consultative assemblies, which had to make known their opinion on important issues. For the first time, the population of these Principalities was to be consulted on their future organization, by convening the two ad-hoc Assemblies (Divans), constituted so as “to represent as accurately as possible the interests of all classes of society” (art. 24). A Commission for the Information of the Guarantor Powers was established, which was to investigate the desiderata of the Romanians and then, based on the work of the ad-hoc Assemblies and its own findings, to prepare a report, which would be the basic document for the proceedings of a future Diplomatic Conference<sup>15</sup>: “The final agreement with the suzerain power will be consecrated by a convention concluded in Paris between the High Contracting Powers”, art. 25 of the Treaty stated. Finally, the powers stipulated that all foreign troops be withdrawn from the Principalities, as soon as the Ottoman Empire and Austria could make the necessary arrangements.

The action of the Wallachian and Moldavian national party, which expressed the wishes of an active and enthusiastic majority, in contradiction with a conservative minority, which sought to maintain the old rules, was now becoming decisive. At the level of the Guarantor Powers, two orientations could be noticed: one favourable to the union - France (Napoleon III), Russia, Sardinia, Prussia -, the other against the union - the Ottoman Empire, Austria, England<sup>16</sup>.

---

<sup>15</sup> Dan Berindei, *Diplomația românească modernă. De la începuturi la proclamarea independenței de stat (1821–1877)*, Bucharest, Albatros Publishing House, 1995, p. 117.

<sup>16</sup> For the Union of the Principalities, *Documente privind Unirea Principatelor, I – Documente interne, 1854–1857*, Dan Berindei (editor in charge) et al., Bucharest, 1961; Dan Berindei (coord), *Istoria Românilor*, vol. VII, tome I, Formation of modern Romania (1821–1878), mainly part II, chap. X–XII, pp. 387–485; Dan Berindei, *Epoca Unirii*, Publishing House of the R.S.R. Academy, Bucharest, 1979, pp. 9–93; Gheorghe Iacob, *România în perioada edificării statelor naționale (1859–1918)*, pp. 607–685, in *Construind Unirea cea Mare*, vol. VII, *De la Sarmizegetusa la Alba Iulia. Stat și statalitate pe teritoriul României*, volume edited by Ioan-Aurel Pop and Ioan Bolovan, Cluj-Napoca, Școala Ardeleană Publishing House, 2018; Gheorghe Iacob, *România în epoca modernizării (1859–1939)*, Iași, “Alexandru Ioan Cuza” University Publishing House, 2013, in particular, IV. *Sub semnul “politicii faptului împlinit”*. *De la Unirea Principatelor la proclamarea Regatului (1859–1881)*, pp. 61–76; Nicolae Iorga, *Istoria românilor*, vol. 9, *Unificatorii*, Bucharest, 1938; Nicolae Iorga, *Partea lui Napoleon III în Unirea Principatelor*, (conference held at the Cultural League on 27 February 1915), Bucharest, Publishing House of the League for the Cultural Unity of all Romanians, 1915; Gheorghe Platon, *Lupta românilor pentru unitatea națională. Ecouri din presa europeană (1855–1859)*, Iași, Junimea Publishing House, 1974; Keith Hitchins, *România. 1774–1866*, second edition, revised, translation from English by George G. Potra and Delia Răzdolescu, Bucharest, Humanitas Publishing House, 1996, in particular, 7. *Principatele Unite*, pp. 335–387; Dumitru Vitcu, *Diplomații Unirii*, Bucharest, Publishing House of the R.S.R. Academy, 1979; D. A. Sturdza, *Însemnările Divanurilor ad hoc din Iași și din București în istoria renașterii României*, in “Analele Academiei Române. Memoriile secțiunii istorice”, series II, tome XXXIII (1910–1911); XXXIV (1911–1912); D. A. Sturdza et al., *Acte și documente relative la istoria renascerei României*, București, 1888–1909, vol. I–X.

According to the Paris Peace Treaty, ad-hoc Assemblies were convened, in which the main social categories were represented, including the peasantry (which constituted over 80% of the population) and which were to formulate the country's desiderata. The elections for the ad-hoc Assemblies and their proceedings, held in Iași and Bucharest in the autumn of 1857, form a special chapter in the history of the movement for the unification of the Principalities. This period notes beneficially the intensification of the relations between the Wallachian and Moldavian unionists, the establishment of a permanent contact, exchanges of visits and combined actions. For example, at the end of September 1857, Dimitrie Brătianu moved to Iași and had meetings with the Moldavian leaders of the union movement. During that period, a close correspondence between the leaders of the National Party in the two countries continued, and it was widely recorded in documents<sup>17</sup>. The Romanian political centres outside the Principalities continued their activity. A pamphlet was published in Paris in 1857, a brochure presenting a series of proposals in respect of the most appropriate wishes to be expressed by the ad-hoc Assemblies. The demands were primarily aimed at the unification of the Principalities and the strengthening of their autonomy, noting that social policy issues could be addressed later internally<sup>18</sup>.

In March 1857, in view of the elections for the ad-hoc Assembly, the Moldavian unionists announced the establishment of the Electoral Committee of the Union for Iași and presented their program, which “is based on the very principles of the Treaty of Paris”. The central points of this program were the union of the Principalities and the promotion of their autonomy under the collective guarantee of the Great Powers signatories to the treaty. They wanted the legislature to be “entrusted to a public assembly which should represent the interests of the whole nation”. At the same time, the unionists in Wallachia presented their political program and declared their agreement with the Moldavian unionists. The aim was “the Union of the countries Romania and Moldavia, in one state and under one government”, as well as “a foreign prince to inherit the throne, chosen from a ruling dynasty of Europe”<sup>19</sup>.

---

<sup>17</sup> Dan Berindei, *Știri noi privind conclucrarea muntienilor și moldovenilor în lupta pentru Unirea Principatelor*, in *File din trecutul istoric al județului Prahova*, Ploiești, 1971, pp. 5–14; Maria Huminic, *Colaborarea dintre unioniștii moldoveni și munteni în lumina unor documente ale vremii aflate în Muzeul Unirii din Iași*, in “*Cercetări istorice*”, Iași, I, 1970, pp. 29–42. In detail on the ad-hoc Assemblies and their significance, Dan Berindei, *Epoca Unirii*, pp. 51–72; Cornelia Bodea (ed.), *Correspondență politică (1855–1859)*, Publishing House of the R.S.R. Academy, Bucharest, 1963, Dimitrie A. Sturdza to Constantin Hurmuzachi, 3 July 1856 (where he mentions the unionist aspirations and unwavering confidence in the imminent achievement of the Union), p. 115; Grigorie Ioranu to Mihail Kogălniceanu, 24 July 1856 (announcing the establishment of Union committees in Bucharest and emphasizing the unionist spirit in the country), pp. 123–124.

<sup>18</sup> *Ce se cuvine să cerem la Adunările ad-hoc*, Imprimerie de Gustave Gratiot & Comp., Paris, 1857; Ioan Aurel Pop, Ioan Bolovan, Ioana-Mihaela Bonda, Ana Victoria Sima, Teodor Laurențiu Popescu (coord.), *op. cit.*, vol. I, point 99, pp. 416–419.

<sup>19</sup> For the text of political programs, Ioan Aurel Pop, Ioan Bolovan, Ioana-Mihaela Bonda, Ana Victoria Sima, Teodor Laurențiu Popescu (coord.), *op. cit.*, vol. I, no. 105, pp. 434–438, no. 107, pp. 440–442.

The ad-hoc Assembly of Moldavia voted at the proposal of M. Kogălniceanu, in the meeting of 7/19 October 1857, by 81 votes for and 2 against, a declaration for *the Union of the Principalities in a single state under the name of Romania*, for a hereditary foreign prince, for the neutrality of the Principalities and for a legislative power "entrusted to a public assembly, in which all the interests of the nation should be represented". In Bucharest, the resolution voted unanimously on 9/21 October 1857, included the same desiderata<sup>20</sup>.

The Commission for the Information of the Guarantor Powers noted in its report the "wishes" expressed by the two ad-hoc Assemblies, the Commissioners' comments and proposed a series of reforms on which a unanimous consensus had been reached: the abolition of privileges and equality before tax and law, the revision of the agrarian relations, the separation of the judiciary from the executive and the gradual introduction of the irremovability of the magistracy, the improvement of education and the creation of an academic education, the simplification of the financial system, the development of the means of communication.

On 10/22 May 1856, the proceedings of the conference opened in Paris, which was to draw up, in accordance with the provisions of the 1856 treaty, a convention on the "*definitive*" organization of the Principalities. The French government firmly maintained its favourable attitude to the Romanian cause, supported by Russia, Sardinia and Prussia. On the other hand, the Porte and Austria were against it. The Conference of the ambassadors of the Guarantor Powers concluded, after laborious negotiations, the *Paris Convention of 9/17 August 1858*.

The Great Powers declared themselves for a compromise formula: Wallachia and Moldavia would be called the United Principalities; there would be a Central Commission for the preparation of the laws and a joint Court of Cassation in Focșani; all citizens were equal before the law (art. 46), and the privileges and ranks of boyars were abolished<sup>21</sup>.

The stipulations on the prince were important, and he could be in each country a Moldavian or a Wallachian, with an income of three thousand golden coins and having held a public office for ten years. He was to be "elected for life by the Assembly" and had to obtain the investiture of the Porte "within a month at most". The legislative power was to be exercised collectively by the prince, the Elective Assembly and the Central Commission. The electoral stipulations annexed to the convention restricted the right to vote directly to several thousand people.

---

<sup>20</sup> Dan Berindei, *Epoca Unirii*, pp. 59–61. The French press reported the results of the Divan debates and stressed that "everything is clear and unequivocal", Gh. Platon, *Lupta românilor pentru unitate națională 1855–1859. Ecouri în presa europeană*, p. 40.

<sup>21</sup> For the text of the Convention, *Acte și documente*, vol. VII, pp. 306–314; B. Boerescu, *Examen de la Convention du 19 août relative à l'organisation des Principautés Danubiennes*, Paris, 1858; <http://legislatie.just.ro/Public/DetaliiDocument/21852>, accessed June–August 2020; Loredana-Maria Ilin, *Sistemul constitutional românesc (1821–1923)*, Aius Publishing House, Craiova, 2009, pp. 181–188.

The prerogatives of the Head of State were provided in art. 14–15 of the Convention: the exercise of government with the ministers, whom he appointed; the sanctioning and promulgation of the laws, but also the right to refuse to sanction laws; the right to pardon or reduce criminal penalties, without interfering in the good functioning of justice; the right of legislative initiative and the preparation of the budget, which was to be submitted to the deliberations and vote of the Assembly; the right to appoint in all functions of public administration and to draw up regulations for the enforcement of the laws.

He also had the right to convene the Assembly in ordinary or extraordinary sessions, to extend the ordinary session and to dissolve the Assembly, having the obligation to convene a new Assembly within three months. He had the right to summon, in case of danger to the borders of the country, the armies of the two Principalities, following the agreement of the two princes and with the notification of the Porte, but also the right to appoint and revoke, as appropriate, the army commander.

All these prerogatives were similar to those of any constitutional monarch, as Andrei Rădulescu noted<sup>22</sup>, as the principle of inviolability and irresponsibility was provided, in the sense that any act of the Prince had to be countersigned by a minister, who assumed full responsibility.

### THE DOUBLE ELECTION OF PRINCE ALEXANDRU IOAN CUZA

In accordance with the provisions of the Paris Convention, a provisional commission was set up in the Principalities to ensure the election of the elective assemblies, which were to appoint the two rulers. In Moldavia, the kaimakamship was entrusted to Anastasie Panu and Vasile Sturdza, representatives of the national party, and to the conservative boyar Ștefan Catargiu. In Wallachia, the members of the kaimakamship represented conservative positions – Ioan Manu and Emanoil Băleanu – or moderately conservative – I. Al. Filipescu.

The elective assembly of Moldavia was dominated by the representatives of the national party, while in Wallachia it was dominated by the conservatives. When the Elective Assembly of Moldavia was opened on 28 December 1858/9 January 1859, the deputies were enthusiastically greeted by the people. On 5/17 January 1859, Al. I. Cuza was elected ruler, by the unanimous vote of the deputies present there. Colonel Cuza was known as a leader of the unionist movement, who in the summer of 1857 had resigned from the office of chief magistrate of Covurlui (Galați) in protest against the falsification of the elections in Moldavia and the

---

<sup>22</sup> Andrei Rădulescu, *Organizarea statului în timpul domniei lui Cuza-Vodă*, Bucharest, Cartea Românească Publishing, 1932, p. 10.

electoral abuses of kaimakam Vogoridi. A member of the ad-hoc Assembly, Cuza had then become the deputy of the minister of war, commander of the country's army. After taking the oath of the newly elected, in which he showed that he wanted to defend "the rights and interests of the homeland" and to ensure "the good and happiness of the Romanian nation", Mihail Kogălniceanu delivered an impressive speech on behalf of the assembly<sup>23</sup>.

In Bucharest, the national party acted in such a way that, on 24 January 1859, it obtained the election of Alexandru Ioan Cuza as ruler of Wallachia. By the double election of Cuza, then 39 years old, the essential desire of the nation was harmonized with the provisions of the Paris Convention, an intelligent and courageous solution of the Romanians for the situation created by the decisions of the Great Powers.

Cuza launched a vigorous diplomatic campaign to gain recognition for his election and sent Moldavian and Wallachian delegates to Constantinople in mid-February 1858. He would also send special emissaries to Western Europe and Russia. The first and most successful mission was that of Vasile Alecsandri in Paris, London and Turin. He was warmly received by Napoleon III and Walewski, who promised to send a military mission to the Principalities<sup>24</sup>.

Internally, Cuza's reign, begun under such happy auspices, would soon run into serious difficulties. The ruler's mission was not easy, being forced to collaborate with two governments and two assemblies, located in Bucharest and Iași, at a distance of 400 km, quite long at that time (which could be covered in about 60 hours). In the first three years of Alexandru Ioan Cuza's reign, the political life in the Principalities was characterized by a deep instability, so that more than 20 ministerial formations and five Assemblies followed one another in the two countries<sup>25</sup>.

The Paris Convention established a high electoral qualification for voters of future elective and legislative Assemblies, different from that applied in 1857. In this context, the great nobility had the opportunity to dominate and control the Assembly politically and to oppose any initiative to improve the situation of the

<sup>23</sup> Dan Berindei, *Epoca Unirii*, pp. 80–83; Session of 5/17 January 1859, *Acte și documente*, vol. VIII, pp. 342–345. For the life and work of Alexandru I. Cuza, Constantin C. Giurescu, *Viața și opera lui Cuza Vodă*, Bucharest, Scientific Publishing House, 1986.

<sup>24</sup> D. Vitcu, *Diplomații Unirii*, Bucharest, Publishing House of the Romanian Academy, 1979, pp. 60–68.

<sup>25</sup> *Istoria Românilor*, vol. VII, tome I, coord. Dan Berindei, Bucharest, Encyclopaedic Publishing House, 2003, pp. 485–495; N. Iorga, *Un cugetător moldovean de la jumătatea secolului al XIX-lea: Ștefan Scarlat Dăscălescu*, Romanian Academy, Memoirs of the Historical Section, series III, tome XIII, Mem I, Bucharest, National Printing House, 1932, p. 45, who noted that ministries "changed like plates". The enthusiasm of the beginning had passed, and many of the risks anticipated by some political leaders were fulfilled. See Ion I. Brătianu, *Memoriul lui Ion C. Brătianu prezentat domnitorului Alexandru Ion I. Cuza, la prima sa venire în București*, Bucharest, Institute of Graphic Arts and Minerva Publishing House, 1901, pp. 1–6.

peasantry<sup>26</sup>. Cuza quickly began the work of administrative centralization of the two Principalities, skilfully using the legislative route, which required the adoption of normative acts by the two Assemblies, or the faster administrative route, which included actions to strengthen the political unity and functionality of state institutions.

The administration of the post office and the telegraph, customs, sanitary service and other services, the currency exchange rate were unified (governing bodies based in Bucharest were also established). Unified solutions in important areas were imposed by the adopted normative acts. In chronological order, among the first projects voted by the assemblies were those related to the unitary organization of the army. The elective assembly of Wallachia voted unanimously, on 22 March 1860, the Law for the instruction of the army<sup>27</sup>, to follow the laws for the organization of the Court of Cassation, the laws on revenues from salt mines, those regarding the construction of roads and railways, the cancellation of the concessions of salt mines and customs and their administration by the state, the organization of ministries and the financial service, the organization of the Court of Accounts, the organization of state accounting. All these were important steps in the process of achieving the full Union starting from the personal union fulfilled at the beginning of 1859<sup>28</sup>.

By various diplomatic means, the agreement of the Guarantor Powers and the Sultan for the unification of the Principalities was obtained. In the Proclamation addressed to the country on 11/23 December 1861, the ruler could declare: “*The union is fulfilled, the Romanian nation is founded...; the one you elected gives you one Romania today*”<sup>29</sup>. The capital was settled in Bucharest, where there was only one government and one parliament, which opened its proceedings on 24 January 1862. In the new political context, Cuza continued and expanded the reform program, conceived together with his main adviser, Mihail Kogălniceanu.

The law of December 1863 imposed the secularization of the monastic wealth, through which approximately 25% of the country’s territory entered the state patrimony, and demonstrated the capacity of the leadership of the young Romanian state to overcome the resistance of the Porte and other great powers.

---

<sup>26</sup> Grigore Chiriță, *Condiția politică a țărănimii în epoca Unirii. Contribuția ei la crearea României moderne (1856–1866)* (I), in *Revista de istorie*, tome 37, no. 1/1984, p. 25. In the sense that the text of the Paris Convention did not propose “the fundamental status that the Romanians expected”, see Dan Berindei, *Trăsături definitorii ale începuturilor procesului de constituire a statului român modern*, in “*Revista de istorie*”, tome 37, no. 1/1984, p. 6.

<sup>27</sup> Pursuant to art. 42 of the Paris Convention, Cuza became the commander of the two armies, aided by a joint general staff, and the two ministries of war also merged into one in 1861.

<sup>28</sup> I. Vântu, Title II, chap. 1 – Constitutional law, sect. I – Statute Expanding the Paris Convention, pp. 63–66, in *Istoria dreptului românesc*, vol. I, Part I, editors: Dumitru Firoiu, Liviu P. Marcu, Bucharest, Publishing House of the R.S.R. Academy, 1984.

<sup>29</sup> Gheorghe Iacob, *România în epoca modernizării (1859–1939)*, Iași, “Alexandru Ioan Cuza” University Publishing House, 2013, p. 65; C.C. Giurescu, D.C. Giurescu, *Istoria Românilor. Din cele mai vechi timpuri până azi*, Bucharest, 1971, p. 553.

## THE STATUTE EXPANDING THE PARIS CONVENTION

However, the road to agrarian reform encountered, in addition to external resistance, fierce internal opposition from the great boyars, who dominated the Chamber and used parliamentary procedures to block any initiative in this regard. After several failed attempts, the adopted solution was the coup d'état of 2 May 1864. The ruler dissolved the Assembly and promulgated the *Statute Expanding the Paris Convention*, where he cautiously stated in the preamble: The Paris Convention "is and remains the fundamental law of Romania". The name of the document was chosen to express continuity and to prevent any suspicions and obstacles on the part of the Porte and the guarantor powers. In order to gain legitimacy, the Statute was submitted to a plebiscite on 10–14/ 22–26 June 1864, together with a new electoral law<sup>30</sup>. The result of the plebiscite vote demonstrated an overwhelming support of the nation for the ruler and his reform projects. There were 682,621 votes *for*, 1,307 votes *against* and 70,220 *abstentions*, which means that over 90% of the votes cast were for the Statute and electoral reform<sup>31</sup>.

After the ruler's visit to Constantinople, the Statute and the electoral law were recognized, and on 6/28 June 1864, a protocol was concluded in this regard between the Porte and the representatives of the guarantor powers. On 8/20 July the "Official Gazette" published this protocol and the "Additional Act to the Convention of 7/19 August 1858", the new name of the Statute, which had certain amendments to the original proposed text. The country obtained the right that the future legislation would be approved according to the internal legislative procedure, without being subject to external intervention, a genuine internal sovereignty that Cuza would make full use of.

The Statute states in its first article that the public powers are entrusted to the Prince, the Moderating Body and the Elective Assembly. It is a new body added to those mentioned in the Paris Convention, the Moderating Body, meant to play a key role in the new organization. Legislative power is exercised collectively by the three bodies, and its organization seeks to rule out the possibility of using

---

<sup>30</sup> See, *Convențiune pentru organizarea definitivă a Principatelor Unite Române*, Bucharest, 1864, pp. 25–30; the Monitor Official Journal of the Romanian United Principalities, no. 99 of 4/16 May 1864, pp. 456–457; the Monitor Official Journal of the Romanian United Principalities, no. 150 of 8/20 July 1864, pp. 671–672.

<sup>31</sup> The Monitor Official Journal of the Romanian United Principalities, no. 113 of 20 May/ 1 June 1864, p. 519. For "*Noua Constituție a Principatelor-Unite*", G. Alexianu, *Curs de drept constituțional*, vol. I, Casa Școalelor Publishing House, Bucharest, 1930, pp. 434–441, who recalls the refusal of the Central Commission to approve the first initiative to amend the electoral law, arguing that the Assemblies are elected for 7 years, and the amendment of the electoral law would mean their dissolution. In his turn, Mihail Kogălniceanu, in order to demonstrate the unfair way in which the national representation was elected, mentioned (Official Gazette of Moldavia of 16 March 1860) that the deputy of Ismail was elected by one vote because there the college of primary owners consisted of one delegate.

parliamentary mechanisms against the normal functioning of the state. The Prince alone has legislative initiative (art. 3), who prepares the laws with the help of the State Council (a newly established body, by Law of 11 February 1864, which replaced the Central Commission of Focșani). The laws are subject to the vote of the Elective Assembly and the Moderating Body.

The deputies of the Elective Assembly are elected by a two-degree scrutiny: by voters who vote directly and by voters who vote indirectly. Direct voters are those who have an annual income of 100 golden coins and pay a tax of 4 golden coins. The right to vote is exercised from the age of 25. Priests, teachers, doctors, engineers, architects, bachelors are exempt from the electoral qualification and can vote as direct voters, if they meet the other conditions required. The law imposes special rules for incompatibilities, indignities and incapacities, provides the procedure for compiling electoral lists and solving contestations, establishing a real electoral dispute system, which reaches the High Court of Cassation. In order to have the right to be elected deputy, several conditions must be met: a. to be Romanian by birth or to have acquired the great naturalization; b. 30 years of age; c. to be a voter and to pay an eligibility qualification (provisionally set at an income of 200 golden coins, with certain exemptions). Indirect voters express their vote collectively, by designating a direct voter (50 indirect voters designate by “open” vote 1 direct voter).

The Statute maintains the prerogatives of the Head of State established by the Paris Convention, adding others that increase his authority: the right to appoint the President of the Assembly annually, from among its members (art. 4); the right to appoint the 64 members of the Moderating Body, according to a formula that includes the recognition and protection of local interests (from among the members of the General Councils of the counties one is elected from each county), and persons “recommended by their merit and experience”; the right to appoint one of the vice-presidents of the Moderating Body (art. 11, the initial text proposed the appointment of both vice-presidents by the Prince); the right to govern by decrees-laws, in accordance with art. 18 which stipulates that the decrees elaborated by the Prince, after the proposal of the Council of Ministers and the opinion of the State Council, until the convocation of the new Assemblies, have the force of the law<sup>32</sup>.

The legislative role of the Moderating Body is very important, having a real control of the constitutionality of the laws, similar to the one exercised by the French Senate. The draft laws voted by the Elective Assembly, except for the budget, are subject to the control of the Moderating Body, from the point of view of their compatibility with the “constitutive provisions of the new organization”

---

<sup>32</sup> See G. Alexianu, *Curs de drept constituțional*, vol. I, Bucharest, Casa Școalelor Publishing House, 1930, p. 440, who mentioned that “on the basis of this provision of the Statute, Cuza manages to carry out, in a short time, the entire reorganization of the state, rejected for so many years by the sterility of party struggles and the bad will of reactionary Parliaments”; Sorin Liviu Damean (coord), *Evoluția instituțiilor politice ale statului român din 1859 până astăzi*, Târgoviște, Cetatea de Scaun Publishing House, 2014, pp. 19–22.

(art. 13 of the Statute). The projects voted by the Elective Assembly and submitted to the approval of the Moderating Body, can be: a. adopted as they were voted by the Assembly; b. amended; c. rejected. In the first case, the project is subject to the sanction of the Prince.

If amendments are made to the draft, it returns to the Assembly. In the event that it votes on the amendments of the Moderating Body, the draft is subject to the sanction of the Prince. If the Assembly rejects the amendments, the draft is sent to the State Council. The draft thus revised may be presented by the government again to the Elective Assembly, in the current or future session. In the event that the draft law was rejected in its entirety by the Senate, it is sent to the State Council and cannot be brought back for debate until the second session (art. 14 of the Statute).

### THE LEGISLATIVE WORK OF PRINCE ALEXANDRU IOAN CUZA

At the end of 1864, the Moderating Body and the newly elected Elective Assembly were opened, the social composition of which demonstrated the important role of the events of May in enlarging political rights. The legislatures began their activity on 6/18 December, listening to the royal message: *“Through the plebiscite of 10–14 May, the nation entrusted me with exceptional powers. So today, I consider myself obliged to give you an account of the use I have made of these powers”*, the ruler mentioned.

The message of the throne includes the circumstances that justified the act of 2 May 1864, a summary presentation of the governing activity, especially in the “last five months of a peaceful, strong and respected administration”, as well as projects waiting to be fulfilled<sup>33</sup>. The ruler reminds that *“throughout Romania”* the communal and county councils function, and the government *“on the path of decentralization”* will keep only *“those inherent attributes”* of a central government. The equality of cults and freedom of conscience receive *“new guarantees”*, the Orthodox Church establishes the *“Central Synod for All Romania”*. The law on public education introduces a broad education system for all classes of society, with free primary education, each *“city, town or village”* will have its own school. The metric system is mandatory for the whole country. The law of expropriation for public utility *“will strongly activate public works”*.

---

<sup>33</sup> See, Gh. Buzatu (coord.), *Discursuri și dezbateri parlamentare 1864–2004*, Bucharest, Mica Valahie Publishing House, 2006, point 1, Bucharest, 6/18 December 1864 – Debates of the Senate and the Elective Assembly. Opening of the session of 1864–1865: The Message of the Throne, signed by the Prince of Romania, Alexandru Ioan Cuza, as well as M. Kogălniceanu, N. Cretzulescu, L. Stege, N. R. Bălănescu, no. 1762/ 6 December 1864, presented in the joint session of the Chambers by Alexandru Ioan Cuza, pp. 61–70.

Chambers of commerce will be set up “*in all the main cities of Romania*”. The Ministry of Finance organizes several specialized services, and the Deposit Bank will make “*profitable the deposit and guarantee funds*”. The army has a new law on recruitment and organization. Agriculture is considered “*the only and strong source of our national wealth*”, the “*abnormal bases*” of land ownership and the Rural Law of 14 August 1864 are mentioned, and the “*compensation due to the owners*” will be paid on time and in the legal amount, being considered “*a national debt*”. It is necessary “*to open the communication ways*”, create railways, build roads, iron bridges over rivers, establish “*a port on the Black Sea*”.

Cuza recalls the “state of peril” to which “the party struggles and dreams of ambitious people had brought the country” a year before, the mission of the two Chambers “to strengthen the Romanian state” and “strengthen the foundations and durability of constitutional institutions”. The Prince asks for their support to complete the work of organizing the state and concludes emotionally: “*after I had to put myself above the law, for a minute, to save the Romanian nation and society, today I am in the happy position to implement the new institutions of Romania*”.

On 11 February 1866, due to prolonged internal tensions, Prince Cuza is forced to abdicate. At another level, Romanian literature had recently witnessed Mihai Eminescu’s debut with the poem “*On Arune Pumnul’s death*”, signed M. Eminovici, in the students’ homage collection dedicated to teachers and entitled “*Tears of high school students from Chernivtsi at the tomb of their beloved teacher Arune Pumnul dead on 12/24 January 1866*”, in Chernivtsi. In Romanian poetry, the Evening Star began his mission. In national politics, the Prince of the Union and Reforms ended his work. His message for the opening of the 1865–1866 parliamentary session, read on 5 December 1865, two months before his abdication, officially announced his intention to leave the throne: “*In Alexandru Ioan I, Prince of the Romanians, the Romanians will always find Colonel Cuza, who declared to the Guarantor Powers that he received the double election only as a sacred deposit*”<sup>34</sup>.

During a reign of only seven years, through an extraordinary political will, completed by a special vision of the needs of Romanian society, Cuza managed to lay the constitutional and economic foundations of modern Romania. Compared to Bismarck or Carvour, who in another historical context, laid the foundations of the German and Italian states<sup>35</sup>, respectively, Prince Cuza is the one who brought the first modern legislative unification in the Romanian legal space, admirably using the force of persuasion in modernizing society. The laws adopted under his rule, the principles and legal solutions, constitute the foundation of the modern Romanian legal system, many in force in the Old Kingdom in 1918 and, subsequently, applicable for a long time in Greater Romania.

<sup>34</sup> For the moment of the abdication, see also Titu Maiorescu, *Istoria contemporană a României (1866–1900)*, Bucharest, Titu Maiorescu University Publishing House, 2002, pp. 6–9.

<sup>35</sup> Gheorghe Iacob, *România în epoca modernizării (1859–1939)*, Iași, “Alexandru Ioan Cuza” University Publishing House, 2013, p. 67.

The elaboration and adoption of the major codes were of cardinal importance for the national legal system: the Civil Code, the Civil Procedure Code, the Criminal Code and the Criminal Procedure Code<sup>36</sup>.

The first Romanian Civil Code was elaborated and implemented during the reign of Alexandu Ioan Cuza, who on 17 July 1862 established a commission of specialists that elaborated a draft of a Romanian Civil Code, after the model of the French Civil Code, submitted to the Legislative Assembly at the end of 1863<sup>37</sup>, without being adopted. After 2 May 1864, the Prince invited the State Council to draw up a Civil Code, with the recommendation to take as a model Pisanelli's Italian Civil Code<sup>38</sup>. Starting from the existing project and having as a main model the French Civil Code (contrary to the recommendation of the prince), the members of the commission completed the project in less than six weeks. On 26 November 1864 the Civil Code was sanctioned by Cuza, on 4 December it was promulgated and its publication in the Official Gazette began immediately. There occurred numerous errors in hastily copying the manuscript and in printing it, so that the Code was published in April 1865 in a second official edition, which was immediately distributed to the courts and regarded as the authentic edition of the Civil Code. The initial deadline for implementation was 1 July 1865, but since the Civil Procedure Code and the Law on the Organization of the Judiciary, necessary for its application, had not been promulgated, it was postponed to 1 December 1865.

Unlike the French law of 21 March 1804, which expressly repeals all previous legal norms, the Romanian Civil Code provides in art. 1912: "The codes of princes Calimach and Caragea and any other previous civil laws, royal ordinances and ministerial instructions of both United Principalities shall be repealed, *in all that is not in accordance with the rules provided in this Code*" (our emphasis – C.S.). The application of previous laws and customs that did not contradict its provisions was accepted, an important legal solution. Over time,

---

<sup>36</sup> *Istoria dreptului românesc*, vol. II, Part II, editors: Dumitru Firoiu, Liviu P. Marcu, Bucharest, Publishing House of the R.S.R. Academy, 1987, Book I, Title I, Chap. III. Structure and sources of law, pp. 42–62.

<sup>37</sup> See D. Alexandresco, *Explicațiunea teoretică și practică a dreptului civil roman în comparative cu legile vechi și cu principalele legislații străine*, vol. I, Iași, National Printing House, 1900, pp. 22–29; P. Cosmovici (coord.), *Tratat de drept civil*, vol. I. General part, Bucharest, Publishing House of the Academy, 1989, pp. 31–44; Ion Dogaru, Sevastian Cercel, *Drept civil. Partea generală*, Bucharest, C.H. Beck Publishing House, 2007, pp. 10–12. For the text of the 1864 Civil Code, see also C. Christescu, *Codicele civil adnotat cu jurisprudența română urmat de un tabel indicativ pe articole de hotărârile pronunțate asupra vechilor legiuri Caragea și Calimach și asupra Regulamentelor Organice ale Munteniei și Moldovei*, Bucharest, Printing-lithography of Wiegand & Săvoiu Publishing House, Covaci, 1894.

<sup>38</sup> The President of the State Council, Constantin Bosianu, divided the matter between the members of the Council on 10 October 1864, without having previously worked in the plenary, as follows: I. Strat and Al. Papadopol-Calimach receive the preliminary title, book I, book II, privileges, mortgages and expropriation; Gh. Vernescu – successions, donations, wills, conventional obligations and commitments without conventions; Al. Crețescu, Gh. Apostoleanu – the marriage contract, sale, exchange, leasing, company, loan, deposit, seizure, aleatory contracts, mandate, bail, transaction, corporal constraint in civil matters, pledge, prescription

several private editions of the Civil Code appeared and were well received by practitioners, such as: A comparison between the Romanian Civil Code and the Napoleonic Code, by Constantin Nacu (Bucharest, no year) or The annotated Civil Code, by Constantin Hamangiu in collaboration with Nicolae Georgean (nine volumes, Bucharest, 1925–1934).

The doctrine states that the *moment of the Civil Code* is crucial for the development of the science of Romanian civil law. It imposes a unitary case law, periodicals and legal journals are published, and the doctrine reacts and brings reference works of some illustrious jurists<sup>39</sup>. It should be remembered that, from Junimist positions, the harshest criticism of this code was that it was an important law lacking the Romanian spirit, because it had nothing to do with the realities of Romanian life and prevented the natural evolution of our old law. It is considered that the fact that it did not regulate the sensitive issue of the freeholders' property, caused serious and endless conflicts, especially at the beginning of its implementation, causing prejudice to freeholders. The criticisms were fought in time by other authors, but the most thorough answer was given by time, through the long and good application of the Civil Code<sup>40</sup>: it was in force, with inherent changes, for 146 years.

The Romanian Civil Code is divided into books and the books into titles, each title making reference to a special matter. Thus, a preliminary title (art. 1–5) deals with “the effects and application of the law in general”, book I “On persons”, art. 6–460, has 11 titles (currently repealed), book II “On goods and on various changes in property”, art. 461–643, has 4 titles, book III “On the different ways in which property is acquired”, art. 644–1910, has 20 titles and, finally, “general provisions”, art. 1912–1914, a total of 1914 articles, compared to 2281, as has its French model.

Although this division is questionable (because of the magnitude of the third part compared to the other two, for example), it is traditionally explicable, because the structure of Justinian's *Institutes* (which reproduces the structure of Gaius' work – often called by Justinian *Gaius noster* – which replaced the case-law treatment of Roman law with a systematic, tripartite one on persons, goods and actions) is taken over. It was emphasized that in the Romanian Civil Code, as in its French model, *the individual is taken as a basis of law*, seeking to protect him by ensuring the protection of the person, by ensuring the legal equality of all before the law, but also by protecting private property<sup>41</sup>.

---

<sup>39</sup> Constantin Nacu, *Drept civil român* (8 volumes, 1901–1903); Matei B Cantacuzino (professor at the University in Iași), *Elementele dreptului civil* (1922); Constantin Hamangiu (counsellor at the High Court of Cassation and Justice), I. Rosetti-Bălănescu, Al. Băicoianu, *Tratat de drept civil român* (3 volumes, 1928). A special place belongs to Dimitrie Alexandrescu, *Explicațiunea teoretică și practică a dreptului civil român* (11 volumes).

<sup>40</sup> Andrei Rădulescu, *Izvoarele dreptului civil. Întocmirea Codului civil*, in *Pagini din istoria dreptului românesc*, 1970, pp. 179–188; Mircea Duțu, *Știința dreptului și cultura juridică în România*, Bucharest, Publishing House of the Romanian Academy, 2018, pp. 42–43; see also Andrei Rădulescu, *Moșnenii*, in *Pagini inedite din istoria dreptului vechi românesc*, 1991, pp. 56–76.

<sup>41</sup> P. Cosmovici, coordinator, *Tratat de drept civil*, p. 34. The Civil Code has undergone numerous changes over time, mainly due to changes in social relations, there have been numerous discussions and initiatives on a new code. In September 2004, the Romanian Senate adopted a draft

In turn, the Criminal Code was promulgated and published on 30 October 1864 and implemented on 1 May 1865, it underwent several changes over time – by the laws of 17 February / 1 March 1874, of 21 February/5 March 1882, of 28 May / 9 June 1893, of 15/27 February 1894 and of 4/16 May 1895 - and was in force until 1 January 1937. Prior to this code, the Criminal Code of 1826 was applied in Moldavia, and *Condica Criminală* (a criminal code) was applied in Wallachia, worked by the public divan under Barbu Știrbei in the period 1850–1853 (in force, amendments in time, until 1865, when it was repealed by art. 398 of the Criminal Code). This code had as its sources the French Criminal Code of 1810 and the Prussian Criminal Code of 1851, being one of the important normative acts of the legislative reform initiated by the ruler. It contains many modern legal solutions, which demonstrates the attempt of its drafters to orient the society of those times towards a new system of values. It consists of four fundamental parts – “Preliminary provisions” and three books: Book I “On punishments and their effects”, Book II “On crimes and delicts in species and on their punishments”, Book III “Police contraventions and their punishments”<sup>42</sup>. The Criminal Code enshrined the principle of the legality of punishments (art. 2), and regarding the qualification of criminal acts, other factors were also taken into account: the way in which they were committed, the number of participants. Regarding criminal liability, it was established that until the age of 8 an absolute presumption of irresponsibility is applied, between 8–16 years a relative presumption of irresponsibility is applied, between 16–20 years a lighter punishment is applied, and full liability arises from the age of 20. In the matter of punishments, unlike the French law, the Romanian Criminal Code abolished the death penalty. Corporal punishments or confiscation of property were not provided.

The Civil Procedure Code was drafted and entered into force at the same time as the Civil Code. The draft code was drawn up by V. Boerescu and Al. Crețianu and was submitted to the State Council in May 1865. It was voted by the Elective Assembly in the session of 21 June/ 2 July 1865 and the Moderating Body on 28 May/ 9 June 1865. He was decreed on 9/21 September 1865, being implemented on 1/13 December 1865<sup>43</sup>. Its sources were the procedural law of the Canton of Geneva of 1819, the French Civil Procedure Code of 1806, some provisions of the

---

law on the Civil Code, which was submitted to the Chamber of Deputies (considered a decision-making chamber pursuant to art. 75 of the Constitution). For the explanatory memorandum of this project, which has not been completed, see *Curierul Judiciar* no. 3/2004, pp. 121–133. For a comparative analysis of the various institutions in the draft and the Civil Code of 1864, as well as for the criticism of certain proposals, see *Revista de Științe Juridice* no. 1/2006. The 1864 Civil Code was repealed by art. 230 letter a of Law no 71/ 2011 for the enforcement of Law no. 287/ 2009 on the Civil Code, which entered into force on 1 October 2011. See, Marian Nicolae, *Elaborarea Noului Cod civil*, in *Codex iuris civilis*, tome 1. The new Civil Code. Critical Edition, pp. XXIV–CII.

<sup>42</sup> *Codul penal al lui Alexandru Ioan Cuza*, Cernăuți, Bukrek Publishing House, 2017, with a presentation of the Code signed by Tudorel Toader and Sergiy Nezhurbida, pp. 13–18.

<sup>43</sup> G. N. Nedelcu, *Textul autentic al Codului civil*, Bucharest, 1904, p. 18, n. 1; G.G. Tocilescu, *Explicația noului Cod de procedură civilă*, vol. I, part II, Bucharest, 1900, p. 15.

Belgian law<sup>44</sup> on enforcement and some rules of our old legislation. The code has seven books: the procedure before the rural district judge, the county tribunals, the courts of appeal, the arbitrator, the enforcement, special procedures, general provisions. Due to the lack of staff, the provisions on rural district courts were not implemented and the competence was assigned to sub-prefects. The trial went through a double stage on the merits of the case (in the first instance court and the court of appeal) and in the second appeal court.

The Criminal Procedure Code – was promulgated on 2/14 December 1864 and implemented on 30 April/ 12 May 1865, and was based on the French Criminal Instruction Code of 1808. The 603 articles included: Preliminary provisions, Book I (art. 13–138) – On the judicial police and police officers exercising it, Book II (art. 139–603) – On trials (police and correctional tribunals, cases to be submitted to jurors, second appeal, particular procedures, jurisdiction regulations, recusals, prisons, prescriptions, etc.). The delicts were within the jurisdiction of tribunals, and the crimes were within the jurisdiction of jury courts, which consisted of a panel of judges and a jury composed of citizens. The jurors answered “yes” or “no” to two essential questions: whether or not the person tried was guilty and whether or not he deserved mitigating circumstances (in the event that he was guilty). Their decision – the verdict – did not have to be motivated and determined either the legal classification of the act and the individualization of the criminal punishment, or the acquittal of the person tried.

In commercial matters, a legislative unification of the two Principalities is recorded by “expanding the legislation”. The law promulgated on 10/22 December 1863 for the “implementation in all Romania” of the Commercial Code of Wallachia, the abolition of the Commercial Court of Appeal in Bucharest and the transfer of its competence to the Civil Courts of Appeal was one of the important measures of legislative unification adopted by Alexandru Ioan Cuza<sup>45</sup>.

As for the organization of the judiciary, the Law of 4 July 1864, established the following courts: the rural district court, county courts, courts of appeal, jury courts, in criminal matters, and the High Court of Cassation and Justice. For the organization of the supreme court, starting from the provisions of art. 38–41 of the Paris Convention, first, the Central Commission of Focșani elaborated and published, in the session of 1859, the Draft Legislation for the establishment of a Court of Cassation and Justice for the United Principalities of Romania, and in February 1860 it was transmitted to the Legislative Assemblies in the two principalities. The draft law was voted by L. of 6 July 1860 in Iași, respectively, L. of 19 July 1860 in Bucharest. In his turn, Cuza sanctioned and promulgated by the Royal Decree no. 1 of 12 January 1861, issued in Iași, the Law for the

---

<sup>44</sup> Andrei Rădulescu, *Pagini din istoria dreptului românesc*, 1970, *Influența belgiană asupra dreptului român*, pp. 188–209; Elena Tereza Chilom, *op. cit.*, pp. 202–203.

<sup>45</sup> The Romanian Commercial Code was adopted under Carol I, promulgated on 10/ 22 May 1887 and in force on 1/ 13 September of the same year.

establishment of the Court of Cassation and Justice. It was published in the Official Gazette of Wallachia no. 18 of 24 January (using the Latin alphabet), as well as in the Official Gazette of Moldavia no. 88 of 29 January (using the Cyrillic alphabet), being countersigned by two Moldavians, Manolache Kostache, the Prime Minister in Bucharest, and Mihail Kogălniceanu, in Iași<sup>46</sup>.

Regarding the Court of Accounts, prior to the Union of 1859, in Wallachia and Moldavia there were “control ministries” subordinated to the executive power. The Central Commission of Focșani seeks solutions for the establishment of an institution specific to a modern state and supports from June 1859 the idea of founding a separate court with financial control powers. The law for the establishment of the Court of Accounts is voted by the Elective Assembly on 8/20 January 1864 and promulgated by the ruler on 24 January/ 5 February 1864, being countersigned by M. Kogălniceanu, President of the Council of Ministers, and A. P. Ilarian, Minister Secretary of State at the Department of Justice<sup>47</sup>.

## CONCLUSIONS

The modernization program of the two Romanian countries initiated after the Treaty of Paris of 1856 and affirmed by the voice of the ad-hoc Divans of 1857 had several fundamental principles, which were to be put into practice gradually: a. the union – fulfilled on 24 January 1859 and institutionally completed on 24 January 1862; b. internal autonomy – affirmed in May 1864; c. the foreign prince; d. the establishment of the constitutional regime.

During the reign of Alexandru Ioan Cuza, the first two desiderata were fulfilled, and after 11 February 1866, the way was open for the achievement of the other two. Cuza built ambitious plans to endow the new state with modern

---

<sup>46</sup> Mircea Duțu, *Istoria Întelei Curții de Casație și Justiție a României*, second edition revised and supplemented, Bucharest, Universul Juridic Publishing House, 2002, pp. 52–58, which explains why the law was applied after almost a year, when by the High Royal Decree no. 82 of 11 February 1862, the members of the Court and of the Prosecutor’s Office attached to it were appointed, after the establishment of the first unitary government, on 23 January 1862, and the official proclamation, on 24 January 1862, of the full and definitive union of the Romanian state. Andrei Rădulescu, *Cercetări privitoare la înființarea Curții de Casație în România*, Romanian Academy, Memoirs of the historical section, series III, volume XIV, mem. 8, Bucharest, National Printing House, 1933, which shows, among others, the disputes regarding the establishment of the seat of the Court of Cassation, “the question of the place where it was to function”, pp. 43–47.

<sup>47</sup> Official Gazette of the Romanian United Principalities, Friday, 24 January/ 5 February 1864, no. 18, p. 1; see, Bogdan Murgescu, *Studiu introductiv*, in *Curtea de Conturi a României 1864–2004. Culegere de documente*, Bucharest, 2004, pp. 9–17. The work contains the “Protocol of the Central Commission of Focșani on the proposal to establish a Court of Control of the United Principalities (12 June 1859), p. 19, “Debates of the Assembly of Deputies on the draft law for the establishment of the Court of Accounts (4/16 January 1864), pp. 20–31, the text of the Law for the establishment of the Court of Accounts, pp. 32–37.

institutions and paid special attention to the legal system, which he organized in accordance with the needs of a European state. From the complex of reforms carried out during his reign we must mention<sup>48</sup>: the rural law, the communal law, the county council law, the public accounting law, the State Council law, the law of the Chambers of Commerce, the law introducing the system of metric weights and measures, the church laws, the law on expropriation for causes of public utility, the pension law.

---

<sup>48</sup> For the economic policy promoted by Cuza and the difficulties of that period, Apostol Stan, *Independența României. Detașarea de piața otomană și ratașarea de Europa 1774–1875*, Bucharest, Albatros Publishing House, 1988, in particular, *IV. Liberalismul economic sub Cuza Vodă*, pp. 115–156. The University of Iași, the oldest modern university in Romania, was established in October 1860, and the University of Bucharest, in July 1864.