REPRESENTATIONS OF THE PAST AND PRESENT IN THE COLLECTIVE UNDERSTANDING

THE INCAPACITY OF THE MARRIED WOMAN IN INTERWAR ROMANIA: FROM THE ISSUE OF LEGISLATIVE UNIFICATION TO THE POSSIBILITY OF PRACTISING ADVOCACY

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Abstract: The incapacity of the married woman in interwar Romanian law is analyzed in the general context of the legal system of that period, which raises the question of legislative unification. From the perspective of the Romanian legal tradition in this field, but also of positive law, the doctrine and case law have clarified several relevant aspects. An interesting 1920 debate concerned the possibility for women to practice the profession of lawyer. The arguments brought by one side or the other reconstruct, to a great extent, the general attitudes regarding the incapacity of women in private law.

In the field of equal political rights, the Constitution of 1923 stipulated the need for special rules "voted by a two-thirds majority" to establish "the conditions under which women can exercise political rights". The ordinary legislature was to decide, sometime in the future, whether, at this level, it would establish a full equality of women and men, or whether it would grant women only in part a number of political rights which men had.

Keywords: married woman, incapacity, profession of lawyer, legislative unification, 1923 Constitution.

PRELIMINARIES

The incapacity of the married woman in interwar Romanian law must be analyzed, first, within the general picture of the Romanian legal system of that period. Equally, the legal tradition, the necessary evolutionary dimension, or the relevant moments from the perspective of the positive law of the time, rightly draw attention in this field. On 8 March 1920, the Bucharest Court of Appeal rejected the appeal filed by Gane Marinesc and "other men" against a decision of the Disciplinary Council of the Ilfov County Bar Association. Three years later, in March 1923, the parliamentary debates for the adoption of the Constitution brought back to the

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attention of the Romanian public opinion the issue of women's rights in the public or private space of the Romanian national state[1].

After the achievement of the Great Union in 1918, the Romanians were called externally, to fight for the international recognition of the new state, and internally, to support the country's economic recovery and, in general, to follow a path of state consolidation, of reform, unification and standardization. A process which seemed from the very beginning complicated and long-lasting. The historical Romanian provinces that lived under different legal regimes started on a common way that had to be reflected in the national legal system. The problem of legislative unification constituted a challenge for interwar Romanian law. As known, Bessarabia brought the regime of Russian laws and the old Moldavian laws and customs, which had remained in force there. Bucovina and Transylvania brought Austrian and Hungarian legislation, different in principles and in spirit from the legislation of the Old Kingdom. From a legislative point of view, Greater Romania appeared as a mixture of heterogeneous elements, because the laws of the former foreign domination: Russian, Austrian, Hungarian, coexisted in all areas, alongside the laws of the Old Kingdom. Because "the lack of unity of the legislation leads, fatally, to the lack of unity of the state", as it was rightly said, this general amalgam seriously damaged the idea of unity and the action of unifying the life of the entire nation[2].

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[1] The article has been translated into English by Assoc. Prof. Simina Badea, PhD., Faculty of Law, University of Craiova. For a deeper insight into this matter, Gisela Bock, *Femeia în istoria Europei. Din evul mediu până în zilele noastre*, Iași, Polirom Publishing House, 2002; Georgiana Popescu, Delia Duminică, *Femeia – lider în viața politică internatională*, Pitești, Universității din Pitești Publishing House, 2011; Lilia Zabolotnaia*, Femeia în relațiile de familie din Țara Moldovei în contextual European până la începutul secolului al XVIII-lea*, Chișinău, Pontos Publishing House, 2011; Mihaela Bărbieru, *Aspects Regarding the Political and Social Organization of Women in Romania in the Intewar Period*, in Claudiu Marian Bunăiașu, Elena Rodica Opran, Dan Valeriu Voinea (ed.), *Creativity in Social Sciences*, Craiova, Sitech Publishing House, 2015, pp. 130–140; Mihaela Bărbieru, *Women in Romanian politics: representation and a better governance*, in I. Boldea, C. Sigmirean, D.M. Buda (ed.), *Reading Multiculturalism. Human and Social Perspectives*, Section: Social Sciences, vol. 9, Târgu-Mureș, Arhipelag XXI Press, 2021, pp. 255–263. Some aspects contained in this study were presented at the National Congress of Romanian Historians, September 8–10, 2022, "1 Decembrie 1918" University of Alba Iulia, http://cnir.conference.uab.ro/, – Sevastian Cercel, Georgeta Ghionea, *Statutul socio-cultural al femeii din Oltenia interbelică. Abandonarea conceptului de „femeie de casă" și incapacității femeii măritate*, abstract: cnir.uab.ro/439 –, in other research projects or published studies: S. Cercel, *Considerații privind unificarea legislativă în România în perioada interbelică. De la entuziasm la stagnare, de la argumente științifice la soluții normative*, in Paul Pop, Radu Rizoiu (coord.), *Dreptul românesc la 100 de ani de la Marea Unire*, Bucharest, Hamangiu Publishing House, 2020, pp. 190–213; S. Cercel, *Impactul Constituției din 1923 asupra unificării legislative a României Mari*, in "Dreptul", no. 9, 2021, pp. 53–80; S. Cercel, *Unificarea legislativă a Principatelor Române și consolidarea dreptului în primele decenii ale Regatului României*, in M. D. Bob-Bocșan, S. Cercel (coord), *Despre (r)evoluții în drept. Studii dedicate centenarului Vladimir Hanga*, Bucharest, Romanian Academy Publishing House and Universul Juridic Publishing House, 2021, pp. 151–173.

[2] Mircea Duțu, *Un secol de stat unitar și drept național (1918–2018). Perspective istorice cultural-științifice*, Bucharest, Romanian Academy Publishing House and Universul Juridic Publishing

In the Chişinău County Tribunal of 13 February 1920, the judge also ruled on the law applicable in Bessarabia in the adjudicated matter (real estate sale). For the beauty and rigour of the analysis, but above all for capturing the legal reality, we will reproduce some ideas from the statement of reasons. "In the territory of Cetatea Albă (Akerman) – the court mentions – the Russian Civil Code is applied, in Ismail and Cahul counties, retroceded to Russia by the Berlin treaty, the Romanian Civil Code of the Old Kingdom is applied, which the Russians found in force in Bessarabia, at the time of the retrocession of this province, and in the other parts of Bessarabia, the local laws of the country apply: the Hexabible or the sumptuary of Harmenopol, the collection of laws of Andronachi Donici, as well as the 1785 "sobornicescul Hrisov" (Ecumenical Document) of Mavrocordat". In addition, with regard to the interpretation and completion of these laws – it is emphasized in the judgment – "recourse is made to the Greco-Roman sources of legislation on which these laws are based: Justinian's Institutes, Code and Novels, as well as the case law of the Russian Court of Cassation (at that time, even the Petrograd Senate). The custom of the land still constitutes a law in Bessarabia today, in matters of sales and in other fields, in accordance with our previous law and in accordance with the old law in general"[3]. As known, all these technical difficulties were found in all areas of private law, and their effects were found in most aspects of socio-economic relations.

LANDMARKS REGARDING THE LEGISLATIVE UNIFICATION

In the absence of a precise orientation on the method that had to be used, as well as in the absence of a national strategy in this regard, the work of legislative unification stagnated for a long time. The difficulties encountered, the decisive moments, the

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House, 2018, pp. 38–39. For the necessity and urgency of legislative unification in that period, see, among others, I. Ionescu-Dolj, *Problema unificării legislației*, in "Curierul Judiciar", 1919, p. 25; P. Vasilescu, *Unificarea legislativă*, in "Curierul Judiciar", 1926, p. 673; D. Dobrescu, *Pericolul unificării legislative*, in "Curierul Judiciar", 1924, p. 161; Șt. Laday, *Problema unificării legislative*, in "Curierul Judiciar", 1928, pp. 81–84; A. R. Ionașcu, *Problema unificării legislației civile în cugetarea juridică românească (1919–1941)*, in "Pandectele Române", 1942, part IV, pp. 146–156; Em. Pușcariu, *Principiile unificării legislative*, Cluj, Cartea Românească Publishing House, 1934; A. Rădulescu, *Dreptul românesc în Basarabia*, Bucharest, Universul Juridic Publishing House, 2017; S. Cercel, *Considerații privind unificarea legislativă în România ...,* pp. 190–213. See also Andrei Florin Sora, *Funcționarii publici "regățeni" în noile provincii ale României Mari, 1918–1925*, in "Studii și articole de istorie", LXXXVI, 2019, pp. 78–90, who mentions that in the new provinces, "the penetration of legislation and some officials from the Old Kingdom, a component and, up to a certain point, logical part of the construction and homogenization process, had a mostly negative reception at the time".

[3] Dimitrie Alexandresco, *Note*, in "Tribuna juridică", no. 20–25 of 20 June 1920, pp. 89–94, who introduces judge C. Simionescu in the following terms: "our distinguished former student, who accustomed us to nice judgments".

experience of the solutions adopted in this matter, constitute important aspects of the history of Romanian law and national history. In turn, the normative acts issued in the work of legislative unification of Romania constitute priceless historical sources.

Without bringing more details, which go beyond the interest of the topic, some opinions from that period are edifying. For example, in 1927, Andrei Rădulescu emphasized that the legislative unification was necessary “to perfect the soul unity of the nation, to strengthen the national consciousness as much as possible”. The diversity of applicable legal rules “makes life very difficult from all points of view and largely maintains the old borders”[4]. The difficulties encountered in many ordinary aspects of life are rightly highlighted: “Married in Bessarabia, you wonder if you are validly married and what value this marriage has in the rest of the country, you don't know if you will be considered as such in another province. Divorced in another part of the country, you don't know if you will be considered as such in another province. Opening the succession of someone from the Old Kingdom, who was sent as an official to one of the new provinces, you will wonder what law applies, who comes to the inheritance, etc.? But how should a receipt, a policy be drawn up? How should companies be incorporated?”[5].

The difficulty of the mission of the magistrates who tried to understand the myriad of laws as well as possible in order to solve the legal problems brought before the courts, also drew attention: “Few magistrates in Europe struggle with as many legal difficulties as many of ours, especially from the new territories”[6]. It is important to remember that Andrei Rădulescu argued that “the most suitable means for unification is the introduction of legislation from the Old Kingdom into the new territories”[7]. On the other hand, in

[4] Andrei Rădulescu, *Unificarea legislativă*, Memoriile Secţiunii Istorice, series III, tome VII, CVLTURA NAŢIONALĂ, Bucharest, 1927, pp. 3–7.

[5] *Ibidem*.

[6] “Those who do not have the opportunity to do other research, please go to the Court of Cassation and see how many laws are being talked about and how far we are from the legislative unification, before the war when the lawyers showed their talent and knowledge, working with the same basic elements, which formed the law – one and only – of the Romanian people. If the multiple shortcomings which result from this and which we don’t have time to dwell on were known, we don’t know how many would doubt to recognize the necessity of unification”. A. Rădulescu, *op. cit.*, p. 5; See also Andrei Rădulescu, *Puterea judecătorească*, 10 March 1922, in *Constituţia din 1923 în dezbaterea contemporanilor*, Bucharest, Humanitas Publishing House, 1990, pp. 278–314, – which reproduces the New Constitution of Romania, 23 public lectures organized by the Romanian Social Institute, published at Tiparul Cultura Naţională, Bucharest, no year –, in which the author also analyzes the problem of recruiting magistrates.

[7] “Complete unity in all areas, on the foundations and in the Romanian spirit, this is the duty of those who were lucky enough to see the dream of Romanianism and who have the mission to ensure with justice, forever and in a solid way, its great incarnation”. Andrei Rădulescu, *Puterea judecătorească…*, p. 43. See also Andrei Rădulescu, *Dreptul românesc în Basarabia*, presented in the public session of the Romanian Academy on 3 July 1942, republished by Universul Juridic Publishing House in Bucharest, 2017, who stated: “Bessarabia also remained Romanian on the ground of law as in all forms of life of its people. We must all know this truth – which anyone can control – and it is our duty to make it known to foreigners as well, and if necessary to use it for the defence of our nation, which respects the rights of others and asks for itself nothing but justice”.

1932, as Minister of Justice, Constantin Hamangiu proposed, after an extensive study on legislative unification, a draft law for the "enforcement, throughout the Country, of Romanian civil, commercial and criminal legislation"[8].

At another level, the concern for constitutional unification was an important point on the public agenda of that period. Dimitrie Gusti considered on 18 December 1921 that a "Contemporary Constitution is the codified national consciousness itself, that is, it is more than a legal technical formulation of all the norms applied to the functioning of public powers". Observing that "the nations resulting from the new reconstruction of the European political map, rushed to consecrate their state consolidation by urgently drawing up their fundamental pact", he argued that "the Romanian nation was too late, compared to the nations that were unified after the world war, with the work of a new constitutional codification"[9]. In turn, Nicolae Iorga emphasized in his lecture entitled "History of the Romanian Constitution"[10] that "the present sums up a past and has its responsibility towards a future, so that this constitutional issue must also be dealt with in the field of history, in the field of the connections and proper development of our people". The great historian noticed that the Romanians had a constitutional development ignored by the Constitution of 1866 and emphasized that the new constitution must be "harmonized with the historical development before which the block of negation of the 1866 one was placed"[11].

Professor Paul Negulescu later explained the necessity of amending the Constitution following the union of Transylvania, Bucovina and Bessarabia and believed that it was necessary to regulate the new state of affairs created by the union and "to establish the principles enshrined and necessary after the great war". In addition, the Constitution of 1866 had not been repealed "by the union achieved by the laws of 1 January 1920 and the organization of the state tacitly functioned on its basis throughout the territory of Romania from the moment of the decree laws of: 10 April 1918

[8] Constantin Hamangiu, *Din opera legislativă a ministerului justiției*, Bucharest, The Official Gazette and State Printing Office. National Printing Office, 1932. Magistrate Emil Pușcariu published in 1934 the work *Principiile unificării legislative. Concepția şi metoda ei de realizare. Contribuția dreptului ardelean la unificarea dreptului pozitiv românesc*, Cluj, Cartea Românească Publishing. The work had a Preface signed by Alex. N. Gane, the first president of the Legislative Council and supported another method for legislative unification.

[9] *Noua Constituție a României. 23 de prelegeri publice organizate de Institutul Social Român*, with an Annex containing the New European Constitutions, Tiparul Cultura Națională Bucharest, no year.

[10] *Noua Constituție a României. 23 de prelegeri publice organizate de Institutul Social Român*, *op. cit.*, *„Istoricul constituției românești*", by N. Iorga, professor, former president the Chamber of Deputies, pp. 5–24; the work is republished in *Constituția din 1923 în dezbaterea contemporanilor*, Bucharest, Humanitas Publishing House, 1990, N. Iorga, *Istoricul Constituției românești*, pp. 25–53.

[11] N. Iorga, *Istoricul constituției românești*, Tiparul Cultura Națională Bucharest, no year, p. 7, who criticized the ignoring of the national constitutional past in the Constitution of 1866, "made by an excellent tailor, but accustomed to making clothes for other bodies, and we have lived with our body apart and the foreign garment fluttering over it, with almost no effect on our political life, except the one of introducing more hypocrisy".

for Bessarabia, 13 December 1918, for Transylvania and Banat, 19 December 1918 for Bucovina”[12].

The royal decree was signed on 23 January 1922, dissolving the Legislative Bodies and convening the electoral body. In the elections of March 1922 – respectively, 5-7 March for the Assembly of Deputies, 1-3 and 9-11 March for the Senate –, considered elections to the Constituent Assembly, the Legislative Bodies were called to adopt the Constitution of Greater Romania and a new electoral law, meant to enshrine the universal vote introduced in 1918. In this context, the National Liberal Party obtained the majority of parliamentary mandates – 222 deputies and 111 senators. Thus, a period of political turmoil ended, and the installation of the liberals in power opened a period of stability, which would last until 1928[13]. During that period, several projects were developed, opening the stage of constitutional unity[14].

The adoption of the constitution in March 1923 was an important moment in the work of institutional and legislative unification of unified Romania, which was completed 5 years after the union of Bessarabia with the Old Kingdom of Romania, the first act of the Great Union of 1918. Even though during the debates regarding its adoption, the opposition political parties contested the adoption procedure, the Constitution was, over time, unanimously accepted and applied by all political actors. If for Greater Romania the constitution of 1923 was the first fundamental pact, for the Old Kingdom it was a continuation of the constitutional monarchy of 1866, of which the historical Romanian provinces became part, knowing and sharing its principles. Regardless of their initial origin and the political, philosophical or legal beliefs of the supporters, the rules incorporated in the Constitution have become fundamental principles of the Romanian state. In legal terms, they constitute fundamental, guiding ideas, which can be found in the entire Romanian legislation adopted during the period in which the Constitution of 1923 was in force, i.e. almost 15 years of applicability, in

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[12] Paul Negulescu, *Curs de drept constituţional român*, edited by Alex. Th. Doicescu, Bucharest, with a foreword “To readers” signed in September 1927.

[13] Official Gazette no. 239 of 23 January 1922; Al. Averescu later called the episode at the beginning of 1922, sending the Parliament “for a walk”, in which his party had an uncomfortable majority for the liberals, see Al. Averescu, *Uzurparea de la 4 iunie 1927*, Bucharest, no year, p. 64.

[14] A. Banciu, *Rolul Constituției din 1923 în consolidarea unității naționale*, Bucharest, Scientific and Encyclopedic Publishing House, 1988; E. Focșeneanu, *Istoria constituțională a României (1859–1991),* Bucharest, Humanitas Publishing House, 1992, pp. 55–69; I. Stanomir, *Libertate, lege și drept. O istorie a constituționalismului românesc*, Iași, Polirom Publishing house, 2005, pp. 83–117; C. Ionescu, *Unirea de la 1 decembrie 1918 – proces istoric obiectiv rod al luptei românilor pentru libertate și progres social, pentru desăvârșirea unității statale și naționale*, in “Dreptul”, no. 12/2018, pp. 3–12; C. Ionescu, *Drept constituțional și instituții politice. Sistemul constituțional românesc*, vol. II, Bucharest, Lumina Lex Publishing House, 1997, pp. 49–58; S. Cercel, *Considerații privind unificarea legislativă a României în perioada 1918–1928*, in “Revista de Studii Juridice”, no. 2/2018, pp. 78–89; M. Duțu, *Fundamente istorice și permanențe definitorii ale culturii juridice românești. Tradiție neolatină, sinteză europeană și amprentă proprie în unificarea constituțional-legislativă*, in “SUBB Iurisprudentia”, no. 4/2020, pp. 246–285, available at http://studia.ubbcluj.ro/download/pdf/1355.pdf, accessed 15–18 April 2021.

the period 29 March 1923 (Official Gazette no. 282 of 29 March 1923) – 27 February 1938 (Official Gazette no. 48 of 27 February 1938)[15].

THE PRINCIPLE OF EQUALITY IN THE CONSTITUTION OF 1923

On 22 January 1922, Mrs. Calypso Botez, formerly Tufescu, delivered the lecture entitled "Women's rights in the future Constitution", within the public lectures organized by the Romanian Social Institute[16]. A well-known activist for women's rights, writer, teacher, she supported in 1917 the establishment of the Association for Civil and Political Emancipation of Romanian Women – AECPFR, with Ella Negruzzi or Maria Băiculescu, she was president of the National Council of Romanian Women, municipal councillor in Bucharest, member of PNȚ (Peasant National Party). C. Botez was also a member of the Romanian Social Institute. In the lecture at the beginning of 1922, she drew attention to the fact that "the situation of women in the family and in society is the most serious problem that offers itself to the meditation of the modern sociologist" and analyzed the principle of introducing the right to vote or, as she called it, "the motor right, through which all feminist demands translate into reality", in the Romanian Constitution.

On this occasion, she recalled that this problem had also been discussed in the Constituent Assembly of 1866 and brought back to the public's attention the opinions of Cezar Boliac and Eliade Rădulescu. The former supported the universal suffrage regardless of class, wealth or sex, and the latter fought with all his energy against this conception, in which he saw a dangerous exaggeration, a utopia that he called "bolliaclîc"[17]. Botez presented a history of the problem, which included issues

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[15] For the principles of law, see I. Dogaru, *Elemente de teoria generală a dreptului*, Craiova, Oltenia Publishing House, 1994, pp. 113–118. For the notion of general principles of law, D. C. Dănișor, I. Dogaru, Gh. Dănișor, *Teoria generală a dreptului*, Bucharest, C. H. Beck Publishing House, 2006, pp. 155–157, who emphasize that the principles of law are "normative" for the system, they are "structural principles", in the sense that they tend to make a coherent system out of the legal order, ensure the "flexibility" of the system in the phase of applying the law and constitute the vectors of the development of the legal system, in the sense that they, by progressing, determine the progress of the legal system, i.e. they are the "principles of development".

[16] Calypso C. Botez, *Drepturile femeii în constituția viitoare*, in "Constituția din 1923 în dezbaterea contemporanilor", Humanitas Publishing, 1990, pp. 124–142; Calypso C. Botez, *Raportul Comisiunii juridice de pe lângă Consiliul național al femeiilor române, pentru punerea în concordanță a codului civil român cu noua Constituție, cu privire la condiția juridică a femeii în raporturile ei dintre soți, de familie și patrimoniale*, in "Drepturile femeii în viitorul Cod civil. Studii, comunicări și propuneri în vederea reformei", Național Council of Romanian Women. Legislative Commission, Bucharest, Typography Curierul Judiciar, 1924, pp. 5–9.

[17] Eliade Rădulescu, *Vot și Răsvot*, 4th edition, p. 17; Instituțiunile României. Part II: Unirea şi Unitatea: Votul – răsvotul universal, Bucharest 1863. – 2nd ed. Buc. 1864. – 3rd ed. Buc. 1894, which contains a short biography of Heliade.

regarding the Romanian Women's League, Constantin Nacu's project of 1918, the Vaida Project of 1919, women in communal councils. She also presented "The sentimental side of the matter". She provided arguments that voting is a social function, not a gender privilege, and presented the situation of the countries that had granted this right: Germany, Austria, Russia, England, etc.; she replied to some fashionable objections: "home and family solidarity are being destroyed", she analyzed the economic and social situation of women in modern society. In the end, she strongly stated that the Constitution should contain "integral rights for women, so that our national life can also take the great momentum of egalitarian democracies".

Title II of the 1923 Constitution is called "On the rights of the Romanians" and regulates in 28 articles (art. 5–32) what today would be denoted by the phrase "fundamental rights, freedoms and duties" (art. 15 – art. 60 of the current Constitution). In the matter of citizens' rights and liberties, the 1923 constitutional rules took over the provisions of the 1866 Constitution, to which substantial changes are made, so that they include a true "declaration of rights"[18].

First, the Constitution guarantees *freedom and civil equality* to all Romanians. The first article under this title (art. 5) provided: "The Romanians, regardless of ethnic origin, language or religion, shall enjoy freedom of conscience, freedom of education, freedom of the press, freedom of assembly, freedom of association and of all the rights established by laws". In turn, civil liberty is enshrined in art. 8, which stipulated: "All Romanians, regardless of ethnic origin, language or religion, shall be equal before the law and shall contribute without distinction to public duties and tasks". On the other hand, the Constitution deals with "primary freedoms": individual freedom (art. 11); inviolability of the domicile (art. 13); inviolability of property (art. 17); freedom of work, trade and industry (art. 21); freedom of opinion, conscience and worship (art. 22). The constitutional rules also regulate "complementary freedoms" (G. Alexianu), such as: freedom of the press (art. 25-26); freedom of education (art. 24); right of propaganda (art. 28); right of association (art. 29). It is important to remember that the principle of equality was enshrined in the Constitution of 1866. First, art. 10 provided: "There shall be no class distinction in the State. All Romanians shall be equal before the law and shall contribute without distinction to public duties and tasks. They alone shall be admissible to public, civil and military offices. Special laws shall determine the conditions of admissibility and advancement in State offices. Foreigners shall not be admitted to public offices, except in exceptional cases, i.e. established by laws"[19]. The constitutional rules of 1866 confirmed the principle of civil equality that we find affirmed in the Izlaz Proclamation, in the memorandum of Mihail Kogălniceanu in 1848, in art. 46 of the

[18] A. Lascarov-Moldovanu, Sergiu D. Ionescu, *Constituțiunea României din 1923 adnotată cu desbateri parlamentare și jurisprudențe*, Bucharest, "Curierul Judiciar" Typography Publishing House, 1925, pp. 16–305.

[19] For the text of the 1866 Constitution, see C. Ionescu, *Dezvoltarea constituțională a României. Acte și documente 1741–1991*, ed. 3 revised and added, Bucharest, C.H. Beck Publishing House, 2015, pp. 457–471.

Convention for the definitive organization of the United Romanian Principalities of 7 August 1858 – "*The Moldavians and Romanians will be all equal before the law, before contributions and received equally in public offices, in both Principalities*" – and, above all, in the legislation developed during the reign of Alexandru Ioan Cuza. From this moment on, the principle of equality is the basis of all national legislation[20]. The principle of equality was reinforced by art. 12 of the 1866 Constitution: "All privileges, exemptions and class monopolies shall cease forever in the Romanian State. The titles of foreign nobility such as: principe, grof, baron and other similar ones, as opposed to the old settlement of the country, shall be and remain inadmissible in the Romanian State. Foreign decorations shall be worn by Romanians only with the authorization of the King".

In this context, the principle of equality is enshrined in the 1923 Constitution in art. 8 and 10, demonstrating in the matter of "the rights of the Romanians", as well as in many other constitutional matters, a natural continuation and attachment to the fundamental principles supported in the decades of the Romanian constitutional monarchy. First, art. 8 provided: "No distinction of birth or social class shall be allowed in the state. All Romanians, regardless of ethnic origin, language or religion, shall be equal before the law and shall contribute without distinction to public duties and tasks. They alone shall be admissible in public, civil and military offices and dignities (…)"[21]. From this text, the idea of "*equality before the law*" is undoubtedly derived, as a fundamental principle applicable to the entire national territory of Greater Romania. Secondly, as a consequence of the equality before the law, the 1923 Constitution abolished "all privileges of any kind, exemptions and class monopolies", along with "titles of nobility". All these "shall be and remain inadmissible in the Romanian state" (art. 10). The constitutional norm prohibits the privileges, exemptions and monopolies of "social class", which refer to "titles of nobility", but does not prevent the granting of exemptions or tax reductions to a category of citizens, taking into account the criterion of social utility. Thirdly, equality before the law imposes equality in terms of admissibility in public offices, in the sense that any Romanian citizen has the vocation to be appointed to any public position, if he meets certain requirements imposed by law[22]. The constitutional text

[20] G. Alexianu, *Curs de drept constituțional,* Casei Școalelor Publishing House, 1930, vol. I, p. 136, who points out that the constitutional norms of 1866 "formally proclaim equality before the law, equality in law, not equality in fact".

[21] For the criticism of the amendments to the constitutional text of 1923 compared to the text of 1866, G. Alexianu, *op. cit.,* pp. 136–137, who mentions that the small changes are not "to the advantage of the new wording", because, among other things, "the distinction of birth is precisely what constituted the social classes. Since there is no difference of class there can be no difference of birth" (p. 136, note 1).

[22] The appointment to public offices was a class monopoly for a long time, and the right to be appointed belonged by birth to certain persons and was passed down from one generation to another. For example, a century before, in the letter dated 9 February 1821 in which the Divan once again urged Tudor Vladimirescu to give up the fight, it is mentioned in the conclusion: "Do everything as we advise and

reserves public offices for Romanian citizens, in the attempt to protect the national element, in general, and support the character of the national state. By exception, foreigners can be admitted to public offices "in exceptional cases, namely established by law" [art. 8 par. 5], in specialized offices, and not in those which would involve the exercise of part of national sovereignty. Fourthly, the principle of equality required that women's civil rights be established on the basis of "full equality of the two sexes" [art. 6 par. 3]. Essentially, the constitutional norms of 1923 impose the idea that gender is not a ground of inequality for political rights or for civil rights, a fundamental rule applicable to the entire state, and equally to all historical provinces. The provisions of art. 6 par. 2 of the 1923 Constitution stipulate *in the matter of equal political rights the need for special rules "voted by a two-thirds majority" to establish "the conditions under which women can acquire the exercise of political rights".* The possibility is thus offered to the ordinary legislature to grant, through laws voted by a qualified majority, full equality of women and men or to grant only in part a series of political rights that men had, which caused hot debates when that article was adopted.

In this matter, Nicolae Iorga argued in the Senate in favour of the equality of women in the matter of political rights, considering that "women's vote is an act of general justice and an act of special entitlement, compared to the very particular conditions of our country". For his part, Vespasian Pella intervened to point out that women "are not inferior to men"[23]. The constitutional principle provided for in art. 6 par. 3 of the 1923 Constitution found its application only in 1932 through the law for lifting the civil incapacity of married women, which places married women on an equal footing with men from the point of view of exercising civil rights (Law no. 96 of 1932 published in the Official Gazette no. 94/ of 20April 1932).

On the other hand, it provides the rule according to which religious beliefs, confession, ethnic origin or language do not constitute in Romania "an obstacle to

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command you, *don't you dare believe much more of yourself than what nature has built in you*, because with this you will bring great disturbance to the ruler over you and then even if we are willing to help you, you will make us helpless" – our emphasis, in *Documente privind istoria României. Răscoala din 1821. Documente interne*, vol. I, Bucharest, Academiei Publishing House, 1959, pp. 247–248.

[23] For parliamentary debates on art. 6 of the 1923 Constitution, A. Lascarov-Moldovanu, Sergiu D. Ionescu, *op. cit.,* pp. 24–32. On the occasion of the discussion on the draft constitution, Nicolae Iorga stated that in its content there were "things said, which needn't have been said and certain things are avoided, which should have been said and there is constant reference to future legislation" and criticized the situation that "a future law is promised on almost every page, which will solve the points on which the respective chapter is silent", see N. Iorga, *Discursul la discuția generală a proiectului de Constituție*, Bucharest, Tipografia Cultura Neamului Românesc, 1923, p. 4. Moreover, in the debates on art. 6, Nicolae Iorga, who rightfully supported the equality of sexes through the constitutional norm, was ironical: "They (*women*, our note) are barely given civil rights – again a law that will hardly emerge into a more distant future. Such a law could – it is said – also deal with the issue of equal rights for women. Whoever lives it then sees it. But we, who are not exactly young, want to see a work of justice fulfilled through us, a work that has been waiting too long", A. Lascarov–Moldovanu, S. D. Ionescu, *op. cit.,* p. 26.

acquiring civil and political rights and exercising them" (art. 7), in continuation of the general principle enshrined in art. 5 of the Constitution. In order to emphasize the character of civil equality in relation to religious beliefs, art. 23 imposed the principle according to which "civil status acts shall be the attribute of the civil law", and their preparation "shall always have to precede the religious blessing". During the 1923 debates of the Constituent Assembly, Metropolitan Primate Miron Cristea supported the maintenance of the obligation of religious marriage. The answers of Professor C. G. Dissescu, as rapporteur, and of Al. Constantinescu, Minister of Agriculture and Domains, were in favour of rejecting the maintenance of the old text of the 1866 Constitution, which would affect the principle of civil equality of the Romanians. Minister Al. Constantinescu emphasized: "We are not making the Constitution for the Orthodox of the Romanian Kingdom, but for all the sons of Greater Romania. We cannot impose religious marriage and our faith on those who have another faith (...). We proclaim the principle of freedom of conscience in the Constitution"[24].

THE WOMAN LAWYER IN INTERWAR ROMANIA

For the exercise of any profession – doctor, lawyer, midwife, theatre job – a woman must be authorized by her husband, the interwar doctrine unanimously held. In addition, the man could withdraw his authorization at any time. A special situation arose regarding the "woman lawyer", which includes aspects relevant to the topic under discussion.

The Disciplinary Council of the Ilfov Bar allowed, by decision no. 377 of 23 October 1919, the enrollment of Mrs. Ella Negruți, who had a degree in law at the Faculty of Iași, as a trainee lawyer in the Ilfov body of lawyers and her registration to the Bar after taking the oath. Lawyers Gane D. Marinesc, Al. Pretoria, D. Bărbulescu and others criticized this solution and argued that in addition to historical, social and economic considerations, there were legal reasons that opposed the admission of the respondent's request. Specifically, the 1907 law on the organization of the Bar provided, textually, this possibility only for men. Consequently, the courts could not admit women to the legal profession, because this role belonged exclusively to the legislative power.

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[24] G. Alexianu, *op. cit.,* pp. 143–144. For parliamentary debates on art. 23 of the 1923 Constitution, A. Lascarov-Moldovanu, Sergiu D. Ionescu, *op. cit*., pp. 215–223. Moreover, the national case law had confirmed the validity of the marriage concluded only before the public registrar, without being followed by the religious blessing, even during the application of art. 22 of the 1866 Constitution which required the religious blessing for marriage, see Bucharest Court of Appeal, 23 February 1900, in "Curierul Judiciar", no. 24/ 1900, p. 190; Jud. Oc. Mizil, dec. no. 648/ 1903, in "Curierul Judiciar", no. 5/1904, p. 47.

The court held that no political or social consideration and no legal text prevented a woman from being able to exercise the profession of lawyer. Consequently, she had the right to request to be called to the Bar and to practice this profession. “From the fact that the terms in the law on the body of lawyers that shows the conditions for someone to be a lawyer, are expressed in the masculine, it cannot be inferred that by this the legislature intended to exclude women from the profession of lawyer”. In our legislation – the judge notes – “we find both in the Constitution and in the Civil Code, various texts, which, although written in the masculine, also include women with regard to the rights contained therein”. Regarding the invocation of tradition in this matter, the court mentioned, first, that “without looking at ancient Rome...”, it was more useful to note that “in various countries, nowadays women are allowed to practice law”. In our law, “it is useless to draw the argument from the silence of our old laws or from the morals of a century ago, when it is known that in 1864 doctors of law were very rare, even the Counsellors of the High Court were not all qualified”. However, it is indispensable to note – it was mentioned in the decision – that “The Ilfov Bar, in 1891, had already registered Mrs. Sarmiza Bilcescu, a doctor of law in Paris, and in the last 30 years different bars and Courts of Appeal have recognized the right of the woman to be a lawyer”[25].

In September 1920, the journal Tribuna juridică published “The report and statement of reasons for the draft law submitted to the Senate in the extraordinary session of 1920 to clarify the right of women to be called to the bar and to exercise the profession of lawyer”. In the editor's Note it was mentioned that “this important document, which in our country is the first step towards the emancipation and capacity of women, bears the signatures of senators D. Alexandresco (professor at the University of Iași), G.G. Mironescu (professor at the University of Bucharest), Bogdan Duică (professor at the University of Cluj) ...” etc.[26]. Thus, the national coverage and special support of this draft bill was highlighted. The legislative initiative was determined by the inconsistent practice in this matter. The Court of Galați and the Court of Bucharest admitted this right, but the Court of Iași and the Court of Cassation (joint sections) refused this right[27].

[25] The journal “Dreptul”, XLVII, no. 25 of 9 May 1920, pp. 293–297, published the decision of the Bucharest Court of Appeal of 8 March 1920 (Section III, Hearing of 8 March 1920, presided over by Mr. N. C. Schina, the case of Gane Marinescu and others v. Ella Negrutzi) which rejected the appeal filed by Gane Marinesc and others against decision no. 377/1919 of the Disciplinary Council of the Ilfov County Bar Association in the process with Ella Negrutzi. Gane Marinescu and Gioroceanu were heard on behalf of the appellants, and Dem Dobrescu and D. Negulescu, lawyers, on behalf of the respondent.

[26] Dimitrie Alexandresco, *The report and statement of reasons for the draft law submitted to the Senate in the extraordinary session of 1920 to clarify the right of women to be called to the bar and to exercise the profession of lawyer*, in “Tribuna Juridică”, no. 28–29 of 26 September 1920, pp. 89–92.

[27] For more details on the capacity of women, Nicolae Turlă (lawyer in Oradea Mare), *Capacitatea juridică a femeii în dreptul privat în România Mare (I)*, in “Tribuna Juridică”, year III, no. 3–4 of 23 January 1921, pp. 11–12; Idem, *Capacitatea juridică a femeii în dreptul privat în România Mare (II)*, in “Tribuna Juridică”, year III, no. 5–7, of 13 February 1921, pp. 24–26; Idem, *Capacitatea juridică a femeii în dreptul privat în România Mare (III),* Tribuna Juridică, year III, no. 12–14 of 3 April 1921, pp. 64–67; Idem,

First, it was recalled that the problem of women lawyers was not new in Romania. Miss Sarmiza Bilcescu was called to the bar in the capital by the interim judgment of 26 June 1891, which led then the illustrious professor of the University of Brussels, Luis Frank, to address a letter full of praise to the dean of the Ilfov Bar. That case was not mentioned by chance. Sarmiza Bilcescu (later Bilcescu-Alimănişteanu, b. April 27, 1867 in Bucharest, d. August 26, 1935), was the first Romanian lawyer, the first woman in Europe to obtain a law degree at the University of Paris and the first woman in the world with a doctoral degree in law.

In the statement of reasons we find historical considerations on the matter, which are worth reminding. First, in Roman law, the woman initially had the right to plead. The praetor intervened with his edict, because of "a shameless woman (improbisima femina), called according to the texts sometimes Carfania, some other times Arfania or Calpurnia. History has kept a sad memory of this woman, and contemporaries compared her voice to the barking of a dog". She was so violent and greedy that later speaking her name in front of another woman was considered an insult. Valerius Maximus recorded that she had died in 48 BC. On the other hand,

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Capacitatea juridică a femeii în dreptul privat în România Mare (IV), in "Tribuna Juridică", yearl III, no. 24–26 of 26 June 1921, pp. 117–119; Dimitrie Alexandresco, *Raport către Comisiunea de unificare a legislației cu privire la dreptul civil (Căsătoria și Despărțenia)*, in "Tribuna Juridică", year III, no. 5–7 of 13 February 1921, pp. 13–24; Idem, *Ante-proiectul de revizuire a Titlului V și VI din Codul civil (Căsătoria și Divorțul) elaborat conform însărcinării Comisie de Unificare a legislației pentru România Mare*, in "Tribuna Juridică", year III, no. 12–14 of 3 April 1921, pp. 37–64; Idem, *Ante-proiectul de revizuire a Titlului VII din Codul civil (Filiația legitimă și naturală) elaborat conform însărcinării Comisie de Unificare a legislației pentru România Mare*, in "Tribuna Juridică", year III, no. 15–17 of 24 April 1921, pp. 69–82; Idem, *Ante-proiectul de revizuire a Titlului IX din Codul civil (Autoritatea sau puterea părintească) elaborat conform însărcinării Comisie de Unificare a legislației pentru România Mare*, in "Tribuna Juridică", year III, no. 18–20 of 15 May 1921, pp. 85–92; Idem, *Câteva cuvinte asupra titlului preliminar din actualul cod civil relativ la proiectul de unificare a legislațiunii pentru România Întregită, răspuns domnului Plopu, membru în comisia de unificare a legislației*, in "Tribuna Juridică", year III, No. 21–23 of 5 June 1921, pp. 93–105; Idem, *Ante-proiectul de revizuire a Titlului I din codul civil, Cartea I Despre persoane, elaborat conform însărcinării Comisiunei de unificare a legislațiunii pentru România Mare*, in "Tribuna Juridică", year III, no. 24–26 of 26 June 1921, pp. 109–117; Idem, *Revizuirea Codului civil*, in "Tribuna Juridică", year III, no. 41–42 of 11 December 1921, pp. 181–184, who replies to criticism published in "Ardealul juridic", no. 2 of 1 August 1921 (with the mention "Craiova, 15 Nov. 1921"); Idem, *Câteva cuvinte asupra privilegiului masculinității în Codul Ipsilant și în Codul Caragea*, in "Dreptul", year XLVII, no. 27 of 23 May 1920, pp. 313–315; I. Mănescu (Counselor at the Oradea Mare Court of Appeal), *Limba românească în justiția din Ardeal*, in "Tribuna Juridică", year III, no. 8–9 of 27 February 1921, pp. 29–30; Grigorie Pherekyde (Counselor at the Bucharest Court of Appeal), *Necesitatea unificării jurisprudenței în interpretarea legislațiunii noastre de război*, in "Tribuna Juridică", year III, no. 8–9 of 27 February 1921, pp. 30–31; *Dezideratele Consiliului Național al femeilor române. Concluziune* (it is signed by the National Council of Romanian Women, without other mentions), in "Curierul Judiciar", no. 5 of 1 February 1925, pp. 67–68, includes 9 points which concern: the nationality of the married woman and the children, the domicile of the married woman, marriage and divorce, paternity investigation, parental power, the organization of guardianship, legal documents between spouses, matrimonial agreements, inheritance rights between spouses.

it is mentioned that Amasia, the wife of the consul Sulpicius, and Hortensia, the daughter of the jurisconsult Hortensius, achieved great and legitimate successes at the bar of justice. In old Romanian law, the Caragea Legislation did not prohibit women from exercising civil rights, but only from exercising political and public rights. It was appreciated that the profession of lawyer could not be considered a public office, or a public right, so it was implicitly admitted. On the other hand, in Moldova, in 1849, the Bacău court required the solution from the chancellor, the minister of justice, regarding the possibility of accepting a woman as bailiff in various cases. The chancellor replied that this was not allowed by the Basilicale. But the Basilicale, to which art. 318 of the Organic Regulation of Moldavia referred, were no longer applicable in Romania in 1920.

The draft law will contribute – claimed D. Alexandresco – to the preparation of the woman towards her full legal capacity – "which, I hope, will be proclaimed very soon in our legislation, where for the time being the married woman is considered a minor". The married woman has full capacity in Bucovina, Transylvania and Bessarabia, i.e. in all the provinces attached to our country, stated Dimitrie Alexandresco. In this context, "we cannot declare all married women from the attached provinces incapable, but we will have to recognize their capacity as proclaimed by the Austrian law, Hungarian law and Russian law". The draft law proposed a simple solution in a single article: "art. 1 of the Law of 12 March 1907 on the organization of the body of lawyers shall be interpreted as follows: married or unmarried women who meet the legal requirements can be called to the bar and exercise the profession of lawyer".

INCAPACITY OF THE MARRIED WOMAN

In Roman law, through marriage, the woman was placed under the power of her husband, if he was *sui juris*, or his ascendant, if he was *alieni juris*. When the marriage was *sine manu* the woman remained subject to parental power. This legal situation of women in ancient Roman law changed over time, so that at the beginning of the imperial period the tutelage of women disappeared. Marital power was preserved only in connection with family relations and domestic cult. In terms of capacity, the married woman was fully capable. She did not need to be assisted by a man for the performance of the legal acts relating to her assets[28]. In Roman society, the woman enjoyed special respect, the man continued to be the head of the family, and the wife owed him respect.

[28] D. Alexandresco, *Explicațiunea teoretică și practică a dreptului civil român*, tomul I, ed. a II-a, Bucharest, The printing house of the Curierul Judiciar newspaper, 1906, pp. 737–799; Vl. Hanga, M. D. Bocșan, *Curs de drept privat roman*, 2nd edition, Bucharest, Universul Juridic Publishing House, 2006, pp. 138–141; C. Hamangiu, I. Rosetti-Bălănescu, Al. Băicoianu, *Tratat de drept civil român*, vol. I, Bucharest, ALL Beck Publishing House, 2002, pp. 488–513; Tudor Radu Popescu, *Drept civil român. Persoane. Familia*, Bucharest, 1945, pp. 248–257.

However, from the point of view of the patrimony, the spouses were independent of each other, having equal capacity to conclude any acts related to their assets by themselves. In 46 AD, through the Velleian senatus-consult, the married woman's capacity to bind herself to guarantee the obligations of a third party, in particular, the obligations of her husband, was limited. In this context, the doctrine emphasized that it could not be argued that the incapacity of the married woman regulated by the Romanian Civil Code of 1864 was not of Roman origin.

On the other hand, in old Romanian law, in the code of Vasile Lupu or Matei Basarab (chap. 185), the man had a “right of coercion” over the woman and had the possibility, within a limit, to lock her in prison or put her in chains (when she committed fornication or when he found out that she was plotting to kill him). According to these rules, only hostile beating was a reason for divorce for a woman, and a reason for quarrelling for a man. Hostility required beating, not with the fist or palm, “no matter how much and how often”, but beating with a stick on the head or cheek, a beating so terrible that the wood would break. In the Callimach Code, the woman had almost the same capacity as the man. We find here few texts that provide for the “authorization of the man”. For example, pursuant to art. 1021, the woman cannot receive an inheritance without the knowledge and consent of the man. Pursuant to art. 1077, the woman cannot ask for the distribution of an inheritance without the knowledge and consent of the man, just as the man cannot ask for it without hers. Along the same line, pursuant to art. 23, the minor married woman is under the power of the man only as far as her person is concerned. On the other hand, in the Caragea Code there is only one text that provides for the authorization of the man. Concretely, art. 2, part III, chap. 8 stipulated that “whoever lends a wife who has a husband, without the confirmation of the man and the judgment, loses his loan”. In this context, the doctrine emphasized that it could not be argued that the full incapacity of the married woman was not found in old Romanian law.

It is thus held that the 1864 Romanian legislature adopted the French system, so that the incapacity of the married woman was the general rule, and her capacity was an exception. In brief, marital power, pursuant to art. 195 Civ. Code of 1864, is defined as a double obligation in a couple: the man owes protection to the woman, and the woman obedience to the man[29]. Among the consequences of this marital power, the following were constantly mentioned: a) through marriage and throughout its duration, the woman acquires the name of the man; b) the domicile of the husband also becomes the domicile of the wife; c) the man exercises control over the woman's conduct, relationships and correspondence; d) regarding parental power, the man has stronger prerogatives, practically the woman cannot exercise

[29] Tudor Radu Popescu, *Drept civil român. Persoane. Familia*, Bucharest, 1945, pp. 250–252; Traian Ionașcu, *Modificările aduse Codului civil de principiul constituțional al egalității sexelor*, in “Justiția Nouă”, VI, no. 2/ 1950, pp. 208–219.

parental power if her husband is alive; e) matrimonial regimes, with the exception of the separation of property regime, are organized based on the special powers granted to the man over the woman's property.

Under these circumstances, the incapacity of the married woman was characterized by the following: a) it was general, so that she could not conclude any act without the express and special authorization of her husband for each individual act; b) the woman could not sit in court without her husband's authorization, regardless of which status she had – claimant or defendant – and regardless of the matrimonial regime adopted. By exception, a married woman could conclude: strictly personal documents – a will, recognition of a natural child, consent to the child's marriage, etc.; conservatory acts; criminal liability; divorce action, etc.

CONCLUSIONS

In 1917, under the known historical conditions, a draft law was submitted to the Senate on a parliamentary initiative, to abolish the civil incapacity of married women. The statement of reasons mentioned, among other things, that "while waiting for the fulfilment of our national ideal, for which we have made so many sacrifices, when our aspirations became a reality, if the civil incapacity of the married woman were to be maintained, we would strike in the legal situation and the dignity of those women who today enjoy full capacity in the territories inhabited by our compatriots"[30].

After 1918, it was expected that, in the shortest possible time, this situation would be clarified. The reality was quite different, as in the matter of legislative unification in general. The law on the lifting of the civil incapacity of married women was voted by the Assembly of Deputies and the Senate in the meetings of 13 and 15 April 1932, and was promulgated by Decree no. 1412 of 19 April 1932 and was published in the Official Gazette no. 94 of 20 April 1932[31]. The law had a single article which provided: "There shall be repealed from the legislation in force in the old Kingdom, art. 197-203, including par. 1 of art. 687, point 3 of art. 950 and art. 1879 of the Civil Code, art. 15 and 16 of the Commercial Code and art. 624-626 inclusively from the civil procedure". It was expressly provided for the amendment of art. 194, 952 and 1285 of the 1864 Civil Code, and the new rules clearly stated: "marriage shall not restrict a woman's capacity to exercise civil rights".

Finally, under another constitutional regime, the Law was adopted for the enlistment of women in the service of the Motherland during wartime, which was published in the Official Gazette no. 217 of 19 September 1938. The law stipulated

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[30] See also D. Alexandresco, *Principiile dreptului civil român*, vol. I, Bucharest, Atelierele grafice SOCEC& Co, no. 153–154, 1926, pp. 131–132.

[31] C. Hamangiu, *Codul General al României (Codurile, legile și regulamentele uzuale în vigoare) 1856–1933 întocmit după textele oficiale*, vol. XX, *Legiuirile uzuale 1932*, Bucharest, Universla Alcalay & Co Publishing, no year, p. 353.

that “in times of war, women shall serve the Motherland. For this purpose, they can be mobilized by individual call or by category to the services for which they are fit, according to their training”[32].

In the Report to H.M. the King it was mentioned: “we were guided by the current that is taking shape today in different countries in the distribution of public tasks to citizens of both sexes, using each one according to training and skills. Through this measure, many uses, which until now have belonged to men, will be given to women, thus increasing the effective forces of the troops and therefore the combative power of the army”. It was emphasized that the measure was imposed in a new constitutional framework that “grants Romanian women political rights not yet granted in countries with an older and more advanced civilization than ours. Or, with equal rights, equal duties are justified”.

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[32] C. Hamangiu, *Codul General al României (Codurile, legile și regulamente) 1856–1939 întocmit după textele oficiale*, vol. XX, *Legiuirile uzuale 1938*, partea II, Bucharest, Universla Alcalay & Co Publishing, 1939, pp. 1784–1785.

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