

ROMANIAN CONSTITUTIONALISM INFLUENCE ON THE CONSTITUTIONALISM OF THE REPUBLIC OF MOLDOVA

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Abstract

Regardless of the recent speculated views on the interest of the governments of the two countries situated on the right and the left of the Prut river and in spite of the Romanians' declared or not solidarity, whose fates were separated conjecturally, we can not ignore the umbilical link between the two states whose citizens have benefited from reforming ideas translated into projects with a real constitutional value and subsequently into fundamental judicial acts adopted in 1866 and 1923. The paper presents the common constitutional evolution as well as the analysis of the two fundamental legal acts in force in Romania and the Republic of Moldova. The steps of the analysis are twofold: the former illustrates, formally, the weight of the texts considered relevant to the various components of the economic and social life of the peoples of the two countries, and the latter, illustrates, from the conceptual point of view, the measure of the differences between the articles. This paper is part of some extensive personal research, which concluded with the author's doctoral thesis "Democracy in the Romanian constitutional theory and practice during 1866 – 2003". Because the topic is really important nowadays, we have found it necessary to continue our research with more attention, reassessing certain ideas and comments.

Key Words: *constitution, constitutionalism, fundamental rights and freedoms.*

The Republic of Moldova became an independent and sovereign state, declaring its independence from the Soviet Union on August 27th, 1991. On 29th July 1994 the Moldavian Parliament adopted the Constitution of Moldova, the legislation regulating political, legal, social, economic, ethnic and cultural relations, comprising, from a normative point of view, the whole state organization. We share the view of Professor Teodor Cârnaț, who appreciates the important role of the Moldavian Constitution of 1994 in the development of the constitutionalism of the Republic of Moldova. In his view, the process of elaboration and adoption of the Fundamental Law took into account the three conditions of the contemporary constitutionalism, such as: the separation of powers; the rule of law; the consecration of the human rights¹.

Naturally, any research in Romanian about the realities of Romania leads to an expected question: are there converging or diverging things across the Prut River in the Republic of Moldova? Holding the appreciation of the principles of democracy in high regard, it is obvious that a research paper can not be based on resentment or emotionality of any kind, those being destined to other circumstances and other products of the human

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¹T. Cârnaț, *Drept constituțional*, Universitatea de Stat din Republica Moldova, Chișinău, 2010, pp. 100-119.

spirit.

It is known that significant historical events and the interests of the great powers have influenced not only the territorial structure or ethnic and linguistic identity, but also the constitutional evolution of the Bessarabian space. One of the events that resulted in territorial concession was the Russian-Turkish war ended with the Peace Treaty of Bucharest that consecrated the division of the Principality of Moldavia. Thus, the Principality of Moldavia was divided and therefore a part of it – a good part of the current territory of the Republic of Moldova – was under a new foreign domination, being deprived of independent economic and political development for more than a century². The reasons of the Russian expansion were various: the division of the principalities ensured the Russian control over the Danube basin, thus widening their sphere of influence; their territorial expansion was at that moment a goal of their foreign policy and the territories annexed after the expansion had to demonstrate the advantages of the new government, contributing in this respect to the increase of the international authority and prestige of the empire. It was considered that the act of 1812 was an arbitrary one, a fraudulent one and maybe unique in the human history³ of extending the influence and possession of a territory, because Turkey defied the international law yielding a territory of a State which did not belong to it and with which it had relations of suzerainty. The Act of 1812 transformed Bessarabia into a Russian province, whose organization was established according to a Regulation on the organization of the Bessarabia region, so no one could speak about a form of statehood and self-determination.

In the Bessarabian space the period between 1917 and 1918 is known in the constitutional history as a political event marked from a twofold perspective: the Council of the Country (Sfatul Țării), a legislative body constituted by the Military Congress, held in Chișinău on 20th – 22nd October 1917, proclaimed Bessarabia as the Moldavian Democratic Republic, and on January 24th, 1918, it declared its independence. Two months later, on 27th October 1918, the Council of the Country adopted the Unity Declaration, integrating Bessarabia into the natural borders of the Romanian nation, the power of the historical right and the nation's right, based on the principle that peoples alone should decide their fate³. Thus, the interwar period was, for the entire population of Bessarabia as part of Romania, a period during which it benefited from the rights and fundamental freedoms with a profound democratic character under the normal conditions of the national and social development, thereby falling into the big family of the European civilization.

It should be emphasized that the provisions of the fundamental law of 1866 acted and produced their effects on the Republic of Moldova in the counties of Cahul, Bolgrad and Ismail of South Bessarabia from 1866 to 1878 and the whole Bessarabia from 1918 to 1923. Hence, no one could deny the influence of the Romanian constitutional norms on the Moldovan constitutionalism, born with the adoption of the Declaration of Independence of 1991 adopted by law no. 691 on 27th August 1991 and subsequently with the adoption of the Constitution of 1994.

We must not forget the reigns of Constantin Mavrocordat, six times in the

² I. Guceac, *Constituția la răscruce de milenii*, Academia de Științe a Republicii Moldova, Chișinău, 2013, pp. 207.

³ http://istoria.md/articol/433/Pacea_de_la_București_1812 (accessed on 20th June 2014).

Romanian Country and four times in Moldova, whose political reforms in the social, fiscal, and judicial fields and local government⁴ had echoes in both countries. Symbolically called “Constitution”, Constantin Mavrocordat’s ‘Establishment’ had a particularly important role for the two Romanian states and demonstrates the concern, even since 1741, for organizing the relations between the rulers and the ruled under a “fundamental” act accepted by the Military Assembly of the states. The reforms in the judiciary wanted to stop the abuses caused by the application of the common law, norms which were sometimes subjectively applied⁵; hence the following were regulated at an early stage: the court proceedings and the levels of jurisdiction, the court judgments in districts and provinces were substantive, the Divan remaining the appeal court. Mavrocordat’s trial procedure, whose aim was to institutionalize justice, provided the written procedure by setting up the legal codices and decisions – drawn up in two copies, one for the archives of the court and the other one for the party who won.

The listing of these reforms is not at random; we want to point out that both in Romanian legislation and in the Moldavian one, common elements can be found, of course in an evolved form. A good example of a norm with a constitutional character is the home inviolability of the country’s inhabitants, introduced in the Moldavian legislation by Constantin Mavrocordat’s ‘Establishment’ of 1743, a constitutional rule that is regulated by the current Fundamental Laws of these two countries.

Within the same register we can introduce the Moldavian boyars’ Memorandum of 1798 headed by the Metropolitan Gabriel Calimach to Ecaterina II, an act which provided constitutional rules on the separation of powers, the separation of the judicial one and the administrative one.

Returning to Bessarabia during the period it proclaimed itself the Moldavian Democratic Republic, although for a brief period of time, due mainly to the historical events in Europe and not because of the self-determination principle of international law according to which a nation has the right to choose their own political status and the path of economic, social and cultural development, we would like to mention that the fundamental law that regulated the organization and exercise of power was inspired by the Constitution of 1866. The Declaration of Independence stipulated that by “the call of the Folk Moldavian Assembly, elected by all the people, through straight speaking, alike and concealed, according to the proportional system, the highest leading organism of the Moldavian Democratic Republic is the Council of the Country (Sfatul Țării) composed of the delegates of all organizations of the revolutionary democracy of the various people and of the empowered people of towns and fairs’ and by no means by a ‘bunch of bourgeois-landlord’, as the Soviets claimed⁶.

1924 brought a new territorial entity created by the Soviet authorities, part of Ukraine, the Moldavian Autonomous Soviet Socialist Republic (MASSR) ‘to which other territorial structures of Ukraine were attached, which after 1940 were returned. Thus, the

⁴ M.T. Oroveanu, *Istoria dreptului românesc și evoluția instituțiilor constituționale*, București: Cerma, 1992, pp. 175-183.

⁵D. Țop, O. Mastacan, *Istoria statului și dreptului românesc*, București, CH. Beck Publishing House, 2009, p. 124.

⁶ I. Guceac, *Constituția la răscruce de milenii*, Chișinău, Academia de Științe a Republicii Moldova, 2013, pp. 207-266.

creation of the MASSR was a political one determined primarily by the Sovietization of the Romanian territories and their occupation. The argument in order to support this idea is the message addressed to the Soviets from the MASSR from 9 to 23 April 1925, where the Government of Ukraine emphasizes that ‘the formation of MASSR is the result of the correct policy of the Soviet Power and it [MASSR] will have an important influence on revolutionizing the people of Romania and the Balkans’⁷. The consolidation of power had to be materialized in a fundamental legal document, so on 23rd April 1925 the MASSR Constitution was adopted, later amended in 1938 in accordance with the USSR Constitution of 1936 and the Ukrainian one in 1937.

The examination of the articulations of the constitutional regime established under the provisions of the MASSR Constitution of 1925 in comparison with the Romanian Constitution of 1923 provides elements that require being associated with the data and the context of political history. The MASSR Constitution did not regulate the fundamental rights and freedoms, which is not compatible with the name of constitution, while the fundamental act of 1923 granted constitutional status to some principles and procedures that are aimed at the natural conditions of the rule of law: the balance of powers and guaranteeing individual freedoms.

The year 1938 brings two fundamental legal acts on the territory of the two countries. In Romania’s case the fundamental law opened the way for a process of constitutional discontinuity, bringing real injury to the democratic regime of separation of powers, creating opportunities for the interference of the executive in the work of the courts⁸; in the MASSR case, as Professor Teodor Cârnaț correctly stated, the basic law had a more ideological character than a legal one⁹. The Supreme Soviet was not the only legislative body, since the documents related to the amendment of the constitution, the administrative-territorial division, had to be confirmed by the Ukrainian authorities. The right to the direct, equal and secret universal suffrage was regulated by that act, while the right of association was limited to a single party.

The events which took place in the Bessarabian space in 1940 and in 1944 stopped the democratic development, integrating the territory of the new state in the USSR, turning it into the Moldavian Soviet Socialist Republic without the prior agreement of the population. On the current territory of the Republic of Moldova during the war between 1941 and 1944 a Decree Law was applied on the organization of Bessarabia and Northern Bucovina; they became two provinces led by a Governor who was the supreme authority of the provinces¹⁰.

The Constitution of 1941 adopted on the 10th February 1941 as well as the one of 1978 were the same as the Romanian fundamental laws of 1948, 1952 and 1965: a negation of the values of constitutionalism in their entirety. Thus, we share the view of

⁷ I. Șișcanu, *R.A.S.S. Moldovenească – O replică a careliei sovietice executată de Kremlin*, Galați, Analele Universității „Dunărea de Jos”, Seria 19 Istorie, tom IX, 2010, p. 162, <http://www.istorie.ugal.ro/anale/9/910%20SISCANU.pdf> (accessed on 20th June 2014).

⁸ C. Voicu, *Istoria statului și dreptului românesc*, București, Universul Juridic Publishing House, 2008, p. 303.

⁹ T. Cârnaț, *Drept constituțional*, Chișinău, Universitatea de Stat din Republica Moldova, 2010, p. 103.

¹⁰ N. Ciochir, *Basarabia sub stăpânire țaristă*, București, Didactică și Pedagogică R. A., 1992, p. 109.

Professor Andrei Smochină who, in his work *The Moldavian Constitutional Bodies under the Totalitarian Regime*, stated that the totalitarian regime was a regime based largely on expropriation and restriction of human rights on the results of their work and wanted the people's removal from politics¹¹.

In the book *Methodological Benchmarks for Studying and Applying Law* Professor E. Arama does a thorough analysis of the doctrinal aspects of interpreting the law in different periods, including the socialist period. On this aspect, the author considers that the totalitarian regime subjected science, and made it subservient to its aims, while the Western legal concepts were assessed in a simplistic manner¹².

The need to adopt the socialist constitutions, in the case of the Republic of Moldova had two causes, as correctly appreciates Professor Victor Popa¹³: 1. the huge Soviet empire needed the constitution to consolidate its power; 2. each of its members needed it in order to be recognized as a subject of the relations of the international law. In fact, the socialist constitutions sanctioned in almost identical terms the role of the unique party in guiding the decisional process, which claims the status of the unique interpreter of the history and the guarantor of the interests of the ruling class in the state¹⁴, thus amply demonstrating that the political power did not belong to the peoples who formally exercise it through constitutional bodies, as it was written in the constitutions, but it belonged to the only party that openly usurped it through a constitutional regulation.

The renaissance of democracy in the two countries at relatively close intervals imposed, as it was natural, the adoption of the fundamental legal acts which laid the foundation of a new stage in the development and evolution of society and the development of constitutionalism. The adoption of the Constitution of Moldova was not rushed because the organization of power and the exercise of its powers were already determined by fundamental documents with a constitutional value: the Declaration of Sovereignty, the Decree on state power, the Declaration of Independence and other relevant legal acts. Although the opinions are not unanimous regarding the constitutionalism of the Republic of Moldova, we agree with Professor V. Popa's opinion, who believes that the real constitutionalism of a state actually starts from the moment it was established as a state and adopted a constitution. For these reasons the Soviet period can not be included in the Moldavian constitutionalism because it was part of the Soviet constitutionalism, which was based on the principle of the proletariat's dictatorship, far from the demands of a true democracy.

Based on the participatory democracy, for which promising conditions of reiteration into public life have been created, it is expected that the fundamental law should evolve in the direction promoted by the Council of Europe even since 1985 through the autonomous exercise of local power.

¹¹ A. Smochină, *Organele constituționale ale Republicii Moldova în condițiile regimului totalitar*, Chișinău, PRAG-3, 2001, p. 4.

¹² E. Aramă, *Repere metodologice pentru studierea și aplicarea dreptului*, Chișinău, CEP USM, 2009, p. 14.

¹³ V. Popa, *Dreptul public*, Chișinău, Academia de Administrare Publică pe lângă Guvernul Republicii Moldova, 1998, p. 253.

¹⁴ I. Stanomir, *Libertate, lege și drept. O istorie a constituționalismului românesc*, București, Polirom, 2005, p. 208.

Authentic democracy is fully manifested at the local level that best knows the structure of the local resources, including human resources and how they can be best used to meet the elector citizen's economic needs. Although, globally, there are many factors influencing the future of the peoples of the two countries, the fundamental laws – the Constitutions of both countries respect the people that have been developed for, the other people who they interact with, and are open to amendments and rewrites increasingly more democratic and adapted to the predictable evolution of the society. As shown in the recent doctrine, the Romanian legal history attests that our ancestors were driven from ancient times by a high sense of justice and morality. The legal rules that they developed and respected demonstrate the Romanians' willingness to live in an organized way. In the course of historical development, the leaders of the Romanian formations (kniezates, voivodates, and principalities) did not hesitate to get inspired by superior legislative sources, thereby seeking to improve their own legal rules.¹⁵

Taking into account the context in which this research is carried out, we will hereinafter present a comparative analysis of the texts of the two countries' constitutions, the Constitution of Romania, published in The Official Gazette Part I, No. 233 of 21st May 1991, approved by referendum, amended in 2003 and ratified by national referendum and the Constitution of the Republic of Moldova of 29th July 1994 published in the Official Gazette no. 1 on the 12th August 1994 and entered into force on 27th August 1994¹⁶.

For a clear comparative emphasis we made a table presented in *Annexe 1* which contains the internal divisions of the texts as they were designed by the constituent power in Romania and the Republic of Moldova.

The steps of the analysis are twofold: the former illustrates, formally, the weight of the texts considered relevant to the various components of the economic and social life of the peoples of the two countries, and the latter, illustrates, from the conceptual point of view, the measure of the differences between the articles.

As shown in the Table below "the Romanian Constitution versus the Moldavian Constitution" contained in *Annexe 1*, there is an almost complete correspondence of the titles contained in the text of the two Constitutions. But there are some differences, too:

1. The Constitution of the Republic of Moldova has a Preamble containing Statements of principle related to the political and state organization and to the fundamental social relations between the members of the society.

2. In the text of the Romanian Constitution, Title VI refers to the Euro-Atlantic integration of the country, which is an essential differentiation of the position of the two countries. We consider that the placement of Title VI is not good according to its importance to the social life of the state. The graphical representation (Figure 1 and Figure 2) highlights the percentage of the articles and their division took into account the following classification: rights, freedoms and duties, public authorities, integration in supranational structures, the economy and public finances, other articles. Thus:

Of the 151 articles of the Constitution of the Republic of Moldova – 45 articles

¹⁵ M. Niemesch, *Insights in the apparition and evolution of the sources of law on the Romanian theritory until the modern process of codification*, in *Analele Universității Titu Maiorescu*, Bucuresti, Hamangiu Publishing House, 2014, p.184.

¹⁶ http://lex.ex.justice.md/document_rom.php?id=44B9F30E:7AC17731 (accessed on 23rd June 2014)

comprise rights, freedoms and duties, respectively 29.80%, 66 articles on public authorities respectively 43.71%, 8 articles on the national economy and public finance, respectively 21.90% and other 32 other articles representing 21.19%.

Of the 156 articles of the Romanian Constitution – 46 articles comprise rights, freedoms and duties, respectively 29,49%, 74 articles about public authorities, respectively, 47,44%, 7 articles on economy and public finances, respectively 4,49%, 2 articles regarding the integration in supra-state structures, respectively 1,28%, 27 other articles, respectively 17,31%.

Conclusions

The analysis of the two fundamental legal acts highlights the similarities of the constitutions, both structurally and in terms of content. Thus we can appreciate the common concern of the two constituent legislators who held in high regard the same democratic values regarding the regulations on the fundamental rights and freedoms institution and the organization and functioning of the mechanisms of power. With respect to constitutionalism, Professor V. Popa believes that the real constitutionalism of a state actually starts from the moment it was established as a state and adopted a constitution. Therefore, the Soviet period can not be included in the Moldavian constitutionalism because it should be considered Soviet constitutionalism, which was based on the principle of the proletariat's dictatorship, far from the demands of a true democracy.

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8. A. Smochină, *Organele constituționale ale Republicii Moldova în condițiile regimului totalitar*, Chișinău: PRAG-3, 2001, p. 192;
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Constitution of the Romania: 156 articles

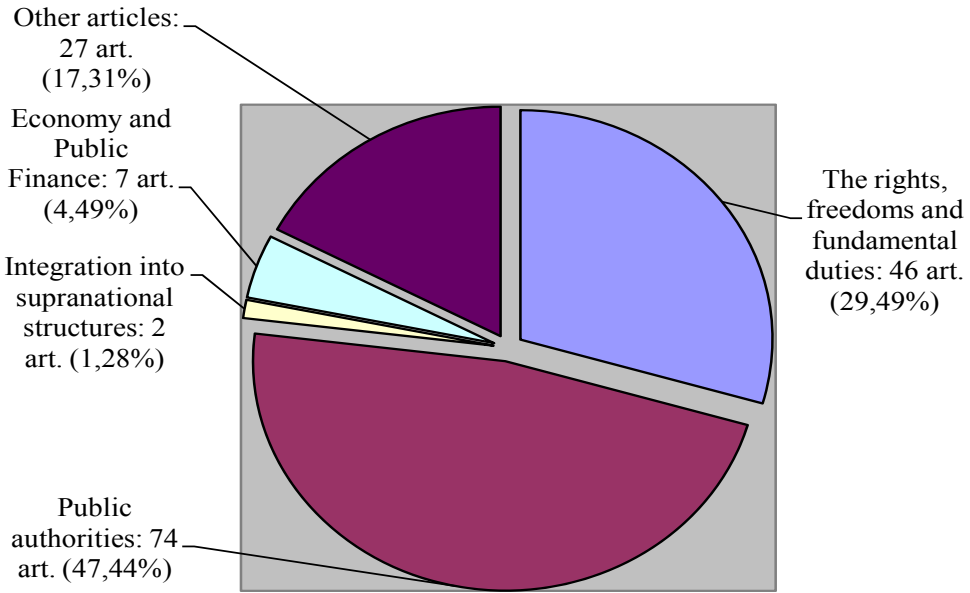


Figure 1

Constitution of the Reublic of Moldova: 151 articles

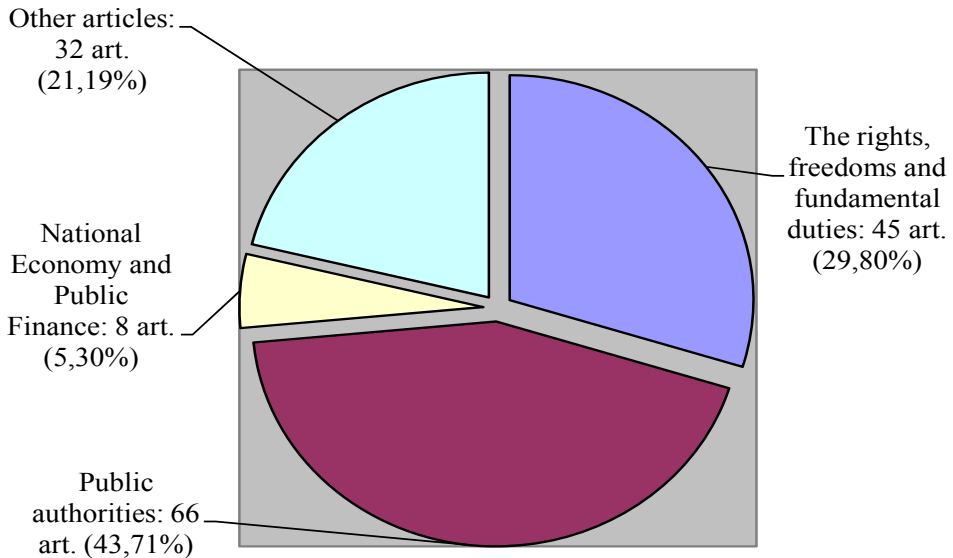


Figure 2

Annexe 1. Comparative structure of the texts of the Romanian and Moldavian constitutions

Constitution of Romania versus Constitution of the Republic of Moldova

No.	Romania	Republic of Moldova
1.	-	Preamble, the preliminary statement of identity of the promoters of the constitution and the adoption of democratic principles.
2.	<i>Title I - General Principles (art. 1-14)</i>	<i>Title I - General Principles (art. 1-14)</i>
3.	<i>Title II – Fundamental Rights, Freedoms and Duties</i> <i>Ch. I – Common provisions (art. 15-21)</i> <i>Ch. II – Fundamental Rights and Freedoms (art. 22-53)</i> <i>Ch. III – Fundamental Duties (art. 54-57)</i> <i>Cap. IV – Advocate of the People (art. 58-60)</i>	<i>Title II – Fundamental Rights, Freedoms and Duties</i> <i>Ch. I – General Provisions (art. 15-23)</i> <i>Ch. II – Fundamental Rights and Freedoms (art. 24-54)</i> <i>Ch. III – Fundamental Duties (art. 55-59)</i>
4.	<i>Title III – Public Authorities</i> <i>Ch. I – Parliament</i> <i>Sect. 1 – Organization and Functioning (art. 61-68)</i> <i>Sect. 2 – Statute of Deputies and Senators (art. 69-72)</i> <i>Sect. 3 – Legislation (art. 73-79)</i> <i>Ch. II – The President of Romania (art. 80-101)</i> <i>Ch. III – The Government (art. 102-110)</i> <i>Ch. IV – Relations between Parliament and the Government (art. 111-115)</i> <i>Ch. V – Public Administration</i> <i>Sect. 1 – Specialized central public administration (art. 116-119)</i> <i>Sect. 2 – Local public administration (art. 120-123)</i> <i>Ch. VI – Judicial Authority</i> <i>Sect. 1 – Courts of Law (art. 124-130)</i> <i>Sect. 2 – The Public Ministry (art. 131-132)</i>	<i>Title III – Public Authorities</i> <i>Ch. IV – Parliament</i> <i>Sect. 1 – Structure and Functioning (art. 60-67)</i> <i>Sect. 2 – The Status of Parliament Members (art. 68-71)</i> <i>Sect. 3 – Legislation and Acts of Parliament (art. 72-76)</i> <i>Ch. V – The President of the Republic of Moldova (art. 77-95)</i> <i>Ch. VI – The Government (art. 96-103)</i> <i>Ch. VII – The Parliament – The Government Interrelationship (art. 104-106)</i> <i>Ch. VIII – Public Administration (art. 107-113)</i> <i>Ch. IX – Judicial Authority</i> <i>Sect. 1 – Courts of Law (art. 114-121)</i> <i>Sect. 2 – The Higher Magistrates’ Council (art. 122-125)</i>

	<i>Sect. 3 – Superior Council of Magistracy (art. 133-134)</i>	
5.	<i>Title IV – Economy and public finance (art. 135-141)</i>	<i>Title IV – National Economy and Public Finance (art. 126-133)</i>
6.	<i>Title V – Constitutional Court (art. 142-147)</i>	<i>Title V – Constitutional Court (art. 134-140)</i>
7.	<i>Title VI – Euro-Atlantic integration (art. 148-149)</i>	-
8.	<i>Title VII – Revision of the Constitution (art. 150-152)</i>	<i>Title VI – Revising the Constitution (art. 141-143)</i>
9.	<i>Title VIII – Final and Transitory Provisions (art. 153-156)</i>	<i>Title VII – Final and Transitory Provisions (art. I-VIII)</i>
	The number of articles summarized	
10.	<p>Total number of articles: 156</p> <ul style="list-style-type: none"> - 46 art. regarding the fundamental rights, freedoms and duties - 74 art. regarding public authorities, of which 4 refer to local public administration - 2 art. regarding the integration in supra-state structures - 7 art. regarding economy and public finance 	<p>Total number of articles: 151(143+8)</p> <ul style="list-style-type: none"> - 45 art. regarding the fundamental rights, freedoms and duties - 66 art. regarding public authorities, of which 5 refer to local public administration - 8 art. regarding national economy and public finance