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THE DANUBIAN PRINCIPALITIES (1829-1835): AUTONOMY AND CONSTITUTIONAL FEATURES IN THE COMPARATIVE EUROPEAN CONTEXT

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Abstract

The main themes covered in this study concern the changes in the political and juridical status of the Danubian Principalities (Moldavia, Wallachia and Serbia), following the Treaty of Adrianople, in the sense of defining their internal autonomy, as well as the institutional transformations that followed, which shaped the modern architecture of the state, but also the means of interference and control of the protecting power, Russia. Analysed in a European constitutional context, the Organic Regulations of the Romanian Principalities and the "constitrution" projects drafted in the Principality of Serbia tended to establish a political regime of *mixed monarchy*, of real modern substance, but also suitable for Russian interests in the Lower Danube region.

Key words: *autonomy, constitutional charter, organic law, Romanian Principalities, Serbia*

The Russo-Turkish war that ended with the Treaty of Adrianople was a turning point in the history of the Orthodox peoples under the domination of the Ottoman Empire, marking a new phase in the transition to the modern state for Romanians, Serbs and Greeks, both in terms of the international political and juridical framework and the internal institutional organization. The research of this topic requires an interdisciplinary type of analysis, combining the history of international relations with constitutional history and political history. The extent to which Moldova, Wallachia, Serbia and Greece acquire a more precise definition of their political-juridical state identity, from the perspective of the modern concept of sovereignty, and their internal organization through institutional reform accumulates (or not) constitutional features (in the sense of this term proper to the European political culture of those years), are the main themes of our investigation.

Until 1829, despite continuous Russian pressure, the Ottomans systematically refused to make any reference to "capitulations" in the treaties with Russia or in the Akkerman Convention, claiming that this "capitulations" did not exist (Maxim, 1987: 159). At the same time, the Balkan area inhabited by Serbs and Greeks, subjects of the Porte, was considered an integral part of the Ottoman Empire, the status of the territories controlled by Milos Obrenović being one of provisional administration, dictated only by the circumstances of the Serb rebellion, without formal recognition of the existence of a Christian principality (Yakschitch, 1907: 400-403, 409-413). In the

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case of the Greeks, who wanted their independence, the intentions of Russia, the main Great Power that diplomatically supported the Greek insurgents, were clear: in the confidential project of January 1824, revealed by the press in June ("Exterieur", 31 May 1824: 1; Extrait d 'un mémoire du cabinet de Russie, 17 June 1824: 341-343), the organisation of one or three Greek principalities, with a regime of privileges like those of Wallachia and Moldavia, but also a political autonomy as a "Christian principality", similar to that projected for Serbia ("Mémoire du Cabinet de Russie", 9 January 1824: 67) in the Treaty of Bucharest and in the subsequent negotiations, interrupted in 1821 ("Depeşa trimisă de Minister baronului Stroganov", 17 Mars 1820: 427-428; Vianu, 1963, 109-116).

The question of the Romanian Principalities autonomy

After the defeat in the war of 1828-1829, being forced to make concessions on many levels, the Ottoman delegation that signed the Treaty of Adrianopole agreed for the first time that "the Principalities of Moldavia and Wallachia, on the basis of a capitulation, are under Ottoman suzerainty" ("Tratatul de la Adrianopole", 14 September 1829: 321). The use of the word *suzerainty* itself, which is inconsistent with the substance of Islamic law, marks a change in the status of the Principalities, of a qualitative nature, but the Principalities continued to be described as "provinces" (Panaite, 2013: 19-20). In the definition of state identity, compared to the text of the Akkerman Convention, the Treaty of Adrianople included certain clarifications which gave legal consistency to features which the legal doctrine of the first part of the 19th century (Barthélemy, 2006: 25-26), especially the German doctrine, attributed to the modern state: a territory, a community and a internal public authority (Alexianu, 1930: 66; Drăganu, 2000: 127). In the treaty, some essential attributes of the modern state, in the understanding of the practice of international relations of the time, are explicitly formulated: "The principalities will have the free exercise of their religion, perfect security, an independent national administration and complete freedom of trade" ("Tratatul de la Adrianopole", 14 September 1829: 321), and in the Treaty of Petersburg, the Organic Statute was called "constitution" ("Tratatul de la Petersburg", 29 January 1834: 338).

The change in the political and juridical status of the Principalities was a premeditated action taken by the Russian officials before the end of the war, of course, on the orders of Tsar Nicholas I. The internal component of state sovereignty was clearly reflected in *Projet d'acte séparé au de Convention spéciale sur les Principautés de Moldavie et de Valachie* (Sturdza, 1829: 363-385), drafted by Alexander Sc. Sturdza shortly before May 1829 (Colecţia Microfilme Rusia, 1829, Sturdza to Nesselrode, 10/22 May 1829: 361)[2]. The author proposed the reign for life of a prince "selected among the boyars of the country", and following the death of the first princes, a Moldavian successor, chosen by the "electoral assembly of Wallachia" and a Wallachian in Moldova, would be "eligible and permitted"; the right of indigeneship of Moldavians in Wallachia and of

[2] In that letter, Alexander Sturdza informed Nesselrode that he had concluded the draft of the Russian-Turkish convention concerning the Principalities, prepared by order of the Russian Vice-Chancellor.

Wallachians in Moldova (art. III); the General Assemblies of the Divans had to elect the princes and to participate in the drafting of laws, as consultative bodies, on the basis of the provisions of a Regulation Act, "which shall be considered as part of the present" Convention (art. VIII); the demolition of the fortresses of Turnu, Giurgiu and Brăila, with the restitution of the villages held by these fortresses (art. IX), the establishment of quarantine along the Danube border (art. X), full freedom of trade, with the Porte retaining a right of preemption for the purchase of grain and sheep, but at market price (art. XI) (Sturdza, 1829: 366-382). A direct right of control over the exercise of internal autonomy by the suzerain and protective powers resulted from art. V, which provided that elections for the prince had to be validated under Russian-Ottoman treaties and conventions (Sturdza, 1829: 368-370).

Russia received a great advantage through the *extra fines imperii* clause of art. XIV, which granted property rights to Russian subjects in both principalities, under the authority of the laws of the state from which they came (Sturdza, 1829: 282)[3]. Certainly, only a part of the clauses of this project will be found in the text of the *Separate Act relating to the Principalities of Moldavia and Wallachia* in the Treaty of Adrianople (Tratatul de la Adrianopole, 14 September 1829: 326-328), but reflects a clear conception of Russian patronage over the development of the Principalities, including in the event of their union, to the advantage of Russia, someday, coming from the political thinking of a Russian intellectual and high official with Moldavian origins. Of course, much less was to be expected from other figures, without the sensitivities that can still be discerned, from place to place, in the case of Alexander Sc. Sturdza.

Between uprising and diplomacy: the autonomy of the principality of Serbia

After the outbreak of the Serb uprising, led by Milos Obrenović, and the negotiations with Marshali Pasha (Yakschitch, 1907:357-364; Ćirković, 2004: 190), Serbia was to receive a special status, with its own "internal administration", in relation to the Ottoman Empire, through the Treaty of Bucharest, in a rather ambiguous political and legal manner, which should have been clarified later (Tratatul de la Bucureşti, 28 May 1812: 300). Instead, the Treaty of Adrianopole stipulated the Christian character of the new principality and the substance of its autonomy in relation to the suzerain power, guaranteed by the Russian protectorate. The rights of the "Serbian nation", prefigured in 1826 by the Akkerman Convention – the freedom of faith, election of its own rulers, independence of its internal administration, reunion of the districts separated from Serbia [after 1813], unification of the various taxes into one, renunciation in favour of the Serbs of the administration of property belonging to the Muslims, with the obligation to pay compensation together with the tribute, freedom of trade (Act separat relativ la Serbia , 7 October 1826: 317) – were confirmed by the 1829 Treaty, without any additional provisions on the internal organisation (Hacisalihoğlu, 2018: 46).

On the basis of the 29 August 1830 s *hatt-i sherif*, the new Principality's border was drawn and the quarantine regime established, the abuses by the Ottoman pashas

[3] About the juridical notion of *extra fines imperii*, more often used in the 16th-17th centuries, in line with the theories about the state, which later became obsolete, see (Allen, 2013: 416).

residing in the border garrisons were eliminated, and, above all, the restrictions on Muslim faith and the transfer of property (the old Muslim *timar* were to be sold within five years to private Christians - the Serbian *baština* - or to the Orthodox Church or to the state) (Noradounghian, 1900: 197-200) were achieved with difficulty, requiring new negotiations and a new sultanal act, the s *hatt-i sherif* of 1833 (Kršljanin, N., 2017: 33).

The Treaty of Adrianople and the Porte's *hatt-i sherifs* provided the international political and juridical support necessary for the organisation of Serbia into an autonomous state with appropriate institutions, overcoming the provisional regime and princely authority based on military loyalties and patronage relations (Dragnich, 1978: 16)[4], resulting from the successful revolt against the suzerain, but without the creation of stable institutions to replace the Ottoman ones. Despite the opposition of Prince Milos, who wished to prolong the old, ad hoc form of power, the pressure of the Great Powers and the internal opposition led to the gradual institutionalisation of the government (Ćirković, 2004: 195; Popović, 2019: 12-13), on the basis of a future legislation adopted by Prince Milos in collaboration with an Assembly composed by elected deputies (Jokanović, 2022: 27-28).

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The involvement of the Great Powers in the resolution of the "Greek question" entered in a new phase, of acceleration of its solution, after the accession to the throne of the new Tsar, Nicholas I, a strong personality, even voluntarist, compared to his predecessor, Alexander I. Thus, the Anglo-Russian protocol of 4 April 1826 explicitly stipulated the establishment of a Christian principality in the Peloponnese and the relocation of the Muslim population resident there, followed by the transfer of properties to the local Christians (Őrenç, 2011: 178). This new principality, tributary to the Porte, was to benefit from internal autonomy similar to that desired by Russia for Serbia - the Greeks "shall be governed exclusively by authorities chosen and appointed by themselves, but in the appointment of which the Porte shall have some influence" and "the Greeks shall enjoy full freedom of conscience and commerce" (Noradounghian, 1900: 115). To these specifications, in the *First Protocol of London* (6 July 1827) the three signatory powers (England, France, Russia) added clauses on the territorial extent of the new state, distinct from the Ottoman territory by the attributes of self-government and a character as Christian principality (Noradounghian, 1900: 132).

As a result, Western commentators noted that "in fact, the line of armed separation [quarantine] between the Ottoman Empire and its dependent northern provinces" turned the suzerainty into a legal fiction (Quin, 1835: 178; McNeil, 1836: 105-106). The debates between diplomats on the legal meaning of the terms of the Treaty continued, as in the case of previous treaties, and were resumed by jurists and historians of law in the second half of the nineteenth century (Becker Lorca, 2010: 506-511, 538-539), but the historical reality shows that these sterile discussions did not prevent Russia from extending its occupation of Moldavia and Wallachia for five years and imposing

[4] The rulers of Serb-controlled districts were appointed by Milos Obrenović from among his relatives and comrades-in-arms, ensuring in this way the loyalty of the administration.

its will, as an *act of power*, by the Treaty of Petersburg (art. II) (Tratatul de la Petersburg, 24 January 1834: 338). In the cases of Serbia and Greece the situation proved different, explained by the absence of military occupation and, not least, by the different scale of Austrian and British involvement.

The clarification of certain structural ambiguities of the political regimes in the Danubian Principalities before 1848 requires not only an investigation of their internal situation and Russian strategies of political interference, but also a comparative analysis in relation to the conceded constitutional acts in Europe in the same period. The modern character of the various constitutional texts until 1848 remained a territory of dispute between authors, for methodological reasons. From the perspective of the theory of law, the constitution must meet two mandatory criteria: it must limit the powers of the rulers, guaranteeing the rights of the individual, because "any society in which the guarantee of rights is not assured, nor the separation of powers established, has no constitution" (Constitution Française, 3-14 September 1791: III) and be endowed with legal supremacy over all other laws (Jellinek, 1913: 179-182; Barthélemy, 2006: 60-75). Law theorists have insisted on a canonical configuration of the modern constitution: sovereignty of the people, inviolable individual rights, separation and balance of powers, independence of the judiciary, ministerial responsibility, etc (Dippel, 2005: 160-162). Other authors, especially among historians, have pursued a more flexible approach to the coverage of the principles, concerned mainly with the transforming power of constitutional acts on the political regimes and societies under investigation (Vick, 2014: 254-255). Pierre Rosanvallon called the years 1814-1830 the "Age of Reason", the golden age of political reflection in France, in search of a balance between political stability and the protection of liberties after the excesses of the previous period (Rosanvallon, 1994: 7-8).

Constitutional typologies in Europe (1814-1830)

The current idea of the constitution in Europe in the first half of the nineteenth century was not necessarily congruent with the classical political theory of the modern constitution, a legacy of the Great French Revolution (Drăganu, 1991: 39-40; Prutsch, 2013: 1-2). In the legal doctrine of the time, the conceded charter was attributed features of a constitution, such as the *French Charter* (1814), the *Constitutional Acts* of the Kingdoms of Bavaria and Württemberg, the Duchy of Baden (1818) or the *Charter of the Kingdom of Portugal* (1826) (Drăganu, 2000: 75-76). Moreover, the charter was in harmony with a central concept of political theory in the first half of the nineteenth century, the *mixed constitution*, having as intellectual references the ancient Aristotle and Polibius, and as a concrete example, the British political system (Velde, 2018: 43-44). In the British case, the idea of a *mixed constitution* defined the balance between the three branches of political power - the King (monarchy), the House of Lords (aristocracy) and the House of Commons (democracy) - according to a famous formulation of Henry John Bolinbroke, adopted and validated by theorists such as William Blackstone, William Paley and Jean de Lolme (Foley,1999: 18). The model was extended on the continent as an ideological reference point in France during the Restoration years

(Benjamin Constant, Germaine de Stäel) (Steven Vincent, 2012: 51-52) [5] and in the German states, especially after 1815, through the *theory of constitutional dualism* (Hummel, 2014: 1-3). The latter presupposed the monarch's singular control over the executive power and the balance of power between the king and the two parliamentary chambers, the first of which was aristocratic, only in the legislative sphere (Ertman, 1999: 38-40).

However, according to some authors, there are significant differences between the various constitutional acts of 1814-1830. A first category, starting with the French charter, represents *self-limiting monarchy*, the only legitimate source of power being the monarch, who concedes part of his exercise of power of his own free will. The second category is defined as *mixed monarchy*, "a dualistic system in which the exercise of authority is shared between the monarch and states or classes invested with concurrent legitimacy" (Lauvaux, 1996: 32), especially where the monarchy was elective, even if only for the founder of a dynasty. Although this election often involved the interference of the Great Powers, the *mixed monarchies* evolved more rapidly towards representative monarchy and a genuinely parliamentary political regime (Lauvaux, 1996: 35-36; Domingues, Moreira, 2021: 92-97; Viaene, 2001: 25-36).

Unlike the French constitutional charter of 4 July 1814, which confirmed the legitimist principle of monarchical sovereignty in an unequivocal manner ("Louis, Par la grâce de Dieu, Roi de France") and the doctrine of "Divine Providence" as the legitimate source of public power (Charte Constitutionnelle, 4 June 1814: CXII). a different interpretation was applied in German-speaking area, in defining the sovereignty, the profile and role of a constitution. The state was considered the personification of the legal and social order, its functioning being determined by a unitary system of rules (Barthélemy, 2006: 27-28). The Romanian jurist G. Alexianu masterfully described the difference between the French (in fact, Anglo-French) and German (Austro-German) doctrine of the rule of law: "the French doctrine places the individual before the State [...] and limits the authority of the State only within the margins set by the rules established by the general will [the constitution], the German doctrine places no limit on the State's right to legislate, but only obliges it to respect its own rules" (Alexianu, 1930: 139-140). He also inserted the observation that the Organic Regulations were drawn up according to the "German doctrine" – which was in the process of being established (Wilson, 2000: 112)[6] – and judged according to the demands of the "French doctrine".

An entire bibliography on the subject, at that time and later, validates Gheorghe Alexianu's judgments, showing that, in Europe, conceptions of the constitutional state in the first half of the 19th century did not respond to a unified set of ideas, eventually of "French revolutionary inspiration" (Guţan, 2020: 151-153)[7]. It does not follow a

[5] Essentially, the argument of these two thinkers, who are part of the "liberal pluralism" movement, revolves around the utility of a political system in which power is shared between the monarch and the people, as a safe solution to avoid the tyranny of the monarch or of the masses.

[6] The rationalism of 18th-century German cameralism, rooted in the theory of natural law, explains both the preoccupation with legislative codification in the Habsburg Empire, Prussia, Bavaria and other German states, and the adherence to the model of a powerful government capable of imposing common rules.

[7] See Manuel Guţan's remarks on the methodology of "constitutional transplantation" in his

straight line, are many "deviations, crossroads, contradictions, uncertainties, returns" (Barthélemy, 2006: 36; Grotke, Prutsch, 2014: 3-4; Hensen, Bock, Dircksen, Thamer, 2012). Alongside the liberal doctrines based to a large extent, but not exclusively, on the political and constitutional experiences of the years of the French Revolution, and the doctrine of self-limiting monarchy, also of French origin (1814), there was, at the beginning of the 19th century, a etatist doctrine, with an impact in the Habsburg Empire, in some German states and in Russia. This doctrine places the state above the individual and 'civil society' as the sovereign guarantor of the social order, using older (autocratic) or newer (rationalist) forms of political legitimation. For instance, Hegel used his famous analytical method to explain the role of the state: the citizen is the thesis, civil society the antithesis, and the state the synthesis, the only one that can rationally guarantee the harmonization of the fundamental contradiction between citizen and civil society (Lev, 2014: 129-136).

The establishment of charters in the German states began in 1816, when Karl August, Duke of Saxe Weimar, granted a constitution. It was defined as "a pact between the prince and his subjects" and provided for the creation of a Landtag, independent courts and a free press (Kater, 2014: 32-33). The series of granted charters or constitutional pacts continued in 1818 in the southern part of the German Confederation with those given by the kings of Bavaria and Württemberg, together with the Duke of Baden. The emergence of these constitutional charters cannot be separated from the history of international relations, of relations between the Great Powers, in this case Austria, Prussia and Russia, in the establishment of a functioning political order in the German Confederation. Paradoxically, the initiators of these constitutional charters, the princes from southern Germany, were to be encouraged towards their adoption by Austria, by Metternich himself (Nafziger, 2002: 194-195), as a reaction to Karl von Stein's initiatives to persuade Tsar Alexander I to support a 'constitution' of the German Confederation, which would strengthen Prussia's political influence and prestige among the German states (Seeley, 1879: 62; Prutsch, 2013: 84-102).

Inspired to a certain extent by the draft "constitution" for Poland prepared by Alexander I, the constitutional acts of the kingdoms of Bavaria (19 May 1818) and Würtemberg (25 September 1818), as well as of the Duchy of Baden (22 August 1818) (Ward, Prothero, Leathes, 1907: 362) appear in the same year when in Constantinople Baron Stroganov, the new Russian ambassador, proposed to the Porte the elaboration of a regulatory settlement for the Romanian Principalities, as a basis for the reorganization of internal institution (Stroganov, 9 January 1819: 68). Moreover, as Victor Taki observed in a recent book, in an attempt to find a common ground for

analysis of the correlation between "actors, causes, models, means, modalities, goals and effects of the constitutional modernization process". On the one hand, the Western influences on ideology, vocabulary and constitutional language must be correlated with the power interests of the elite in order to explain the features and dynamics over time of certain constitutional solutions, refining Lovinescian evolutionary dialectical approach (revolutionary thesis, reactionary antithesis, modern synthesis). On the other hand, "the Romanian constitutional-political developments of 1800-1866 must be approached from the perspective of the balance and interaction" between "two distinct agendas of modernization", the internal one, specific to the Romanian elite, and the external one, managed by the Great Powers.

dialogue with the local elites, establishing a political order based simultaneously on the force of law and the political traditions of the region, Tsar Alexander allowed the drafting of constitutional charters, influenced by the arguments of Ioannis Capodistrias, and the use of a language of reform by Russian officials which, in the view of its promoters, was capable of harmonising the demands of monarchical legitimacy with the expectations of local elites for enlightened, rational and civilised government (Taki, 2021: 73-79). At the same time, these "constitutional" transformations were intended to ensure Russian imperial influence and interests in Poland, Bessarabia (*The Settlement of the Oblast of Bessarabia*, 1818) and the Romanian Principalities, or, in the case of the German states mentioned above, Russia's role as arbiter in the competition for influence between Austria and Prussia in the German Confederation.

All these charters explicitly affirmed the unity of power in the state, coming from the monarch, in other words, from the *principle of monarchical sovereignty*, without, however, using the rhetoric of legitimation present in the French charter. The main political aim of these charters was to associate the nobility, the other privileged states, the army and the bureaucracy to the exercise of power, on a legally founded basis and for the benefit of the state (Hummel, 2014: 4). The new charters were also intended to give structural unity to states that had received new territories with different characteristics and traditions following the Congress of Vienna (Hummel, 2014: 5-6). Another relevant illustration of the etatist doctrine results from the revision procedures, absent in the French charter, which required both a two-thirds majority of the deputies of the states and the absolute veto of the king/duke in order to reach a political agreement in the best interests of the state (Jellinek, 1913: 201-202).

The diversity of constitutional solutions in post-Napoleonic Europe and the role played by circumstances in the adoption of a particular model are perfectly illustrated by the constitutions of three Scandinavian state entities: Norway, Sweden and Finland. The Norwegian constitution, adopted in May 1814, is historically credited as the cornerstone of the nation state and a monument of *French-inspired liberalism* (Michalsen, 2014: 213-214). By contrast, Sweden, whose political elite had promised the Norwegians a liberal constitution if the union was accepted, had a constitutional charter since 1809. Despite a strong pre-modern tradition of "Swedish liberties" and the existence of a parliament with long-standing and strong powers, in which the peasants were also represented (*Riksdag*) (Nordin, 2011: 29-37), and an aversion to the absolutism of the last Swedish monarchs, the solution proposed by the committee that drafted the new constitution was an ad hoc mixture of Enlightenment principles (separation and balance of powers) and conservative governance mechanisms: the king controlled executive power without interference from the Riksdag, the privileges of the nobility were explicitly confirmed in the constitution, the idea of collective sovereignty was carefully avoided, but the sanctity of monarchical power was proclaimed (Stjernquist, 1975: 55-64).

In the same year, the constitutional history of Finland, which became an autonomous Grand Duchy within the Russian Empire, began. Here, Tsar Alexander I "magnanimously" confirmed the Swedish constitutional acts that represented the Finnish legislative tradition (the Swedish *Code of Laws* from 1734, Gustav III's "constitution" of 1772 and the *Act of Union and Security* of 1789) (Nordin, 2011: 37-38; Einhorn, Logue, 2003: 38), but the Diet was never called until 1863, following a tactical

pattern of Russian "constitutional" formalism that was reserved for the European border provinces (Suksi, 2018: 25). Instead, Tsar Alexander I established in 1810 a Senate as an executive body with two departments: an administrative one composed of an "army" of bureaucrats, Finns and Russians, which effectively ran the Duchy under the authority of a Russian governor; the other, judicial, drafted legislation approved by the Tsar and functioned as a court of appeal (Kekkonen, 2004: 172-173). The historical period between 1809 and 1855 was called by Finnish historians the "bureaucratic era", marked by the gradual infiltration of Russian legal and administrative practices into Finland, the introduction of censorship, severe punishment of "subversive" actions and an educational and cultural model based on loyalty to the imperial crown and devotion to a paternal state (Kekkonen, 2004: 173-175). This political and constitutional trajectory of Finland contains similarities with the history of the Organic Regulations introduced in the Romanian Principalities.

Organic regulation, constitutional charter?

The research of internal sources, associated with the comparative analysis of several constitutional models in operation at European level before 1831 (the year of the completion of the organic law), led us to the conclusion that the etatist doctrine and the welfare state model, in the variants assimilated by the Russian political and legal culture, also present in the political thinking of a part of the native boyars from the Principalities, played a crucial role in the architecture of the Organic Regulations. From a general perspective, we can see that the ideological foundations of the Organic Regulations, present especially in *The Petersburg Instructions*, revolve around the definition of the powers and needs of the state, the preservation of its proper functioning, in the name of a rational, organised and efficient administration (Ploscaru, 2014: 843; Guţan, 2020: 165-166).

Without an explanatory preamble, like in the case of the French charter of 1814, or a first "title" concerning the sovereignty and individual rights, like in the charters of Baden, Bavaria, Portugal (Laferriére, 1869: 151-153, 219-220, 488-489), the organic law inserts a single reference to the source of public powers, in article 55, where "the privileges of the Principality, treaties and *hatt-i sherifs* concluded in its favor" by Russia and Ottoman Empire are mentioned, with reference to the external component of sovereignty (Reglement organicesc a Moldovei, 1831: 176). On the other hand, some ideological references to the legitimacy of public power appear in *The Instructions of Petersburg*, with the fundamental idea that "le droit d'election des Princes de Moldavie et de Valachie par le corps des boyards avec *l'accord general des habitants*" (Enstrucţiile ce a primit Comitetul din Bucureşti, 1829: 18). This statement must be associated with the provision of art. V of the Treaty of Adrianopole, referring to the fact that the Romanian Principalities will enjoy "une administration nationale independante" and with the indication from the same *Instructions* that the Extraordinary Public Assemblies for the election of princes should be formed "dans chaque Province du haut clergé, des boyards de la première classe, d'un certain nombre des boyards de la seconde classe, des deputés provinciaux choisis par les notables de chaque district au nombre de deux, enfin des deputés des villes et des corporations et peut ètre aussi de quelques autres notables du pays" (Enstrucţiile ce a primit Comitetul din Bucureşti, 1829: 19). On the basis of this

information, it is quite clear that the original intention was for the regulatory political regime to have the profile of a *mixed monarchy*, with a representative character comparable to that of the German charters mentioned and with a territorial and corporatist character. Why, in the end, the regulatory regime created by the organic law took a different shape is a question for future research.

Following the same comparison between the texts, if in the organic law the "provisional council" (căimăcămia) was composed by "the great logothete [of justice - n.n.], the minister of the interior and the president of the High Divan", an institution with appointed members (Reglement organicesc a Moldovei, 1831: 166), in the *Instructions* the *elective character of the institution* it replaced, the kingship, was preserved, since the Ordinary Public Assembly „sera aussitôt assemblée pour choisir dans son rein, séance tenante au scrutin secret et à la majorité absolue des suffrages, trois caimacams auxquels la gestion de toutes les affaires administratives sera confiée jusqu'à l'installation définitive du nouvel Hospodar" (Enstrucţiile ce a primit Comitetul din Bucureşti, 1829: 20).

How can these changes be explained? The difficulties of Pavel Kiselev's collaboration with the boyars, the turmoil in Moldova caused by rumours about the content of the Organic Regulation and the outbreak of the Polish insurrection (Taki, 2021: 196-209) completely removed from the final text of the organic law (Reglement organicesc a Moldovei, 1831: 161-163) politically important provisions from the *Instructions*, replacing them with simple technical descriptions, without constitutional value, of the election of the deputies of the Extraordinary Assembly or of the Ordinary Assembly. The experience of the years of military occupation and the internal resistance to the organic legislation led to the fact that the two essential political issues on which the future of the regulatory political regime depended - *the question of the election of the princes* and *the procedures for the revision of the organic legislation*, an essential component of internal autonomy, guaranteed by the Treaty of Adrianople (Tratatul de la Adrianopole, 14 September 1829: 321) – were decided in a manner consistent with Russian interests of political control of the situation in the Romanian Principalities (Colecţia Microfilme Rusia, 1830, Minciaky to Kiselev, 2/14 April 1830: 379). Initially, the revision was assigned to an Extraordinary Public Assembly, a solution agreed in the "committee of reforms", as it clearly emerges from a report of Minciaki. He was against the presence of this provision in the final form of the Organic Regulations, because the free election of the princes would generate intrigues and internal tensions, fed by the consuls of the other Great Powers, with unpredictable results, and the prerogative of revising the Regulations would allow the boyars, over time, especially in Moldavia, to alter the foundations of the regulatory regime (Colecţia Microfilme Rusia, 1830, Minciaky to Kiselev, 2/14 April 1830: 380-381).

Serbia's first "constitution" (1835) - charter or organic act?

The issue of the organisation of the institutions of autonomous Serbia proved to be delicate and marked by tensions, both between Russia and Prince Milos, and between the latter and the internal opposition, which wanted reforms and saw Obrenović's personal government as a transitional phase, justified only until the Ottoman Empire formally recognised the existence of the new Christian principality in the Balkans (Ćirković, 2004: 190-195). On the basis of the provisions of the Treaty of

Adrianople, Russian diplomacy became more involved than before as an intermediary and arbiter of Serbian-Ottoman relations on the materialisation of the regime of "independence of internal administration", wishing to avoid a situation similar to that of 1815-1821, when Milos Obrenović negotiated directly with Marshali Pasha the limits of Serbian autonomy, to the discontent of the Petersburg government (Jelavich, 1991: 102). On the other hand, Russia's position of strength was not as clear as in Moldavia and Wallachia, which were under military occupation, explaining Russia's somewhat more concessive approach towards the Serbs, including the recognition of Milos Obrenović as hereditary prince of Serbia in 1830 (Popović, 2019: 11).

Initially, the data revealed by the correspondence between Milos Obrenović and Russian officials show the tendency of the protective power to impose the introduction of a Council with broad executive powers, a kind of "government" or *ministerium*, similar to the Administrative Council from the Romanian Principalities, as an intermediary institution between Prince Milos and the National Assembly (Jelavich, 1991: 102-103). This Council was to replace the Chancellery established by Prince Milos, a kind of secretariat, whose members were appointed and entrusted with various public tasks directly by Obrenović. A delicate subject for negotiation, the Council was intended to provide Russia with institutional instruments to control the power of the prince and the work of law-making, which was absolutely necessary, but Obrenović invoked, with obvious hypocrisy, the idea of "ministerial responsibility" in order to give the Assembly, over which he had more influence, legal authority over the members of the Council, perceived in principle as rivals in the exercise of public power (Dragnich, 1978: 19). The truly relevant aspect of the November 1830 *hatt-i sherif* of the Porte, namely the right of the Assembly to dismiss members of the Council only for crimes of "high treason against the Sublime Porte or violation of the laws and regulations of this country", with the prior consent of the suzerain and protective powers (Popović, 2019: 12). Aware of the Russian intentions, materialized in a draft for the organization of the institutions of the new principality, quite similar to the Organic Regulations, Milos Obrenović postponed the application of these provisions of the *hatt-i sherif*, with the tacit complicity of the Ottoman suzerain.

Nevertheless, at the domestic level, two drafts of a "constitution", dated in 1831, were written and circulated in some limited political circles. The first draft, *Plan of a Constitution* (*Plan Konśtitucije*), proposed the establishment of a Senate, consisting of eight members, appointed by the National Assembly, but irremovable for a five-year term, who could be removed by the Assembly for misconduct in public office (Popović, 2019: 13). The project seems to propose an alternative to the Russian intentions, and it is possible that it was drafted by a close associate of Prince Milos, using as model the Organic Regulation of Wallachia, which favoured the princely power. The second draft, called *The Constitution* (*Ustav*), defined the relations between the four main institutions - the Prince, the Administrative Council, the Senate and the National Assembly - in a completely different way. Executive power was exercised by the prince through the Administrative Council, while legislative power was shared by the prince, the Senate (which drafted laws) and the Assembly, which passed the laws by deliberative vote (Popović, 2019: 13-14). In other words, we can speak of a genuine *constitutional charter*, which proposed the establishment of a *mixed monarchy* in Serbia.

This intention materialized with the adoption of the *1835 Constitution*, a curious, eclectic document, a combination of liberal principles (sovereignty of the people, citizens' freedoms, proclamation of the separation of powers in the state) and a complicated mechanism of government, the result of a political compromise, through which Prince Milos accepted the involvement in government of the district leaders, an important part of the Serbian social and military elite, who had risen in the context of the uprising between 1804 and 1818. The establishment of the Council of State, composed of 22 persons (two for each district), with legislative and judicial powers (supreme court) and from among whom the prince was to choose the six ministers, did not essentially undermine princely authority, but placed it within legal frameworks, quite similar to those existing in the Organic Regulations (Ubicini, 1871: 11-14; Svirćević, 2010: 105-108). The unusual opposition of Russia, the main Great Power which opposed the entry into force of this constitutional charter, protesting vehemently and threateningly through the extraordinary commissioner sent to Belgrade, Baron Rückman, was due both to the "subversive" liberal principles which it proclaimed, but above all to the manner in which it confirmed, from a legal point of view, the supreme authority of Prince Milos over the political system in Serbia, contrary to Russia's wishes (Yovanovitch, 1871: 66-67). Unlike in the case of the Romanian Principalities, where Russia wanted to limit the power of the "disturbing aristocracy" by the Organic Regulations (Papadopol-Calimah, 1886-1887: 92), in the case of Serbia the protective power wanted to limit the power of the prince in order to control the political situation, using the opposition of the other local leaders (Hehn, 1986: 23-24).

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In an attempt to pursue the comparative investigation further, the brief review of several political regimes with constitutional features prior to 1830-1831 suggests the *existence of some typologies in continental Europe*. A genuinely modern constitutional route was to be followed by France (1830) and Belgium (1831) as independent kingdoms. The German states mentioned above, the Netherlands, Portugal, Piedmont and Greece would benefit from monarchical political regimes with some constitutional features comparable to those of Sweden. In contrast, Finland, Poland and the Danubian principalities will endure political regimes of foreign domination, *with constitutional rudiments*, supported by strong bureaucratization, discursive and repressive control of the public space, cultural and legal "colonization". However, in the case of Moldavia, Wallachia and Serbia there were some political and legal ideas specific to the local elites, due to a complex of traditions and influences, but Russian power interests and reform plans played a significant role, detectable especially through the use of the critical historical method. Nevertheless, in the two Romanian Principalities and in Serbia the legal nature of the state and the transition from patrimonial domination to the modern bureaucratic state are consistently reflected in the famous *Petersburg Instructions* and in the organic legislation, and the political form, paraphrasing Pierre Rosanvallon's definition, took shape as a mixed monarchy, although the rule retained the attribute of ruling power.

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