THE 1938 CONSTITUTION REGARDING THE ADMINISTRATIVE-TERRITORIAL ORGANIZATION OF ROMANIA

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ABSTRACT

This study analyzes the 1938 Constitution of Romania, focusing on its impact on the administrative-territorial organization. Promulgated during King Carol II's authoritarian regime, the Constitution marked a shift from parliamentary monarchy to royal dictatorship. Emphasizing executive dominance, the Constitution redefined administrative units, introduced ten regions (ținuturi), and diminished local autonomy by replacing elected councils with appointed officials. The Royal Resident became the central figure of regional governance, assuming extensive supervisory and executive powers. This legal framework institutionalized centralized control, aligning with European authoritarian trends of the time. While designed to professionalize and depoliticize public administration, the law ultimately fostered bureaucratic control, weakened democratic institutions, and proved incompatible with Romania's socio-political realities on the eve of World War II.

KEYWORDS: *administrative reform, authoritarianism, descentralization, royal resident*

J.E.L Classification: H70, N44, K36

1. INTRODUCTION

The 1938 Constitution of Romania represented a critical departure from the democratic principles enshrined in the 1923 Constitution, signaling the consolidation of an authoritarian regime under King Carol II. Adopted in a political climate marked by the erosion of parliamentary authority and the increasing personalization of power, the Constitution served as the legal foundation for sweeping administrative reforms. These changes were not merely legalistic but were intended to institutionalize control over the entire territorial and administrative structure of the state. The law introduced a hierarchical and centralized model, anchored by the creation of ten regions (ținuturi), led by Royal Residents endowed with executive authority. This study investigates the implications of these reforms, particularly how they reconfigured state power and administrative governance. Drawing from constitutional texts, legislative enactments, and comparative European practices of the interwar period, the paper explores how the 1938 Constitution sought to modernize public administration while ultimately undermining democratic governance. It provides a critical analysis of the tensions between professionalization and politicization, centralization and decentralization, and legalism and authoritarian control, all within the context of a Europe edging toward totalitarianism and war.

2.THE AUTHORITARIAN SHIFT AND CONSTITUTIONAL ENGINEERING

The authoritarian monarchical regime inaugurated by King Carol II on February 10, 1938, brought with it a new Constitution, promulgated in the presence of government members at the Royal Palace on February 27, 1938. The principles of the fundamental law were stated through the Royal Proclamation, published in the Official Gazette along with the text of the Constitution (Official Gazette, Part I, 1938). The preeminence of the Romanian nation was reaffirmed, as well as the rights and obligations of the citizens, the authority and independence of the government, the powers of the legislative bodies (significantly diminished compared to the 1923 Constitution), the parliamentary representation of the production sectors according to the new corporatist system of social organization, and so on.

The new Constitution (Romanian Academy, History of the Romanians, vol. VIII, 2003) enshrined principles of an active monarchy and gave the political regime enough features to be characterized as "authoritarian," positioned at a considerable distance from one based on parliamentary monarchy. The text of the 1938 Constitution preserved most articles from the 1923 Constitution. However, it was eclectic through the newly introduced articles which Istrate Micescu, the renowned jurist, and his team deemed necessary to consecrate the new power relations in the State "favorable to the King and the Romanian Nation." The new Constitution did not radically change the constitutional framework but reconfigured it in the direction mentioned above. The Government became a "body of the state" (Flotescu, 1998), a notion that visibly diminished the principle that all state powers emanate from the Nation and emptied of content another key democratic principle — the separation of powers.

In a comparative analysis of the 1938 and 1923 Constitutions, the differences begin with the revision procedure. Parliament would no longer be dissolved if it proposed a revision, but would itself vote on it within each Chamber through a special procedure. In 1938, the King had the initiative for revision, consulting the Legislative Bodies through a Royal Message. The legislators expressed their opinion by a two-thirds vote, meeting in a joint session presided over by the President of the Senate. The result was conveyed to the King by a delegation made up of the presidents of the two Chambers, accompanied by members of a Special Commission.

The 1938 Constitution maintained the basic principles regarding territory established in 1923. Romanian citizenship under the new Constitution was granted by the Council of Ministers through a law voted by Parliament and sanctioned by the King (in contrast with the simplified procedure in the 1923 Constitution, which established a Naturalization Commission). Articles regarding the loss of citizenship were carried over from the old Constitution, with the addition of a new clause that Romanian citizenship was incompatible with holding a position in the service of a foreign state or private company. A Decree-Law simplified the loss of Romanian citizenship for those citizens living abroad whose actions harmed the image, security, or interests of the Romanian state — a provision found in all fundamental laws of authoritarian or dictatorial regimes. In the new Constitution, citizen rights from the 1923 text were preserved, but duties toward the Fatherland and the State were also clearly stated — from obeying the law to paying taxes. Only Romanian citizens could hold political office, taking into account the "majority and state-creating character of the Romanian Nation." Regarding Sovereignty and State Powers, as previously mentioned, the principle of separation of powers was formally maintained, but decisions were taken by the executive power. In the 1923 Constitution, article 91 stated that: "The King shall have

no other powers in the State than those given to him by the Constitution." In the 1938 Constitution, article 31 stated: "The King becomes the Head of State." "Ministers are responsible only to the King" (art. 65), and were formally obligated to respond to parliamentary interpellations. The person of the King was declared inviolable in both Constitutions, with ministers bearing responsibility, as they countersigned the King's state acts (with the exception of the Prime Minister, who was exempt from countersigning).

In the new Constitution, among the conditions for becoming a minister, in addition to those already required of senior public officials, was the requirement to prove Romanian citizenship for at least three generations. Ministers who left office after holding it for three years could not become board members of companies that had contracts with the respective ministries, and former ministers of justice could not practice law for one year after leaving office. A Decree-Law of March 30, 1938, established the Crown Council, composed of permanent advisers appointed by the King from among the country's prominent figures. At the Parliamentary level, there were numerous changes. These aimed to drastically reduce the role of the legislative bodies in the system of state powers. Article 3 of the new Constitution stipulated that legislative power was exercised by the King through the National Representation – the Senate and the Assembly of Deputies, made up of Romanian citizens aged at least 30, actively engaged in one of three economic sectors – agriculture and manual labor, commerce and industry, or intellectual occupations. For the first time in Romania, women were granted the right to vote, and the corporatist system was introduced.

Now, senators came from three sources – elected by citizens; appointed by the King (half of those elected); and ex officio (holders of high offices and positions in the State). The term of office for deputies was six years, while that of senators, both appointed and elected, was nine years, with one-third renewed periodically. The 1923 Constitution was the first in Romania to proclaim universal, equal, direct, secret, and mandatory suffrage, with proportional representation for minorities. The new 1938 Constitution also provided for secret and mandatory voting, but no longer universal, even though women were granted the right to vote. In 1923, party-list voting was used, while in 1938 a single-member voting system was adopted.

3. REGIONALISM AND THE NEW ADMINISTRATIVE-TERRITORIAL ARCHITECTURE

The King could postpone the opening of Parliament by up to one year, compared to one month, plus another possible extension, under the previous Constitution. As mentioned, the right of legislative initiative belonged to the King, while the legislative bodies could only propose laws "for the public good of the State." Based on the new Constitution, the Administrative Law was promulgated on August 14, 1938. According to this law, Romania was divided into 10 regions (ținuturi), each with legal personality, as follows:
Ținutul Olt – seat: Craiova, 6 counties
Ținutul Bucegi – seat: Bucharest, 10 counties
Ținutul Mării – seat: Constanța, 4 counties
Ținutul Dunărea de Jos – seat: Galați, 10 counties
Ținutul Nistru – seat: Chișinău, 4 counties
Ținutul Prut – seat: Iași, 9 counties
Ținutul Suceava – seat: Cernăuți, 7 counties

Ținutul Mureș – seat: Alba Iulia, 9 counties
Ținutul Someș – seat: Cluj, 7 counties
Ținutul Timiș – seat: Timișoara, 5 counties

The county (județ) lost its legal personality, remaining, like the district (plasă), a mere administrative and control district. The prefect was no longer a political appointee but became a career official. The mayor became the "head of the commune," invested with greater authority. Villages that were not commune seats formed "small units" represented by a delegate at the commune level. The law retained the classification of communes: rural, suburban, urban (non-county seat), urban (county seat), spa and health resorts, and municipalities – urban communes with over 50,000 inhabitants or county seat status. The mayor was appointed by the authorities depending on the type of commune: by prefects for rural and non-county urban communes, and by the Royal Resident for urban county seats.

The deputy mayor was appointed under the same conditions as the mayor – at least 30 years old, university-educated (in county seat municipalities and spa resorts), or primary education in rural communes, etc. In municipalities, two vice-mayors were provided for. The communal council consisted of:

- 3 elected councilors in rural communes
- 5 in urban non-county seat communes
- 7 in county seat urban communes
- 12 in municipalities

(The capital had a special organization regulated by a separate law.) In addition to elected councilors, the law also included ex officio councilors – such as the teacher, the priest, etc.

In communal elections, candidates had to hold Romanian citizenship, belong to one of the professional categories, and be actively practicing within them (according to the corporatist structure). Royal Residents were appointed by royal decree and had extensive powers, notably ensuring public order and peace in their region. A royal resident was appointed for six years by royal decree, based on a Cabinet journal and at the proposal of the Minister of Interior. They held the rank and salary of an undersecretary of state and the title of "Excellency." They were chosen from among university graduates or military officers with at least the rank of general. The minimum age was 35, with no maximum age specified. The royal resident was not a career official. The conditions of appointment and the nature of the position gave it the appearance of a political-administrative dignity.

The six-year appointment should not be interpreted as a guarantee of irremovability for the royal resident. Article 58 of the law listed incompatibilities: a royal resident could not hold any other state, commune, or public institution-paid position; could not practice a liberal profession; could not serve as administrator, auditor, or employee in civil or commercial companies, cooperatives, or people's banks; could not engage in commerce, leasing, or contracting, or manage businesses connected to his office. The same article also made the royal resident's position incompatible with parliamentary mandate. As a representative of central authority, the royal resident was the executive agent for measures ordered by the central government (ministries) – see Articles 66 and 68 – and was considered a decentralized body of central authority. In this capacity, the royal resident had the right of initiative and independent decision-making (Art. 63).

His powers did not extend to all ministries or departments. Under Article 54, justice, military, foreign affairs, higher education institutions, autonomous state enterprises, and commercial administrations were excluded from decentralization. Moreover, the royal resident's powers were limited and supervised by the respective ministers (Art. 63, letter e), final paragraph), who could suspend or revoke the royal resident's decisions – whether upon complaint or ex officio – in cases of legal violations, abuse of power, violation of instructions or ministry norms, and in the interest of state finances and public order.

4.THE ROYAL RESIDENT: AGENT OF CENTRALIZED AUTHORITY

The royal resident acted as a supervisory and administrative oversight authority over local agents of the central government. He thus assumed responsibilities formerly belonging to the Ministry of Interior, especially regarding municipalities, county seat cities, and spa resorts. He could attend communal council meetings whenever he saw fit, and his opinions were to be included in the minutes (Art. 67). He supervised the activity of autonomous public enterprises and commercial administrations, reporting findings to the relevant ministries. According to Art. 67, he also oversaw all cultural, charitable, and social welfare institutions dependent on the state, region, or commune (see Articles 44, 45, 135, 161). His powers extended beyond local government bodies and included local representatives of central government – such as prefects, sub-prefects (pretori), and notaries. He had the right to appoint notaries (Art. 109) and to supervise all other local state representatives (Art. 192). He could refer sub-prefects, prefects, chief administrative inspectors, general secretaries of the regions, and other public officials to disciplinary courts (Art. 137, letter c). Under Article 63, letter d, the royal resident could apply disciplinary actions directly (such as reprimands and 15-day salary withholding) to external ministry officials. For harsher sanctions, he had to contact the relevant ministry, although Art. 137 allowed him to directly refer cases to disciplinary courts, specifically the administrative courts.

Finally, the royal resident was the hierarchical superior of all external officials of ministries, except those listed in Art. 54, paragraph 2. He supervised their activity, could grant leave, apply minor disciplinary sanctions, or refer them to disciplinary courts, as previously explained. As administrator of the region, the royal resident was both the head of local administration with initiative and decision-making authority, and the executor of decisions made by the Regional Council. This made sense, as the Council – a collegial and deliberative body – required a single-person executive agent, as provided for in the law. The Regional Council was a pluralistic, collective body, composed of members elected by the electoral body and members appointed according to law. The powers of the Regional Council are deliberative in the following cases: when the creation of revenues of any kind is pursued; the establishment of taxes and dues within the limits set by law; the voting of the income and expenditure budget; decisions regarding loans, alienation, allocation of immovable property, purchases, exchanges, concessions, acceptance of donations and legacies, transactions, waivers, and recognition of rights when their value exceeds one-twentieth of the ordinary revenues. The Council also has consultative powers, meaning it provides opinions to the Royal Resident when consulted.

The law does not specify the duration of the Council's mandate. It only states that the mandate of elected members lasts six years, and that of ex officio members expires upon the termination of the respective offices (Art. 76). Moreover, the mandate of elected members can end by revocation as a disciplinary measure issued by the competent authorities (Arts. 134 and 135). These articles establish, without distinction between the types of locally elected bodies, various

cases and procedures for applying disciplinary sanctions. The regulatory function within the region belongs to both the Royal Resident and the Council (Art. 94). The Royal Resident drafts regulations on matters under his direct competence and consults the Council. The Council drafts regulations on all matters under its deliberative jurisdiction. Such regulations are approved by royal decree, upon proposal from the Minister of the Interior, and are published in the Official Gazette and in the regional gazette. The law fails to specify who holds jurisdiction over two categories of responsibilities that could be subject to administrative regulation: police duties and those concerning the creation and organization of regional administrative services. Regarding police duties in regional administration, the law says nothing, except for issues related to public order and state security, which, being matters of force, fall to the Royal Residents and representatives of the Ministry of the Interior (Art. 66). However, it is undeniable that at the regional level there are public security concerns relating to areas such as: traffic safety, public hygiene and health, preservation of public property, agricultural and livestock measures, etc. Since the law does not clarify these areas, we agree—based on opinions expressed at the time—that these duties fall under the exclusive authority of the Royal Residents, with the Council having no police competence (Art. 82). In conclusion, such responsibilities belong exclusively to the Royal Residents, who are invested with general and full competence in administering the region (Art. 69). As for the regulations necessary for creating, organizing, and operating the administrative services of the region, we support the view that responsibility lies equally with the Royal Residents and the Regional Council. This is because establishing a public service, organizing it, and setting rules for its functioning necessarily involves the use of budget allocations, salaries, and capital investments. The Royal Resident cannot dispose of these funds without the participation of the Council, which, by law, is called upon to decide on the creation of taxes and levies, as well as on the budgetary allocation of such funds.

On the other hand, it must be considered that the initiative for administrative activity within the region belongs to the Royal Resident. He presides over the Council, sets the agenda, and convenes its members for ordinary and extraordinary sessions. The Council cannot discuss or take action on matters not listed on the agenda. Consequently, the Royal Resident holds the initiative for the creation of a regional service and establishes a set of rules for its organization and operation, which must then be submitted for approval to the Council of the respective region.

The Administrative Law of 1938 established, for the first time in Romanian legislation, a comprehensive vision regarding the conditions for the organization and urban development of communes, including mandatory layout and urban planning plans for communes and the required content of each (Art. 139). The law placed special emphasis on local administration personnel, establishing a local administrative hierarchy distinct from the statutory one, composed of ranks and classes with recruitment and promotion criteria different from those previously in place—a technical hierarchy based on competence. It stipulated the existence of three well-differentiated categories of civil servants. The law abolished the communal and county funds and introduced a new and important source of ordinary revenues for communes and regions, allowing for the creation of taxes and duties within the maximum limits set by an annexed table. Local finances acquired independence and autonomy, enabling them to generate their own sources of revenue to meet the growing infrastructure and social needs. The revenues and expenditures previously assigned to counties were now allocated to the regions (ținuturi), which were now able to undertake much larger-scale projects than the counties had been.

Budgetary evaluations had to fall within the actual revenues collected in the previous year for each income category. This measure aimed at balancing local budgets and ensuring the implementation of a minimum urban development program. The provisions of the 1938 law, its explanatory memorandum, and references to comparative law indicate that its drafters pursued two main goals: The need to align the new administrative institutions with the Constitution of February 27, 1938, which emphasized the role of the executive power;

The desire to create greater unity and order within public administration, as existing laws had enshrined a diversity of administrative organizations from different regions of the country that were hard to integrate into a single legal framework promoting new institutions and rules previously absent in those areas. The administrative life, which had previously been heavily influenced by political organization, led to instability in local administration laws, contradictions with central administration laws, and a lack of coherent organizing action. For these reasons, the new law sought to align with trends found in many other European countries that had reorganized their administrations. It aimed to establish a separation between politics and administration by attempting to create an administrative science and technique independent of the electorate. The concepts of authority, order, hierarchy, and discipline were also emphasized. The core principles from European legislation—decentralization and deconcentration, technical expertise based on competence and hierarchy, and a focus on urbanism and public works—were reflected in this law as well.

The creation of the regions (ținuturi) and the commune as units of decentralization and deconcentration aligned with these principles. This structure realized a unified form of regionalism, based on the division of the country into large territorial districts where all external administrative services coexisted, while also promoting local interests. For this purpose, the State ceded part of its public authority to the new body, within the limits set by law. Decentralization was achieved by granting part of the local administration to centrally appointed officials (the royal resident and mayor) and by limiting the authority of elected bodies (regional and local councils), which essentially remained auxiliary and consultative bodies to the executive. The law attempted to find professional, not political, mechanisms for recruiting management personnel, based on competence and royal trust, not electoral mandates, thereby excluding partisan politics and electoral influence. These principles, outlined in the explanatory memorandum, supported the drive to professionalize the administration through competence and hierarchy. However, in practice, the elimination of electoral principles rapidly led Romania—including in the field of administration—towards the arbitrariness of appointments.

The law also emphasized urbanism and infrastructure, and reformed local finances. A new structure for planning commissions was created, including the financial means required for implementation. These commissions were composed of specialists. The new financial regulations gave the region (ținutul) initiative over actual management, allowing each region to achieve financial balance based on its economic capabilities, while the law set tax brackets and maximum rates. Beyond the widely discussed nuances at the time, we cannot ignore the realities of Romanian political and administrative life after 1938, which made many of the law's administrative reform provisions obsolete, due to the increasingly authoritarian and totalitarian nature of the Romanian state. As a result, many objections were raised regarding the recruitment of public officials, especially the royal residents.

The Administrative Law of August 14, 1938, as previously emphasized, aimed to organize public administration in accordance with the Carlist constitutional principles, which placed the

State above all, replacing the parliamentary regime with the primacy of the executive. The idea of authority was reinforced; the role and functioning of representative bodies were rationalized, and political group influence was limited. An authoritarian centralized administration was introduced. From the smallest administrative unit—the rural commune—to the newly created large units—the regions, administration was entrusted to appointed bodies with initiative and decision-making power. Elected councils were assigned only consultative powers. Counties lost their legal personality, as did the districts (plăși), which became control districts. Prefects became career officials, and mayors were appointed, taking over many responsibilities previously held by communal councils, thereby implementing the principles of authoritarian rule down to the smallest unit of state administration. Through these measures, King Carol II sought to consolidate his power and control over the state's administration.

The final and transitional provisions of the law stated that it would enter into force upon promulgation and could not be amended for two years from that date (Art. 194). The implementation regulations, promulgated on November 18, 1939, largely supplemented the law, especially concerning administrative officials in rural communes. However, the law was soon abrogated by Decree no. 32119, issued by General Ion Antonescu's regime. The explanatory memorandum of the new law stated that: *"The administrative institutions introduced by the Carlist law did not correspond to the real needs of the country, and even less to the spirit that must prevail in administration: simplification of the state apparatus, sincere cooperation between administration and the administered, free from bureaucratic formalities and parasitic administrative organs."*

This Constitution, which effectively marked the transition from parliamentary monarchy to a regime based on authoritarianism and royal dictatorship, led to visible changes in Romania's administrative-territorial architecture, as previously defined by the 1923 Constitution, ultimately weakening the capacity of Romanian administration to respond to the challenges and the emerging international context that foreshadowed the outbreak of World War II.

5. CONCLUSIONS

The 1938 Constitution and the accompanying Administrative Law represent a turning point in Romania's interwar governance, illustrating the paradox of reform within an authoritarian framework. Conceived as a means of rationalizing and professionalizing public administration, the reform simultaneously marked the demise of democratic governance and the triumph of centralized royal authority. Through a technocratic reorganization of territorial units and the institutionalization of figures like the Royal Resident, the state sought to consolidate control under the guise of efficiency and unity. However, the suppression of local autonomy, the marginalization of elected bodies, and the overt politicization of appointments ultimately contradicted the stated goal of administrative depoliticization.

While the law introduced elements of modern administrative science—such as regional planning, fiscal autonomy, and hierarchical structures based on competence—it did so within a rigidly top-down system that left little room for civic participation or institutional resilience. The corporatist model and the King's omnipresence in constitutional and administrative life underscored the regime's priority: control over consensus, order over representation.

In retrospect, the 1938 administrative-territorial reform failed to take root not only because of its political fragility but also due to its dissonance with Romania's societal needs and democratic aspirations. Its rapid repeal by General Antonescu's regime and the harsh critique it received

underscore its limited applicability and legitimacy. As a historical case study, it exemplifies the risks of administrative modernization pursued through authoritarian means—a reformative shell masking regressive governance. In the broader European context of the late 1930s, it reflects the broader pattern of constitutional backsliding and state centralization that paved the way for totalitarian trajectories.

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