

JUDIT TÓTH

## Review on *Constitutional Law in Romania*

Dr. Varga Attila – Dr. Veress Emőd: Román alkotmány-  
jog. Csíkszereda: Státus Kiadó, 2007. (340 pages)

**E**mőd Veress and Attila Varga have written the first textbook on the development of constitutional law in Romania since the political transition. The two authors, as academics and law practitioners, are well positioned to represent the depth of changes which have resulted as the law-on-the-books would become the law-in-practice in a new democratic society. However, the 340 pages of the book cannot possibly describe all of the relevant contradictions and incoherent rules of public law in contemporary Romania.

The 17 chapters are intended to cover basic terms and theory, such as the legal and state system, constitutional subjects and sources, and the development of constitutional law in general. The book also contains descriptions of the diversification in Romanian public power, as well as legal sources and a history of written constitutions in the country since 1866 up through the recent reform adopted in 2003. This theoretical and historical introduction to the analysis of actual constitutional institutions and basic rights is meant to guide the book but in a capricious manner. For instance, the notion of law, constitutional law, theory and typology of constitutions, protection of the constitution, citizenship and fundamental rights and protections are substantiated without descriptions of the other criteria of constitutionalism (rule of law, the separation of

powers) that are the basis of a democratic system and which are treated in the middle of the book together with an analysis of state organs. Naturally, relations between the state and the individual should be based on respect for human rights and rule of law, but this constitutional principle is not necessary as a structural guide in an educational material. On the other hand, the fundamental rights and those protections afforded by the Ombudsman and rule of law which are supported or looked after by the Constitutional Court are acceptable in the forefront of a solemn Charter of Constitution. But in a textbook, the theoretical basics should be followed by a description of the structure and operation of the constitutional power explaining the institutional guarantees of democracy and rule of law. However, the book would derive through this structural pattern, the cult of an ideal constitutional state and democratic society. In our region myths, cult and ideas have had a stronger motivational power than pure facts. Taking into account the principle of respect for fundamental rights as the major aim and goal of each state organ and authority, the role played by judges and public prosecutors in the protection of fundamental rights is rather limited. At least according to the brief final chapter on justice the existence of all necessary guarantees of autonomy, personal, financial, institutional independency and impartiality of justice cannot be confirmed.

The textbook, aimed at law and public administration students, also gives a summary of the major Romanian and Hungarian works dealing with various aspects of constitutional studies. For this reason it can function as an intermediary between Romanian authors and Hungarian readers providing the necessary information in order to foster a better understanding of one another. Beyond this cultural and terminological mediation, the overview of recent constitutional institutions can be considered the most important part of the textbook. Allow me to mention two examples from this wealth of information.

- The Law-Decree No.137 of 1990 provided upon request for the reestablishment of Romanian citizenship for an individual whose Romanian citizenship was terminated before 22 December 1989 regardless of his/her dual citizenship and the absence of standard residence in Romania or intention to return to Romania.
- The number of exceptionally issued Government Decrees in emergency situations (of constitutional operation) has been growing since 1995. Although the Constitution entitles the

Government to pass even *contra legem* decrees in a constitutional crisis, exception should be the rule. For instance, in 1999–2000 the number of statutory acts by the Parliament was below that of rapidly issued Government Decrees – thus an abuse of governance power could be observed. The authors warn how the Government may monopolize the legislation: the Parliament would become only a rubber stamp of governmental intentions through the confirmation of emergency government decrees. When it was decided to correct the situation an extraordinary amount of legislative work appeared. For example, the number of statutory acts adopted annually was 796 in 2001, 683 in 2002, 609 in 2003, and it has been extremely high in recent years, while the criteria for exceptional conditions for emergency government decrees, and its legality or conformity with constitutionalism has remained in vogue also by the Constitutional Court.

We can accept the evaluation of the authors on the constitutional transition in Romania: it has been gradual and slow. The first amendment to the Constitution (1991) was adopted in 2003. This ongoing reform of political, social and economic life has taken decades, and it is not finished yet. A quote from the writer Ion Luca Caragiale may characterize the ambivalence between preserving the centralized, unchecked public power or establishing a genuine division of power: “Let us revise the Constitution in order to stop changes, or let us reject a constitutional reform, but we shall modify it in relevant points! – Europe is keeping its eyes on us.” It was written in 1884 and Romania acceded to the European Union in 2006. Where are the heedful eyes? From the textbook, the constitutional influence of accession has been visible only in part.