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# The Multinational State That Wasn't: The Constitutional Definition of Romania as a National State

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**Abstract:** This article looks at the constitutional label of Romania as a 'national state' and the constitutional discourse surrounding it. It argues that this label is unavoidably linked to a project of constitutional nationalism. The article examines the origins of the provision enshrining this state characteristic, as well as the eternity clause declaring it unamendable, so as to reconstruct the genealogy of the idea of the national state in Romania. The article traces the origins of the concept to early-twentieth century nation-building discourse but links its current incarnation to the distinctive type of nationalism promoted in late communist and early post-communist Romania and its fear of the Hungarian 'other'. This fear seeped into debates in the 1990–1991 constituent assembly debating the new constitution, which proceeded to disregard calls for a more pluralist definition of the state and clearer constitutional protection for national minorities. While some of these choices were revisited during the 2003 revision of the constitution, the fundamental law retains its emphasis on the national state. To this day, Article 1 (1) continues to be contested, especially by representatives of the Hungarian community. At the same time, it is invoked and creates confusion every time administrative territorial reorganisation is entertained. The article argues that greater clarity is required in understanding the concept and operation of the national state provision, as well as openness to an inclusive national dialogue surrounding this constitutional unsettlement. Only by moving the constitutional discourse beyond the highly politicised debates of years past, and the 'us versus them' mentality informing them, can Romanian constitutionalism show a maturity in keeping with its recent 25-year anniversary.

**Keywords:** Romania, national state, constitutional nationalism, national minorities, unamendable provisions

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# 1 Introduction

This article looks at the constitutional definition of Romania as a ‘national state’ and the constitutional discourse surrounding it. It examines the origins of the provision enshrining this state characteristic, as well as the eternity clause declaring it unamendable, so as to reconstruct the genealogy of the idea of the national state in Romania. The article traces the origins of the concept to early-twentieth century nation-building discourse but links its current incarnation to the distinctive type of nationalism promoted in late communist and early post-communist Romania and its fear of the Hungarian ‘other’. This fear seeped into debates in the 1990–1991 constituent assembly debating the new constitution, which proceeded to disregard calls for a more pluralist definition of the state and clearer constitutional protection for national minorities. While some of these choices were revisited during the 2003 revision of the constitution, the fundamental law retains its emphasis on the national state. Also to this day, Article 1 (1) of the Constitution to be contested, especially by representatives of the Hungarian community. At the same time, it is brought up and creates confusion every time administrative territorial reorganisation is entertained.

The article argues that the constitutional definition of Romania as a national state amounts to the entrenchment of constitutional nationalism.<sup>1</sup> The article proposes, first, that greater clarity is required in understanding the concept and operation of the national state, which can only be achieved by renouncing the myth that it is an uncontested, benign, value-neutral concept. The article goes on to argue that from the moment of drafting, references to Romania as a national state have reinforced a type of constitutional nationalism which has excluded, both symbolically and in practice, national minorities from full membership to the political community. The elevation to unamendable rank of this provision deeply entrenches this nationalism, as it further insulates it within the hierarchy of norms. As will be seen, the unavoidable consequence of placing them at the apex of the constitutional system and rendering them unamendable is the reliance on these nationalist values, to the exclusion of others, in resolving constitutional conflicts. Majoritarian interpretations see the constitutional

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<sup>1</sup> As defined by Robert Hayden, constitutional nationalism refers to ‘a constitutional and legal structure that privileges the members of one ethnically defined nation over other residents in a particular state.’ Robert Hayden, ‘Constitutional Nationalism in the Formerly Yugoslav Republics’ (1992) 51:4 *Slavic Review* 654, 655. For an earlier analysis of the Romanian post-communist legal framework as constitutional nationalism, see Ioana Lungu, ‘Romanian Constitutional Nationalism’ (2002) 140 *Polish Sociological Review* 397.

reference to the national state as the recognition of a purely descriptive, and therefore largely inconsequential, state characteristic and at the same time anchor in it a zero-sum approach to any expansion of minority rights. The continued contestation of this provision in the quarter century since the constitution was adopted indicates that the problem is not going away. It remains central to Romania's constitutional unsettlement. Finally, the article calls for a respectful, honest and open debate on Article 1 (1) of the constitution, together with the other provisions related to national minorities, in an effort to understand and find a way to reconcile the disparate interpretations put forth by the different sides in this argument. Only by moving the constitutional discourse beyond the highly politicised debates of years past, and the 'us versus them' mentality informing them, can Romanian constitutionalism overcome such nationalist tinges. Comparative references, where available, help situate the Romanian case in a wider European context.

## 2 The genealogy of Romania as a national state

The text of Article 1 (1) of the Constitution reads as follows: 'Romania is a national state, sovereign and independent, unitary and indivisible.' Article 152, as amended in 2003, contains the constitution's eternity clause or unamendable provision. It lists the limits on constitutional amendment, with Article 152 (1) listing the state's core characteristics not open to amendment (including those in Article 1 [1]).

What follows is a brief incursion into Romania's constitutional history, which will find the origins of this constitutional language both in the pre-communist, 1923 constitution, and in Romania's communist experience. An examination of constituent assembly debates around these provisions follows, with a view to shedding some light on drafter intent behind the adoption of Article 1 (1). A look at the 2003 constitutional revision as well as more recently attempted reforms will show that the issue remains disputed and real channels for compromise so far closed.

### 2.1 The national state in historical perspective

The 1923 Romanian constitution, the new fundamental law meant to ensure the governance of the newly enlarged post-war state, also referred to the state as 'national'. Simplistic parallels to the 1991 document should be resisted, however. The 1923 document was very much part of a state-building project, meant to

create and consolidate a national cohesion that was not yet fully there.<sup>2</sup> Romania together with other Central and Eastern European states described themselves as nation-states in spite of considerable diversity among their subjects.<sup>3</sup> Minorities were to be quickly integrated, and cultural and demographic challenges overcome. This unwillingness to accommodate cultural difference in these newly formed states has been attributed to the particularities of the nationalist agenda in the years preceding World War I, finding that ‘it was a product of the zero-sum way that nationalists had come to treat culture and difference within the Habsburg Monarchy in the half century before the war.’<sup>4</sup> Cultural differences were ‘insuperable [...] barriers’ and nationhood was defined ‘on the basis of objective external factors’.<sup>5</sup>

Same as will be the case in the early 1990s, alternative constitutional projects were quickly side-lined without much debate in the interwar period as well. Federalist, confederalist, and even cantonal options had been proposed by intellectuals coming from the newly acquired territories, especially the highly-diverse Transylvania, but were never seriously entertained on a national scale.<sup>6</sup> Instead, any federalist or regionalist solutions were swiftly taken off the table and replaced with high degrees of centralisation and mistrust of local authorities.<sup>7</sup> The Alba-Iulia Resolution of 18 November/1 December 1918, the constitutional basis for Transylvania joining the Romanian state, had explicitly referred to the ‘complete national freedom of all cohabiting peoples’ and to their right to ‘educate, administer and judge [its own affairs] in their own language and by its own members.’<sup>8</sup> Nevertheless, any post-unification talk of cultural and religious autonomy for minorities was directly associated to secession,<sup>9</sup> in a move identical to that of much of the political establishment in the first years of post-communist transition.

There is also a different, somewhat paradoxical, way in which references to the national state are illuminated by Romania’s twentieth century history. The

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<sup>2</sup> For more on the 1923 Romanian Constitution, and Romanian constitutional history more generally, see E Popescu, *Din istoria politica a Romaniei. Constitutia din 1923* (Editura Politica 1983) and Eleodor Focseneanu, *Istoria constitutional a Romaniei* (Humanitas 1998).

<sup>3</sup> Pieter M. Judson, *The Habsburg Empire: A New History* (HUP 2016) 446.

<sup>4</sup> *ibid* 448–449.

<sup>5</sup> *ibid* 449.

<sup>6</sup> Daniel Citiriga, ‘Tentatii federaliste: romani, maghiari și problema autonomiei Transilvaniei in perioada interbelica’ (2012) 1 *Studii si Materiale de Istorie Contemporana* 25.

<sup>7</sup> Irina Livezeanu, *Cultural Politics in Greater Romania: Regionalism, Nation Building, and Ethnic Struggle, 1918–1930* (Cornell University Press 1995) 155–166.

<sup>8</sup> My translation. All other translations in the text are my own.

<sup>9</sup> Citiriga (n 6) 35.

idea owes much to the nationalist turn in Romanian communism, which found an easy target and ‘other’ in the country’s Hungarian minority.<sup>10</sup> Thus, while none of Romania’s communist constitutions had contained references to the state as national, the nation-building project pursued before 1989, and in particular by the Ceausescu regime, ended up fusing nationalist and Marxist-Leninist elements.<sup>11</sup> Rather than due to some version of cultural determinism, post-communist Romania’s illiberal nationalism –evident especially in the first decade or so after 1989 –was therefore due to the legacies of this communist nationalist project.<sup>12</sup> In this context, the constitutional embrace of ‘national statehood’ in the 1991 fundamental law was immediately spotted by some as the culmination of Ceausescu’s nationalist policies.<sup>13</sup>

## 2.2 Debates in the 1990–1991 constituent assembly

The workings of the 1990–1991 Romanian constituent assembly and the debate around the constitutional draft in many ways tell a story of missed opportunities. The constituent assembly was dominated by the National Salvation Front (FSN), an umbrella organisation made up of former socialist activists having rebranded themselves democrats.<sup>14</sup> The FSN was eager to speed up the process of constitutional renewal in an effort to entrench its hold on power and legitimise itself internationally.<sup>15</sup> In this pursuit, it ‘invoked some of the symbols of negotiation’<sup>16</sup> but never truly dropped the reins. Thus, unlike other post-

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**10** Katherine Verdery, *National Ideology Under Socialism: Identity and Cultural Politics in Ceausescu’s Romania* (University of California Press 1995).

**11** Cheng Chen, ‘The Roots of Illiberal Nationalism in Romania: A Historical Institutional Analysis of the Leninist Legacy’ (2003) 17:2 *East European Politics and Societies* 166.

**12** *Ibid* 175.

**13** Victor Ivanovici, ‘Pentru o repatriere in Europa’ in Gabriel Andreescu (ed), *Romania versus Romania* (Clavis 1996) 33–34.

**14** Sergiu Gherghina & Michael Hein, ‘Romania’ in Anna Fruhstorfer & Michael Hein (eds), *Constitutional Politics in Central and Eastern Europe: From Post-Socialist Transition to the Reform of Political Systems* (Springer 2016) 176. See also Dinu I Pietraru, *The Romanian Constitution of 1991: The ‘Stolen’ Constitution* (unpublished PhD thesis, New School of Social Research 1996).

**15** Stephen Holmes, ‘Back to the Drawing Board’ (1993) 2 *East European Constitutional Review* 21, 22.

**16** Paul Blokker, ‘The (Re-)Emergence of Constitutionalism in Eastern and Central Europe’ in Michal Kopecek & Piotr Wcislik, *Thinking Through Transition: Liberal Democracy, Authoritarian Pasts, and Intellectual History in Eastern and Central Europe After 1989* (CEU Press 2015) 149. See more generally, Radu Carp & Ioan Stanomir, *Limitele Constitutiei: Despre guvernare, politica si cetatenie in Romania* (CH Beck 2008).

communist countries such as Poland or Hungary, which chose to postpone constitutional replacement at first, Romania would find itself with a new fundamental law within two years of the fall of communism.

It was not just the speed of adoption of the text which was problematic. From the point of view of national minority representatives, there was no adequate opportunity for negotiation around key provisions, let alone broader public consultation on core aspects of the draft. Representatives of the Hungarian minority, united under the banner of the umbrella ethnic party Democratic Alliance of Hungarians in Romania (UDMR), repeatedly objected to the national state definition of the state and requested either that no such language be included at all or that it be replaced with references to the state as ‘multinational’.<sup>17</sup> Some of them warned that those ‘ethnic communities [...] which would have accepted to live in a multinational Romania would not accept a Romania defined as national state.’<sup>18</sup> Given their minority status in the constituent assembly, however, they were consistently and easily voted down on this and other points raised.<sup>19</sup> FSN members opposing UDMR amendments argued that the reference to the national state was a direct result of the country’s over eighty per cent Romanian ethnic majority<sup>20</sup> and that the state’s national character ‘excludes its multinational character’.<sup>21</sup> Romanian citizenship was said to take priority over any other ethnic self-identification, and remaining in Romania was argued by some to imply accepting a common goal (understood within the confines of the national state).<sup>22</sup>

The adoption of an eternity clause in what is now Article 152, which insulated this definition of the state from subsequent amendment, left no doubt that drafters intended to embed the national state at the heart of the constitutional project. Other provisions as well would be subject to the new constitution’s stringent amendment procedure, which requires approval by a two-thirds majority of members in both houses of Parliament and a successful

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<sup>17</sup> See, for instance, the statement by Domokos Geza that leaders of the Hungarian minority represented in the constituent assembly could not vote for the national state definition, although they had no objections to characterising the state as ‘unitary’, ‘indivisible’ or ‘sovereign’. Dumitru Ioncica (ed), *Geneza Constitutiei Romaniei 1991: Lucrarile Adunarii Constituante* (Monitorul Oficial 1991), 134.

<sup>18</sup> Szocs Geza-Stefan in Ioncica (n 17) 135.

<sup>19</sup> Gherghina and Hein (n 14) 178.

<sup>20</sup> Petre Turlea in Ioncica (n 17) 130, 132.

<sup>21</sup> Antonie Iorgovan in Ioncica (n 17) 134.

<sup>22</sup> Nicolae Simescu in Ioncica (n 17) 136.

national referendum within thirty days (Article 151).<sup>23</sup> Both unamendability and super-majority entrenchment operate to elevate certain provisions within the hierarchy of constitutional norms. The difference, however, is that the former seeks to completely remove the possibility of contestation and renegotiation of what are often ambiguous constitutional values. Unamendability also empowers constitutional courts to police the boundaries of the values in question, which the Romanian Constitutional Court has also done on more than one occasion (more on this shortly). It has been noted that the entrenchment of a formal constitutional hierarchy may reflect a variety of motivations, from a considered judgment of the sliding importance of certain values, to political compromise, to distrust of future generations.<sup>24</sup> In the case of Romania, the resulting text came to entrench the project of the political majority to the exclusion of competing visions.

It should be noted that it was not just to minority voices that the dominant FSN had closed the door to during negotiations for a new constitution. The very document of the Front's creation, adopted on 27 December 1989 as Decree no 2 (Elena Brodeala discusses, in her contribution to this special issue, the very first Decree adopted, which among other measures decriminalised abortion) simply declared the form of government as being republican. In a country which had been a monarchy prior to communist rule, and which sought to self-legitimize on the basis of the will of the people, this unilateral move was problematic. It has been termed 'an abuse incompatible with the rule of law'<sup>25</sup> and, while public appetite for the monarchy may not have been sufficient for the latter's restoration, it remains true that the people were never consulted on the matter.<sup>26</sup> Nor were amendments raised in the constituent assembly asking for a referendum on the matter given any attention.<sup>27</sup> This is even more democratically dubious given the inclusion of the republican form of government, also protected by Article 1 (2) of the current basic law, among the unamendable principles of the Romanian constitution (Article 152 [1]). Space precludes any further parallels with other principles incorporated in Article 1 or indeed elsewhere in the Romanian fundamental law. What remains is the reality that constitutional fundamentals were adopted in a rushed, non-inclusive manner, and with little to no real public

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<sup>23</sup> This procedure was once described as the most difficult constitutional revision rule in the region. See Andrew Arato, *Civil Society, Constitution, and Legitimacy* (Rowman & Littlefield 2000) 163.

<sup>24</sup> Richard Albert, 'The Expressive Function of Constitutional Amendment Rules' (2013) 59:2 *McGill Law Journal*, 225, 245–47.

<sup>25</sup> Focseneanu (n 2) 186.

<sup>26</sup> Ivona-Arina Raef, 'Negocierea Constitutiilor din 1923 si 1991' (2012) 172 *Sfera Politicii* 53, 58.

<sup>27</sup> Ion Ratiu in Ioncica (n 17) 136.

debate and were quickly declared non-negotiable. In other words, the new fundamental law enshrined an elitist and nationalistic constitutional project, whose core characteristics – including the definition of the state as national – it further insulated from amendment.

### 2.3 The 1991 constitution and protection of national minorities

Article 1 (1) is not the only element in the mosaic of Romanian constitutional nationalism.<sup>28</sup> Article 4 (1) speaks of the state as ‘founded upon the unity of the Romanian people’. Article 6 (1) ‘recognises and guarantees for members of the national minorities the right to preserve, develop, and express their ethnic, cultural, linguistic, and religious identity’ but then in the next paragraph qualifies it by requiring that any protective measures be ‘in accordance with the principles of equality and nondiscrimination in relation to the other Romanian citizens.’ Article 13 declares Romanian to be the official language, an element also declared unamendable in the constitution’s eternity clause. Article 32 on the right to education contains two seemingly contradictory paragraphs: one declaring the language of instruction as being Romanian (Article 32 [2]) and another guaranteeing ‘right of members of ethnic minorities to learn their mother tongue and the right to be taught in this language’ (Article 32 [3]). Much of the latter’s implementation, as with other minority rights provided for in the constitution, is left to ordinary legislation and has been at the heart of fierce constitutional battles (more on which below). Finally, it is also true that the case for Romania’s constitutional nationalism should not be overstated. The 1991 constitution embraces equality and non-discrimination principles (Article 4 [2]). It is also unique in affording minorities which fail to pass the required electoral threshold for parliamentary representation the right to elect one member of the Chamber of Deputies each (Article 62 [2]). However, given the high symbolic and practical impact of the unamendability of Article 1 (1), these commitments cannot be said to mitigate the overall nationalist undertones of the constitution.

According to Bianca Selejan-Gutan, the term ‘nation’ is not used in the Romanian constitution, which preferred to refer to the more general ‘the people’ understood as bearers of sovereignty.<sup>29</sup> She has counted around forty instances of ‘national’ being used as a determinant of other concepts, with varying meanings: ‘national state’ and ‘national sovereignty’ understood as the sovereignty

<sup>28</sup> For an analysis of these provisions which pre-dates the 2003 constitutional revision, see Lungu (n 1).

<sup>29</sup> Bianca Selejan-Gutan, *The Constitution of Romania: A Contextual Analysis* (Hart 2016) 41.



belonging to the people as supreme constitutional actor (also ‘national territory’, ‘national day’, ‘national anthem’, ‘national security’, ‘national budget’ etc); ‘national minorities’ understood on ethnic grounds; and ‘national culture’ understood as the whole cultural heritage of the country.<sup>30</sup> Gutan rightly identifies a back and forth and resulting confusion between these references, and between ethnocentric and pluralistic constitutional language – likely due to the competing demands during drafting: of the majority to strengthen the national state; of the Hungarian minority to be recognised; and of the international community to ensure a certain type of state.<sup>31</sup> Gutan argues that what is needed is a change in mentality and not in the constitutional text.<sup>32</sup> This position is nonetheless challenged by the persistent calls for revising the national state reference in Article 1 (1). This interpretation also does not explain resistance to calls for clarification that the article refers to the nation in its civic rather than ethnic sense (discussed in further detail below).

## 2.4 The 2003 constitutional revision and beyond

The Romanian constitution was revised in 2003, primarily to prepare the country for membership in the North Atlantic Treaty Organization and the European Union but also so as to clarify institutional relations.<sup>33</sup> The question of minority protection was not central in that reform process, although several successful amendments did refer to minority rights. The right to use minority languages in local administration where minority groups formed over twenty per cent of the population as well as before courts of law were recognised (Article 119 and 127, respectively). No serious effort was made to revisit the language of Article 1 (1), however. Antonie Iorgovan, a social-democrat senator long seen as the ‘father of the constitution’ given his leading role during its drafting, had closed the door on any such reform early on, declaring that the national state reference would not be open to negotiation, irrespective of who would ask for it.<sup>34</sup>

Not much changed in the intervening years: the UDMR continued to push for Article 1 (1)’s amendment and continued to face opposition. The next section

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<sup>30</sup> *ibid.*

<sup>31</sup> *ibid.* 40–43.

<sup>32</sup> *ibid.* 43.

<sup>33</sup> Legea nr 429 din 2003 Legea de revizuire a Constitutiei Romaniei, Monitorul Oficial nr. 669, 22 September 2003.

<sup>34</sup> ‘Folosirea limbilor minoritatilor nationale – trecuta in Constitutie’ (*Adevarul*, 15 April 2002) [http://adevarul.ro/news/politica/folosirea-limbilor-minoritatilor-nationale—trecuta-constitutiei-1\\_50abb4ff7c42d5a6637ef87a/index.html](http://adevarul.ro/news/politica/folosirea-limbilor-minoritatilor-nationale—trecuta-constitutiei-1_50abb4ff7c42d5a6637ef87a/index.html) accessed 14 July 2017.

dives deeper into debates surrounding further constitutional revision, including the failed constitutional overhaul in 2013 (Paul Blokker, in his contribution to this special issue, analyses this reform project in greater detail), in order to map out the different positions vis-à-vis changing the reference to Romania as a national state. Space precludes a full engagement with other constitutional flashpoints for the Hungarian minority: the wars over the establishment of a Hungarian-language public university in the 1990s<sup>35</sup> and attempts to reform territorial administration, including by setting up regions within which the Hungarian population might form a majority.<sup>36</sup> Many of the lines of conflict are similar across these debates, as are the arguments on each side: the majoritarian camp claiming it has accommodated minority demands sufficiently, the minority one asking not to be treated as second class citizens and to be afforded protection of their cultural identity. The national state definition of the state was also central in all of these other debates and has been used as a trump card precluding more ethnic accommodation given the unamendable provision's higher status within the constitutional order.

### 3 Constitutional battles over Romania as a national state

Unsurprisingly, the constitutional definition of Romania as a national state was challenged from early on and continues to be to this day. While the majoritarian view has remained largely unchanged – holding that the term is value-neutral and should be understood as a benign recognition of the fact of ethnic Romanian majority – opposing views have suffered several changes throughout the years. From warnings in the 1990s that official endorsement of nationalism could result in very real violence, leaders of the Hungarian minority have more recently come to oppose Article 1 (1) of the Constitution on the grounds of it being historically inaccurate as well as exclusionary of *all* of the country's minority groups. As will be seen, there is also a certain degree of confusion and overlapping of concepts, with the unamendable national state characteristic often being invoked in opposition to administrative territorial changes which

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<sup>35</sup> See Carmen Kettley, 'Ethnicity, Language and Transition Politics in Romania: The Hungarian Minority in Context' in Farimah Daftary and Francois Grin, *Nation-Building, Ethnicity and Language Politics in Transition Countries* (Open Society Institute 2003) 243.

<sup>36</sup> See Dragos Dragoman and Bogdan Gheorghita, 'Regional Design, Local Autonomy, and Ethnic Struggle: Romania's Syncopated Regionalisation', (2016) 68:2 *Europe-Asia Studies* 270.

have more to do with the unitary nature of the state. There has also been talk of modifying Article 1 (1) on account of further EU integration, as a means of eliminating any obstacle to further transfers of sovereignty rather than in the national minority context.

None of this is to say that references to the national state have not been deeply politicised, by all sides. It periodically appears as a bone of contention between the UDMR and other parties and is especially politicised during electoral campaigns – whether directly or indirectly (see the appeals to Romanian ethnic and religious identity during the 2015 presidential campaign and then again during the 2016 parliamentary one). This article deliberately ignores extremist positions on either side—whether majoritarian ones claiming Hungarian demands are ‘terrorist’<sup>37</sup> or minority ones who call for the revision of Romania’s territorial borders, including through violent means.<sup>38</sup> It focuses instead on the constitutional claims made by each side, including constitutional amendment proposals, rather than on this wider political discourse surrounding the national state.

### 3.1 Majoritarian views on Romania as a national state

A complete survey of majoritarian positions vis-à-vis the national state in Romanian constitutional and political discourse would exceed the object of this article. The recurring theme, however, has been that no constitutional revision is needed, given that Article 1 (1) of the constitution is not discriminatory and instead a statement of fact (this in spite of persistent objections from Hungarian representatives, discussed below). Even before the 2003 constitutional revision process, for example, then-President Ion Iliescu dismissed out of hand any amendment to Article 1 (1), which he viewed as recognising the presence of an ethnic majority but not contradicting democratic protections of minorities.<sup>39</sup> Similarly, in the run-up to the failed 2013 constitutional revision,

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37 ‘Vadim Tudor: Autonomia secuilor, terorism impotriva statului roman’ (*Ziare.com*, 13 March 2010) <http://www.ziare.com/corneliu-vadim-tudor/stiri-corneliu-vadim-tudor/vadim-tudor-autonomia-secuilor-terorism-impotriva-statului-roman-1002059> accessed 14 July 2017.

38 ‘Beke Istvan, acuzat ca intentiona sa confectioneze si sa detoneze un dispozitiv exploziv de 1 Decembrie, Arestat’ (*Mediafax*, 1 December 2015) <http://www.mediafax.ro/social/beke-istvan-acuzat-ca-intentiona-sa-confectioneze-si-sa-detoneze-un-dispozitiv-exploziv-de-1-decembrie-are-stat-14905561> last accessed 14 July 2017.

39 ‘Iliescu: “Caracterul national al statului roman nu se supune discutiei”’ (*Ziarul de Iasi*, 14 July 2001) <http://www.ziaruldeiasi.ro/national-extern/iliescu-quot-caracterul-national-al-statu-lui-roman-nu-se-supune-discutieiquot-ni23fe> accessed 14 July 2017.

then-Prime Minister Victor Ponta, responding to questions as to whether UDMR demands to amend Article 1 (1) of the constitution would be reflected in the final revision project, retorted that ‘there is no question of [doing] it.’<sup>40</sup> This position was shared across the political aisle, with representatives of the National Liberal Party explaining that, even absent the constitutional eternity clause precluding its amendment, they still would not have supported changing Article 1 (1); they saw the answer in the civic rather than ethnic definition of the nation, but did not put forth any concrete amendments to clarify the constitutional text in this direction.<sup>41</sup>

An influential academic exponent of the majoritarian interpretation of Article 1 (1) (and former member of the constituent assembly) is Ion Deleanu, who sees the nation as indissolubly linked to the state and the collective will.<sup>42</sup> He rejects contestation of the national state language of Article 1 (1) as misguided — according to Deleanu, opposition in the constituent assembly was based on ‘passionate rather than useful’ debates, given that ‘chauvinism is foreign to the national feeling’, the latter presupposing the protection of minorities.<sup>43</sup> He views the nation as a non-negotiable category, a historical phenomenon different from state to state, and finds calls for renouncing references to the national state as equivalent to ‘renouncing the very identity card of the Romanian people’; the more moderate proposals of redefining the state as multinational Deleanu dismisses as ‘arbitrarily lifting to the rank of “nations” minority ethnic groups in Romania.’<sup>44</sup>

Deleanu goes on to examine the architecture of minority rights protection in the Romanian constitution and not only finds it satisfactory, but believes it renders moot requests for deepening this protection. Critics are, according to him, unreasonable, given that the current constitution affords ample rights to minorities; given that European and international law does not go farther, and that it is not Romania’s place to surpass them or innovate in this area; and given that these ‘excessive’ minority demands are not founded on real needs.<sup>45</sup> While

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**40** ‘Victor Ponta: Trebuie sa stabilim in Constitutie ca deciziile luate de CCR pot fi schimbate in Parlament cu doua treimi’ (HotNews, 20 November 2012) <http://m.hotnews.ro/stire/13654938> accessed 14 July 2017.

**41** ‘Amendamentul UDMR privind eliminarea sintagmei de stat național din Constituție a fost respins’ (Gandul, 29 May 2013) [http://www.gandul.info/politica/amendamentul-udmr-privind-eliminarea-sintagmei-de-stat-national-din-constitutie-a-fost-respins-10909091?fb\\_comment\\_id=124905121048654\\_42314#f3de897dffce018](http://www.gandul.info/politica/amendamentul-udmr-privind-eliminarea-sintagmei-de-stat-national-din-constitutie-a-fost-respins-10909091?fb_comment_id=124905121048654_42314#f3de897dffce018) accessed 14 July 2017.

**42** Ion Deleanu, *Institutiile si Proceduri Constitutionale in Dreptul Roman si Comparat* (CH Beck 2006) 327–349. See also Ioncica (n 17) 131 ff.

**43** Deleanu (n 42) 337.

**44** *ibid* 337, fn 1.

**45** *ibid* 336–349.

he cautions against excesses on either side of the debate, Deleanu himself appears to adopt a zero-sum understanding of further minority accommodation, referring to any rights expansion as degenerating into ‘privileges’ which should not be granted.<sup>46</sup>

Deleanu, a respected constitutional scholar and law professor, is by no means alone in his take on Article 1 (1). Many share his reading of this article as a descriptive recognition of historical fact, which is not – and cannot be, given the presence of other constitutional protections for minorities – akin to ‘national exclusivism or chauvinism’.<sup>47</sup> Furthermore, his understanding of the nation and its constitutional recognition harks back to precisely the kind of ethno-cultural identification denounced by the literature on constitutional nationalism.

### 3.2 Minority views on Romania as a national state

Calls for the amendment of Article 1 (1) of the Constitution have not abated since the constitution’s adoption. However, it would be erroneous to attribute this position exclusively to Romania’s largest ethnic minority. In the earliest days of post-communist Romanian democracy, intellectual allies of the Hungarian minority also saw this constitutional provision as dangerous and a regrettable anachronism in a country with ambitions of European integration.<sup>48</sup> While the issue continues to be seen in public debates as largely one of ‘us versus them’, it bears noting that the contestation of the constitutionalization of the national state is not restricted to the Hungarian minority.

There are at least four lines of attack against the national state provision in the Romanian constitution. First, it is objected to for simply being *factually incorrect*. UDMR senator Gyorgy Frunda explained this position well when he traced the origins of such constitutional language in state-building around World War I and in the French definition of the state as national, subsequently noting that even that state renounced this self-definition following World War II. Thus, Frunda stated in 2011:<sup>49</sup>

<sup>46</sup> *ibid* 338.

<sup>47</sup> Cristian Ionescu, ‘Comentarii pe marginea art. 1 din Constitutia Romaniei revizuita’ (2014) 10 *Pandectele Romane*, 86, 91.

<sup>48</sup> Ivanovici (n 13). Later on, this openness to minority demands narrowed, with one commentator attributing it to the impossibility of retaining an electoral edge without adopting a political discourse with at least some nationalist overtones. See Pomogats Bela, ‘Dialog intelectual romano-ungar’ in Andreescu (n 13).

<sup>49</sup> ‘Gyorgy Frunda: Romania nu este stat national’ (*Jurnalul.ro*, 3 November 2011) <http://jurnalul.ro/stiri/politica/gyorgy-frunda-romania-nu-este-stat-national-595562.html> accessed 14 July 2017.

The problem is one of education, of perception. From 1920 until today, all Romanians have been brought up, educated in the spirit of the national state. It is an issue that is difficult to accept psychologically, but this is the truth, Romania is not a national state.

Second and relatedly, this constitutional provision is viewed as an *anachronistic* legacy of nineteenth century nationalism. As mentioned above, this was a view shared in the early days of democratisation by Romanian intellectuals eager for an inclusive democratic start and critical of the rapprochement between the political elites of the time and extreme right factions. In more recent years, leaders of the Hungarian minority in Romania have used the same justification – the national state reference as outdated – for their calls for this constitutional provision to either be deleted or explained within the constitution as referring to civic nationalism.<sup>50</sup> Interestingly, these calls appear to have thus come full circle: from being seen as anachronistic and a block to Romania's Euro-Atlantic integration in the early 1990s, the national state has come to be seen as anachronistic also *because* this integration into supranational structures has reduced the currency of ethnic nationalism overall.

Third, Article 1 (1) of the Constitution is considered by its detractors to *contradict other constitutional provisions* which seek to afford rights to national minorities. Thus, where the majoritarian camp sees proof of constitutional accommodation – other constitutional provisions defusing any nationalist overtones of Article 1 (1) – minority interpretations find here evidence of incoherence. The same Frunda cited above wondered:<sup>51</sup>

How can I define Romania as a national state, if five articles down I admit that national minorities exist in Romania, to whom I guarantee the right to keep, develop and express their national identity? How can I be living in a national state, if I ensure to national minorities the right to use their language in public administration, education etc.? How can I define the Romanian state as a national state, when the Romanian state, today a member of the EU, recognises the decision-making power of the European Commission in Brussels or the European Court in Strasbourg, in areas that until now exclusively characterised the national state?

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**50** 'Tumori canceroase in statul national' (*Ziare.com*, 7 January 2013) <http://www.ziare.com/udmr/hunor-kelemen/tumori-canceroase-in-statul-national-1211021> accessed 14 July 2017. See also statements by future Constitutional Court judge, Varga Atilla in 'Varga Atilla despre propunerea de eliminare a caracterului national din Constitutie: Termenul este depasit' (*HotNews*, 2 November 2011) [http://revistapresei.hotnews.ro/stiri-subiectele\\_zilei-10593670-varga-attila-despre-propunerea-eliminare-caracterului-national-din-constitutie-este-depasit.htm](http://revistapresei.hotnews.ro/stiri-subiectele_zilei-10593670-varga-attila-despre-propunerea-eliminare-caracterului-national-din-constitutie-este-depasit.htm) accessed 14 July 2017.

**51** Frunda (n 49).

These questions are rendered even more poignant when one remembers the unamendable nature of Article 1 (1) and its privileged position within the hierarchy of constitutional norms.

Fourth, critics of Article 1 (1) blame it for *reducing the space for negotiation around minority rights in Romania*. A prime exponent of this view is political scientist Gabriel Andreescu, who has long believed that the reference to the national state, read together with Article 4 (1) of the constitution, severely limit national minorities' manoeuvring space in terms of legislative demands for further recognition.<sup>52</sup>

Fifth and finally for our purposes, the impugned constitutional provision has been criticised for affecting *the recognition of all minorities, not just the Hungarian one, as full members of the political community*. There are echoes here of the debates around the drafting of the 1991 constitution, in which leaders of the Hungarian minority called for the definition of the state as 'multinational' in recognition of the historic presence and contribution of national minorities in the state's evolution. There are also echoes of restrictive definitions of the political community, delineated on ethnic grounds, in other Central and Eastern European states. Examples include the post-Soviet citizenship laws in the Baltic States<sup>53</sup> and the numerous provisions constitutionalising the majority's national language as the official language.<sup>54</sup>

More recently, in the context of the 2013 debates around constitutional reform, Kelemen Hunor, the president of the UDMR, explained his party's wishes as including the repeal of the national state reference in Article 1 (1), but also:<sup>55</sup>

Additionally, we wish an addition after Article 1, in which we say that national minorities are recognised as constituent factors of the Romanian state. It is a recognition of our communities, of the Hungarians, the Germans, the Jews, the Roma and all those who live in our country.

This change in discourse is that much more remarkable when one considers that in the early days of transition Romania, national minority communities had been

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<sup>52</sup> Gabriel Andreescu, *Natiuni si Nationalitati* (Polirom 2004) 150–151.

<sup>53</sup> Dovile Budryte, *Taming Nationalism? Political Community Building in the Post-Soviet Baltic States* (Routledge 2005).

<sup>54</sup> Stephane Pierre Caps, 'Constitutional Images of the Nation-State' in *The Transformation of the Nation-state in Europe at the Dawn of the 21st Century* (European Commission for Democracy through Law 1997) 25.

<sup>55</sup> 'Kelemen precizeaza ca nu vrea radierea alineatului 1 din Constitutie, doar a cuvintului "national"' (*Mediafax*, 11 May 2013) <http://www.mediafax.ro/politic/kelemen-precizeaza-ca-nu-vrea-radierea-alineatului-1-din-constitutie-doar-a-cuvantului-national-10871536> accessed 14 July 2017.

pitted against each other in an effort to control them, and division rather than cooperation had been the norm.<sup>56</sup>

A final word of caution is in order, however. One should resist the tendency, of which much mainstream Romanian political discourse is also guilty, of supposing the Romanian Hungarian minority a monolith. While it is true that the UDMR has rather successfully navigated political waters and has been a coalition partner in several governments, there is a risk of missing the reality of intra-communal contestation.<sup>57</sup> In other words, of ignoring the multiplicity of voices claiming to speak for the Hungarian minority in Romania. An illustration of this diversity is the multitude of autonomy projects for the Szeklerland (*Székelyföld/Tinutul secuiesc*), the territory in eastern Transylvania with a Hungarian majority population having claimed its right to self-government within the Romanian state for the past century.<sup>58</sup> The simple point to note here is that Hungarian elites themselves disagree on the precise contours of this (and other) constitutional demands. Whether compromise might be reached and where that compromise would have to lie has never been seriously explored by the powers at the centre of the Romanian state.

### 3.3 The position of the Constitutional Court

As Bianca Selejan-Gutan explains in this special issue, the Romanian Constitutional Court has been on a long journey of evolution since its early days. Its jurisprudence on minority rights, however, and in particular its interpretation of the national state provision have largely been in line with the majoritarian views described above.

The Constitutional Court found itself at the centre of Romania's language wars on several occasions. In an early decision, the Court was called upon to rule on the constitutionality of education legislation insofar as it affected minority rights.<sup>59</sup> While the constitution guarantees the right of ethnic minorities to learn and be taught in their mother tongue (Article 32 [3]), the Court

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<sup>56</sup> Gabriel Andreescu, 'Instrainarea de valorile civice prin abuzul drepturilor constitutionale de marja' in Gabriel Andreescu et al (eds), *Comentarii la Constitutia Romaniei* (Polirom 2010) 81–82.

<sup>57</sup> On this point, see Miklos Bakk, 'Comunitate politica, comunitate nationala, comunitati teritoriale' in Andreescu (n 56) 125.

<sup>58</sup> Miklos Bakk, 'De la drepturile minoritatilor la autonomie. O provocare cu precedent teritorial: Tinutul Secuiesc si regionalizarea Romaniei' (2013) 1 *Noua Revista de Drepturile Omului* 35.

<sup>59</sup> Decision No 72 of 18 July 1995, Monitorul Oficial No 167, 31 July 1995.



unequivocally dismissed all objections of unconstitutionality in that case by virtue of Article 13 (declaring Romanian as the official language) and the confines of Article 6 (2) (limits on the right to identity). In another case, the Court rejected calls for Hungarian to be used in public administration, again invoking Article 13 as the basis.<sup>60</sup> More recently, in a 2014 ruling on the constitutionality of proposed revisions of the constitution (an exercise of abstract constitutional review), the Court analysed a proposed amendment to Article 32 which would have included and defined the scope of a principle of ‘university autonomy’.<sup>61</sup> The Court found this change unconstitutional on the grounds that it would result in a violation of Article 152 (2) (‘the elimination of the fundamental rights and freedoms of citizens or of the guarantees of these rights and freedoms’).<sup>62</sup> As two minority opinions in this latter case argued, however, the majority judgment did not explain which rights and freedoms would come under attack, nor whether any of the principles contained in the eternity clause were violated and would thus justify a finding of *a priori* unconstitutionality.<sup>63</sup>

The same 2014 decision offers the most recent insight into the Court’s interpretation of the national state provision as well. Regarding an amendment to Article 3 (3) to stipulate that ‘Traditional zones may be recognised by organic law as administrative sub-divisions of regions’, the majority found it to contravene the national character of the state and therefore to constitute a violation of Article 152 (1). It went on to declare<sup>64</sup>:

‘The unity of the nation, including from the perspective of traditions, is not compatible with the recognition of a different status, in the sense of administrative autonomy, for a portion of the country’s population, based on the criterion of an identity of “traditions”.’

The Court also spoke of a violation of the unitary nature of the state,<sup>65</sup> but did so while invoking much the same argument as above and as such did not help elucidate the demarcation line between the two elements, at least in the context of territorial administrative reorganisation. The Court also found a violation of the eternity clause and the national state provision when considering a proposed addition to Article 6, which would have empowered minority representatives to create their own decision-making bodies with competences in matters of

<sup>60</sup> Decision No 40 of 11 April 1996, Monitorul Oficial No 76, 13 April 1996.

<sup>61</sup> Decision No 80 of 16 February 2014, Monitorul Oficial No 246, 7 April 2014.

<sup>62</sup> *ibid* § 128.

<sup>63</sup> Separate Opinions of Judges Petre Lazaroiu and Puskas Valentin Zoltan, Decision No 80 (n 61).

<sup>64</sup> Decision No 80 (n 61) § 33.

<sup>65</sup> Decision No 80 (n 61) § 35.

identity, and Article 12, which would have expressly permitted the use of minority symbols in public and private spaces.<sup>66</sup>

In a separate opinion, Justice Puskas criticised the majority for its findings on these points, viewing them as outside the Court's competence. His reasoning was the following: Article 152 (1) imposes substantive limitations on amendments to particular constitutional provisions, including Article 1 (1); given that the law on revision under examination had not sought to change those provisions, the majority erred in engaging in an analysis grounded in Article 152 (1). He accused the majority of starting from the premise that the revision affected the national and unitary nature of the state, rather than providing evidence that it did. Puskas went on to explain why the impugned amendments would not violate the national and unitary characteristics of the state, providing a civic rather than ethnic reading of the references to the nation in the constitution. He stated<sup>67</sup>:

[...] in order for the national minority to also be included – and not excluded – in the constitutional reference to “national state”, the nation must be understood as a juridical relationship having as a central element citizenship and, in these conditions, a certain regulation of the administrative-territorial organisation of the state – which recognised historical reality – does not concern and does not affect in any way this juridical relationship between the state and the citizen.'

Puskas also defended the proposed amendments to Article 6. He viewed it as contradictory to accept the constitutionality of the right to cultural identity already provided for in this article, but to find that changes which allow for its implementation contravene the national and unitary nature of the state. Interestingly, Puskas also appealed to the 1918 Alba-Iulia Resolution mentioned above, which he viewed (together with the 1991 constitution) as part and parcel of a 'constitutional block' to be respected.

The Constitutional Court's position thus also provides evidence that Article 1 (1), entrenched by Article 152 (1), is not mere ink on paper. In constitutional review proceedings, it provides a frame of reference for all constitutional and legislative changes. Moreover and unlike other procedural amendment rules such as higher legislative thresholds or obligatory referendums, unamendable provisions such as this impose substantive limitations on change which create a certain hierarchy of norms within the constitution. That the hierarchy rests on unavoidably vague value commitments does not preclude it being enforced by constitutional review, as was the case above. The reach of this type of review can

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<sup>66</sup> Decision No 80 (n 61) § 51.

<sup>67</sup> Decision No 80 (n 61).

be profoundly worrying to committed democrats, as constitutional openness is limited in the name of elite-favouring values and change is channelled exclusively through judicial interpretation.<sup>68</sup>

The practical consequences of Article 1 (1) also go beyond the context of constitutionality control, however, and cover more practical aspects of public administration and law enforcement. For example, a sub-prefect was dismissed in 2016 on account of statements that he viewed the national state provision in the constitution as outdated; the Government justified his dismissal on account of public administrators' duties to respect, not interpret, the constitution.<sup>69</sup> Another illustration is a 2017 parliamentary bill aiming to amend the Penal Code so as to allow the jailing of protesters whose 'purpose is to change the constitutional order or to make more difficult or preclude the exercise of state power'.<sup>70</sup> Its initiator explained the initiative on the grounds that recent 'extremist manifestations' in Szeklerland were an affront to the 'essence of the Romanian state' and violated Articles 1 and 13 of the constitution.<sup>71</sup> The bill is still making its way through Parliament at the time of writing, but its intention is clear: to give teeth, in the form of criminal sanctions, to Article 1. Thus, both in constitutional jurisprudence and in legislative and administrative matters, Article 1 (1) has been relied on to stifle divergent visions of the state and of the political community it embodies.

### 3.4 The constitutionalization of the Romanian national state: a story of confusion

Part of the opposition to any revision of the constitutionalization of the national state is grounded in confusion. The provision is often brought up in debates on decentralisation of state power and regionalisation, in which the state's unamendable 'national', 'unitary', and 'indivisible' characteristics are often invoked without distinction. As seen above, not even the Constitutional Court can resist the temptation to discuss them together. Fears that decentralisation would lead

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<sup>68</sup> Allan C Hutchinson and Joel Colon-Rios, 'Democracy and Constitutional Change', Vol 6, No 11, Osgoode Hall Law School Research Paper No 48/2010 (2010) 4.

<sup>69</sup> 'Premierul l-a demis pe subprefectul de Timiș după declarațiile despre "statul național unitar"' (*Mediafax*, 8 December 2016) <http://www.mediafax.ro/politic/premierul-l-a-demis-pe-subprefectul-de-timis-dupa-declaratiile-despre-statul-national-unitar-16020892> accessed 14 July 2017.

<sup>70</sup> *Lege privind completarea Legii nr 286/2009 privind Codul penal*, 28 February 2017.

<sup>71</sup> *Expunere de motive, Lege privind completarea Legii nr. 286/2009 privind Codul penal*, 28 February 2017.

to territorial disintegration have also permeated legislation, such as Law no 251/2001 on Local Public Administration. The latter expressly declares that principles of local autonomy and decentralisation of public services are limited by the national, unitary and indivisible character of Romania (Article 2 [2] of the Law). Such confusion persists in spite of both expert opinions that these state characteristics are different<sup>72</sup> and repeated clarification from leaders of the Hungarian minority that any regionalisation projects they propose are not meant to breach the state's unitary or indivisible character.<sup>73</sup> This story of confusion also interlinks with the incoherent manner in which decentralisation and regionalisation have been pursued in post-communist Romania: reform in these areas has also been adopted as a consequence of external demands rather than principled plans and without any national debate.<sup>74</sup>

Somewhat surprisingly, the national state provision in the constitution has also been invoked as a potential impediment to further transfers of sovereignty to the European Union. Questions have been raised as to whether Article 1 (1) of the Constitution would have to be amended in order to facilitate ceding further elements of sovereignty to Brussels, either so as to remove any constitutional vagueness in this regard<sup>75</sup> or to remove any incompatibility with integration within a 'European nationality'.<sup>76</sup> There was no consensus on this point when it was first raised, mainly on account of the Eurosceptic atmosphere across the Union and the unlikely adoption of a new European treaty within the near future.<sup>77</sup> There does not seem to have been any connection made to the calls for removing the national state reference in the context of minority accommodation, nor the same emotional responses to the issue when discussed in the context of further European integration.

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72 Ionescu (n 47) 92.

73 See n 55.

74 Marius Suci, 'Decentralization and Regional Development in Romania: An Unfinished Reform in Search of a "European" Model' in Francesco Palermo and Sara Parolari (eds), *Regional Dynamics in Central Europe: New Approaches to Decentralization* (Martinus Nijhoff 2013) 128–130.

75 'Parvulescu: Dupa 2014, am putea fi nevoiti sa modificam art.1 din Constitutie' (*Ziare.com*, 24 April 2013) <http://www.ziare.com/politica/constitutie/parvulescu-dupa-2014-am-putea-fi-nevoiti-sa-modificam-art-1-din-constitutie-1231982> accessed 14 July 2017.

76 'Prigoana, de acord cu eliminarea caracterului national al statutului din Constitutie' (*Ziare.com*, 2 November 2011) <http://www.ziare.com/silviu-prigoana/pdl/prigoana-de-acord-cu-eliminarea-caracterului-national-al-statutului-din-constitutie-1131242> accessed 14 July 2017.

77 'Chiuariu, despre modificarea art. 1 din Constitutie: Nu e in ton cu atmosfera eurosceptica' (*Ziare.com*, 25 April 2013) <http://www.ziare.com/tudor-chiuariu/pnl/chiuariu-despre-modificarea-art-1-din-constitutie-nu-prea-e-in-ton-cu-atmosfera-eurosceptica-1232139> accessed 14 July 2017.

## 4 Conclusion

This article has sought to reconstruct the origins and operation of the concept of national state in Romanian constitutionalism. It has argued that this concept, and its unamendability within the Romanian fundamental law, embodies a constitutional nationalist project. The article has tested and ultimately challenged three axes of the majoritarian, and so far dominant, interpretations of the constitutionalization of the national state in Romania.

First, the article has challenged the claim that characterising the Romanian state as national is a purely descriptive move. Whether understood in majoritarian terms, as recognising the numerical dominance of ethnic Romanians, or on civic nationalist terms, as recognising the unity of the nation understood as the sum of the state's citizens, this descriptive understanding is problematic. As the analysis above has shown, such interpretations are not historically accurate, seeing as they ignore the ethnic nationalist roots of the provision. In the 1923 constitution, the first to have defined the state as national, this choice was directly tied to the project of state consolidation in the aftermath of World War I. In the 1991 constitution, the language of the national state built on pre-1989 national-communist discourse and on lingering fears of the Hungarian 'other'. Moreover, the descriptive understanding of Article 1 (1) of the Constitution is not consistent with other constitutional provisions which more or less explicitly retain an ethnic understanding of the constituent people.

Furthermore, even accepting the premise that the national state reference is meant to describe a factual reality, this can be challenged on two grounds. On the one hand, if this reality is to be understood as ethnic-based, namely that the Romanian state is and has always been the home of one nation, the claim is factually wrong as the Romanian state has never been ethnically homogenous. On the other hand, if the claim is that the provision refers to nation understood on civic, non-ethnic grounds, the fact remains that this interpretation has been contested from the outset and has never been accepted by the Hungarian minority. When faced with the option to embrace such a reading, the Constitutional Court has also shied away from it.

Second, the article has also investigated whether Article 1 (1), as entrenched by the eternity clause in Article 152 (1), can be seen as largely inconsequential. In other words, whether – because it is a purely descriptive recognition of factual reality as discussed above – this provision can be seen as innocuous. The problem with this line of reasoning, as the complex contestation on the part of representatives of the Hungarian minority shows, is that, at the very least, the definition of the state as national carries symbolic value. The perception that it

defines the political community on ethnic grounds lingers and is linked to calls for amendment which would recognise all minorities as constituent elements of the polity.

Additionally, it is inaccurate to claim that Article 1 (1) has no practical effect. Not only can it be seen to have restricted the negotiation space around minority rights, but it has also been relied on by the Constitutional Court and other constitutional actors to frame and block attempts at constitutional revision.

Moreover, one may also question the consistency between this position – seeing Article 1 (1) as *de facto* irrelevant – and the fearful and hostile reactions associated to calls for its revision. One cannot have it both ways: either it is without effect, in which case its alteration should not pose many problems, or it does have constitutional consequences, in which case a more honest admission of this fact would be required.

Third and finally, flowing from the above analysis is a constitutional picture in which the expansion of minority accommodation is viewed as a zero-sum game. The majoritarian view of Article 1 (1) defends it against alteration on the grounds that, ultimately, something constitutive to the state would be lost were it to no longer be defined as national. A strong perception persists that giving in on this point would automatically result in a loss for the majority in favour of the minority which, in its extreme forms, is only one step removed from territorial disintegration. Such ideas are a direct consequence of years of constitutional narratives which painted minority claims as threats to the state and to its cohesion. This antagonistic perception of minority claims has remained largely unchanged since the constitution's adoption and does not reflect the changes in discourse, and demands for amendment, put forth by the Hungarian minority.

The aim of this article is not to prescribe any concrete constitutional amendments to the Romanian constitution. Instead, it is to highlight the continued contestation of the constitutional definition of the state as national on the ground that it draws exclusionary boundaries to the political community, with both symbolic and practical consequences. This contestation has never been fully addressed, with the majoritarian constitutional discourse preferring to minimise or outright dismiss minority critiques of Article 1 (1). Opposition to the constitutionalization of the national state not only predates the current constitution, but has been voiced tirelessly since its adoption and raised at each opportunity for constitutional revision. This article has sought to challenge entrenched majoritarian assumptions about the origins and effects of the national state in Romanian constitutional law and discourse and to call for a better informed, inclusive and respectful engagement with minority voices. This would likely have to include constitutional renegotiation and ultimately revisions to the fundamental law which more accurately, and inclusively, reflect the

heterogeneity of the Romanian political community. It would have to involve, in other words, the type of painful soul-searching which the 1989 constituent moment should have but did not allow. Contrary to still-dominant views in Romanian society, however, this article posits that such a respectful dialogue and inclusive constitutional reform would not be a zero-sum game. It would ultimately strengthen the Romanian state and its constitutional definition.