

**ANALYSIS OF THE OPPORTUNITY OF AMMENDING THE
FUNDAMENTAL LAW**

Adelin UNGUREANU*

Moto: „*All virtues are gathering into an interest just like the rivers into the sea.*”
Francois de la Rochefoucauld

ABSTRACT: *The Constitution of a country represents the legislative act bestowed with the highest legal force. Called the law of the laws, it represents the foundation for all other legislative acts adopted. However, the constitution is itself a legislative act and so it too can be subject to certain procedures of amendment and even abolition, as the constitutional history of numerous countries has already proved. In this study we analyze the opportunity and the social motivations that might represent amendments of a possible revision of the supreme law, without focusing on the technical legislative procedures of amending the most important law in the country. The studied elements are points of view accompanied by a minimum of arguments without pretending to be the sole themes or the most evoked ones in the ever ongoing process of legislative perfecting.*

KEY-WORDS: *constitution, revision, fundamental law, immunity, (bi) unicameralism, sovereignty.*

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The procedure of adopting the present supreme law had not yet been finished, in 1991, and already unsatisfied voices with predilection from the political sphere, made felt their influence and pointed out that new legislative efforts are needed to perfect the constitution of the country.

Indeed, although it is a legislative act enjoying real stability, the constitution of a country is not infallible. After a shorter or longer period of time passes, this legislative category too is subject to amendments or even abolition. There is one constitution in this entire world that has been in force for over two centuries and this has almost become a national brand under the aspect of parliamentary life. However, at the opposite pole, there have been situations when a fundamental law had been abolished very shortly after the moment it entered into force. On the other hand, we must not forget that even the very

* Lecturer, Ph.D., Petroșani University, ROMANIA.

long-lived constitutions, adopted more than one century ago and that to this day still represent the general legislative frame, have not kept their original form intact. Every once in a while, depending on the national or external context, on the evolution and the needs of the society and also on other political, economic and not only factors, the need to legislatively amend the text of the supreme law has arose.

The constitution can be assimilated to the statute of a state, representing the legal foundation for state organization and functioning. If the statute of any other type of legal entity has as foundation the law, the constitution is based on the general consciousness of the population of a state (Dănișor DC & Dogaru & Dănișor Gh, 2008, p.136). And if the revision of a constitution has as legal foundation its provisions, the adoption of a new constitution radiates out of the consciousness of all individuals or the majority of the individuals that make up the population of a country.

Our country has had 6 fundamental laws, up until the present supreme law, if we eliminate from the count the Organic Regulations from the first half of the XIXth century and the Statute of Cuza based on the text of the Parisian Conference that previously took place and where the problem of the extra-Carpathian Romanian Principalities was debated. The first one adopted is the one from 1866, fundamental law that remained in force for a long period of time and that was maintained intact in its original initial form during the entire time it was in force. We have also had fundamental laws that remained in force only for a few years and of course others that have been amended to such a great degree, as is the case, for example, of the one from 1952 or the one adopted immediately after, that the mere idea of legislative stability had started to overcome the limits of the meaning of this expression.

Any constitutional amendment draws after it new revisions of the subsequent normative texts. Even the first authentic Romanian constitution provided, in its final provisions, that all existing legislative acts will be altered and amended (The Constitution of Romania – 1866, art. 132) in the process of harmonization with the fundamental law.

The present Romanian Constitution has already gone through a stage of legislative amending in the autumn of 2003, when it was subject to revision and when the entire constitutional procedure of revision was covered, from initiation to notification to adoption in the legislative authority and then through national referendum. The initial provisions of the constitutional text had to be adapted to the new context, especially since the country already had connections at euro-Atlantic level on economic, social and military issues and therefore the generic legislative framework had to be harmonized. Naturally, after this stage of legislative evolution had been crossed, the demands for new amendments of the fundamental law did not cease and the discussions developed so far as the very limitations of the constitution were subject to debate and the conclusion was that, in the future, a new revision would not suffice and that a new fundamental law must be adopted after, obviously, the present one is abolished. However, the revision of the fundamental law in 2003 represents an important step on the path of evolution, not only legislatively but also of the system of adopting laws because the population participates in this case to a major decision on the issue of amending the content of the constitution and this, naturally, is worthy of appreciation. There where many and lengthy parliamentary debates over the content of the constitution and finally the political forces assumed the new text of the constitution, which they adopted and which was later confirmed by the elective body in October 18-19, 2003. Therefore, this revision of the fundamental law

took place 12 years after its entering into force. Since this referendum and up until today more than 12 years have passed and therefore, we could say that, under a chronological perspective, a new constitutional revision is due to take place. In the following paragraphs, I will try to formulate opinions concerning the content of the new revision, the constitutional provisions that should be abolished, amended or added to, stressing that the subject is vast and debated in length and that the expressed opinions are merely points of view lacking any political connotations or of other nature.

Some of the thoroughly debated aspects of the fundamental normative acts' content are: the immunity regime of public officials, a clearer definition of the relations between the main institutions of the state, the different duration of the parliamentary term versus the head of state, a certain legal regime of wealth, the functioning of the judicial system, the number of parliamentary chambers, promulgations of laws, a more clear definition of state sovereignty, the relations with euro-Atlantic structures and even the form of government although in this regard the constitutional provisions are strictly limited. Naturally, many other parts of the supreme law can be object of concern for those that initiate or adopt constitutional amendments. We can therefore add to the previous list: a more clear definition of Romanian citizens and foreigners' rights and obligations, limitations of external interferences, strict provisions regarding legal liability in correlation to citizens' equality in the eyes of the law (Romanian Constitution, art.16, paragr. 1), clearer provisions concerning the secret of correspondence, state defense, the attributions of the President in the legislative process, the liability of the President, special legislative procedures, the relation between judicial courts and the Public Ministry, the functioning of the Constitutional Court, euro-Atlantic relations and certainly many more constitutional provisions can be subject to revisions.

The issue of the immunity of public officials remains omnipresent in the national media and also in any type of debate, official or otherwise. It represents, in the meantime, a question that has been in attention previous to the revision and these concerns have not remained without finalization. Contrary to the initial form of the Romanian Constitution, the immunity granted to the members of the Parliament has greatly diminished, even if in its original form it was situated below the level of rights or protection guaranteed at a higher level for other officials. However, the immunity of the President of state, based on certain official interpretations, has remained intact. Certainly, since the presidential office is unique, even this argument in itself represents reason enough for maintaining what some call the presidential super-immunity, when referring to the legal status the head of state enjoys.

The president of the state, due to security and stability reasons and regardless of any political or social situations, must be sheltered from any forms of accusations, which would transform the person holding the office into one without credibility and lacking strength in making decisions. On the other hand, considering the type of republic, neither parliamentary nor presidential, the President of Romania, from the perspective of its competences, is not the strongest (decision-wise) person in the state. Hence, following this logic, it would seem necessary to extend this immunity to other officials that take highly important decisions. The general orientation is yet against this extension. However, from the present provision and interpretation of the constitutional texts: "The President of Romania shall enjoy immunity" (Romanian Constitution, art.84, paragr.2) and "impeachment of the President of Romania for high treason" (Romanian Constitution,

art.96, paragr.1) the logical question arises whether the president can only be accused for one category of deeds (high treason) throughout the entire terms of office and whether in case the president commits serious crimes, violent crimes, having an extreme degree of social danger and negative effects on the map of human existence, the person holding the office could be held liable. It is likely that for such a pure theoretical situation different provisions and legal interpretations would be used in order to vacate the presidential office either by resignation or temporary (maybe!) cessation of office. Certainly, a possible revision of the fundamental law should consider phrasing more clearly those provisions regulating the immunity of the president.

The members of the Parliament, for a long time already, do no longer enjoy immunity regarding criminal investigations, impeachment, sentencing and carrying out of freedom privative sanctions. The only areas they enjoy immunity are warrants, confinements and other preventive measures that under no circumstances can eliminate the possibility of investigating and, if the case, sentencing them. The public opinion as well as certain opinion makers state that once the constitution is amended and revised, any sort of immunities, even these few still remaining, must be eliminated. Some considerations are in order at this point. First, not only the members of the parliament enjoy these types of immunities in the country and the requirement of asking opinions or approvals exists. Then, at European level these types of immunities exist as a rule. Thirdly, despite the fact that the legislative body temporarily lacks trust, through the constitution and in the light of democratic principles, this body is the most democratic authority of a country. The absence of any limitations in the preventive protection of members of the parliament would lead to the possibility of abuses that are impossible to control. Without this form of minimal immunity, in a matter of merely a few hours detentions and arrests could be made in such manner that parliamentary majorities could be changed or major decisions taken or the grounds for other sorts of attempts upon the democratic state could be made. We can seek example in the developed countries in central Europe, from the 4th century until the last century where the absence of any possibility of defense for the members of the legislative body had, in the long term, the worst repercussions for mankind.

In numerous times, the much invoked need for change generates changes of legislative nature, and such is the case for the revision of the fundamental law, procedure finalized in the autumn of 2003. However, when the change itself seems to be in need of alterations, to use the same phrasing for this idea, we find ourselves in front of an interesting situation, to say the least. In the initial form of the present Romanian constitution, the presidential terms of office as well as the parliamentary terms of office was set for four years and both presidential elections and parliamentary elections took place, regularly, in the same day. Many believed at that point, and brought arguments in support of this opinion, that separating the presidential elections from the parliamentary elections would represent a more suited solution for ensuring a better balance between these main state institutions. Finally, the adopted solution was that of changing the presidential terms of office and setting a new term of office of five years, a year longer than the parliamentary one, so that for two decades the presidential elections and the parliamentary elections took place at different moments in time. Everything seemed to be fine and the reaction of the public opinion and of politicians was hardly felt. From strictly a legal point of view, the terms of office is not one of the limitations set for revising the fundamental law and based on the new provisions, all public authorities were organized accordingly. After a decade

from what is practically the only revision of the present constitution, from the political factor mostly but not only, more and more opinions come to surface that indicate, with economical and political arguments, that a conjugation of elections and the overlapping of the terms of office of the president with the members of the parliament would have many positive aspects. The economic criteria point to the fact that the expenses would become much lower if both elections would be organized un-separately and there would be less years marked by election campaigns, while the political ones reflect the possibility of applying a program assumed through the elective procedure by a team having the same or different political color, between two clearly defined chronological moments.

Therefore, we cannot exclude that, in the possibility of a future revision of the constitution, the intention to overlap these elections as well as terms of office will become again a fundamental provision.

The constitutional text provides expressly that "Legally acquired assets shall not be confiscated. Legality of acquisitions shall be presumed." (Romanian Constitution, art.44, paragr.8). The last sentence of this paragraph has many times stirred confrontations in opinions, and demands in the context of a future possible revision of the fundamental law. The fact that the state must have an active role, an offensive attitude in order to prove the legal character of certain goods that belong to a person has been considered an unjust provision, to some degree, and the new angle on this issue seemed to be quite the opposite, that the person holding those assets must prove the way in which and the legal procedure through which these assets grew his patrimony. It is possible that such a provision to have found place in the legal text following the years in which, as a result of other legislations, persons had lost their assets either through general nationalization measures or, in some individual cases, through different methods and conditions where the exercise of the right to private property was greatly diminished.

However, for high public officials of the Romanian state, both at central and local level, for persons holding management positions in state public institutions and for public servants, as for in fact all the family members of these category of persons, through an organic law, there had been identified solutions for confiscating their assets or, more exactly, their counter value, if the one holding the assets could not prove the means of acquirement. The legislative process in this case started in about the same period as the revision of the fundamental law and had been amended during the following years. Therefore, although the supreme law presumes the legal character of private property, for the mentioned categories at least there are legal provisions, that produce legal effects and that allow the confiscation of the counter value of assets that cannot be justified, without a previous decision of a judge that criminally convicts the owner of those assets.

If in the future, in case of a possible amendment of the supreme law, these provisions will become targets for the initiators of a revision procedure and, more specifically, for the members of the legislative authority that will adopt the final form of the normative act, then we will witness a new different legal provision that will become applicable in the future. However, it is desirable to avoid in this case also, as in so many others, to reach extremes. The constitutions adopted in Romania after the end of the war and the legislative systems based on these constitutions allowed, even promoted, the nationalization of assets and latter the expropriation, based on arbitrary, to say the least, analyses and other types of considerations then those concerning the legality of the acquirement of assets or of patrimony in general. The present supreme law marked a shift

to the opposite pole, so that the expropriation and confiscation procedures have been almost completely blocked through legal provisions, although at times they represent useful solutions, for either social development or social protection. In the future, it is preferable to have more stable legal solutions, which do not shift over time so greatly, so that an adaptation to times, in any direction it may be, is much more consolidated. On the other hand, Romania has proven, in many cases since the modern state of Romania exists, to be a country of extremes, with very abrupt shifts to completely opposite sides and this lead to the known consequences and so the legislative practice too falls within the logic of long-time passed decisions. However, everything durable is usually built up over time, sometimes over a very long time!

The way justice works in a state is one of those topics that in no democracy in this world will ever reach full unanimity. Justice is, under a philosophical magnifier, a sensitive subject and its tools help remove, punish and correct everything that's bad, thus forging safety and justice for all. Concerning the individuals, they always seem to find themselves on antagonistic positions: those that loose in court almost always criticizing justice, and those that win in court some are extremely pleased by the system while others are mildly unsatisfied either due to the lengthy duration of litigations or to partial successes compared to their demands and expectations.

Firstly, justice must be referred to principles and these must be correctly chosen and implemented. The population has the right to indicate these principles either through direct consultation, as is the case of referendums organized to approve constitutional laws, or through the structures of representative institutions at central level. Then, the factors that hold attributions in consolidating this system will make decisions and will have to take into account the guidelines in the form of principles, as already mentioned.

Sometimes, the public forum has demanded, through media organizations, that the supreme law creates the necessary frame work for establishing some forms of legal liability for magistrates, depending on their professional conduct. These issues are not, however, of constitutional nature. The fundamental law does not have express provisions on the issue of magistrates' liability. One category of magistrates, the judges, hold this office for life according to the constitutional provision, and the other category, the prosecutors carry out their activity based on the principle of hierarchical control and, especially, under the authority of the ministry of justice (Romanian Constitution, art.132, paragr.1). Drafting legislation on this theme, amending it or putting it into application, are not contrary to the Constitution. However, creating a legal framework or creating procedures that would breach the independence of the justice system would lead to violations of the limitations of the supreme law. Independence refers to all aspects pertaining to organization, functioning, impartiality and decisional correctness. If these suffer in any way of slippage, then naturally interventions, even of legislative nature, are imposed in order to save the independence of justice from this slippage, regardless of their causes. An efficient barometer of these aspects, even if we stated in the beginning of this line of reasoning that unanimity does not exist, is represented by the reaction of public opinion. Many times, the public opinion notices certain negative aspects and manifests itself accordingly, even it at times it can interpret real situations distortedly.

The question of bicameral versus unicameral parliament is one of the most debated ones. The source of these debates was generated by the fact that in the year 2009, most probably with an electoral end, a referendum was organized regarding the number of

parliamentary chambers and the maximum number of members of the parliament. The referendum was advisory in nature and it was organized at the end of the electoral campaign for the first tour of presidential elections. This referendum could not have had the effects of a popular consultation, whose consequences would produce direct effects, as is for example the case of referendums organized for the approval of a constitutional law. However, we are in the presence of a popular consultation, even if advisory, which under a pure technical approach has fulfilled every step of the procedure and whose results are valid ones. It is not less true that the association with the electoral campaign and the subject of the consultation were elements that greatly influence the voting intention of the electoral body. Concerning the subject, considering the trust oscillations of the legislative forum, we may ask ourselves if it's possible that any consultation with negative effects for the parliament would have had the same success. Probably the vote would have been in any context, broadly, at the expense of the legislative body and its organization and functioning and this should not be normal. But these sorts of consultations did not take place and therefore it's not the place for such analyses. In summary, according to the results of the referendum, the Romanian legislative body should be diminished to a maximum of 300 members of the parliament, reunited in a single parliamentary chamber. Certainly, an advisory referendum could not, procedure-wise, represent anything more than the reason or pretext for initiating a constitutional law that would operate this revisions and, in the end, those citizens that enjoy the right to vote would again be invited to the voting section to approve the new fundamental amendments.

The Romanian Parliament has representation norms that have often been criticized, and the number of the members of the parliament in the 2012-2016 terms of office, as a consequence of the electoral legislation, had almost over-exceeded the number of the members of the European Parliament in exercise at that time. The problem was solved, to great extend, for the elections in 2016 and the total number of members of the parliament dropped with some tens of percents. On the issue of the representation norm, things are much more simple and it would be desirable that, in the future, the number of members of the legislative body, would decrease even more, especially in the light of the Romanian demographic realities and the significant number of Romanians that have left the country and are away from Romania almost permanently, for well known reasons.

On the issue of Romanian bicameral parliament, the legal and electoral debate will also be carrying on. We have had, over time, both bicameral and unicameral experiences, at the level of the supreme legislative body in the country. Without returning to these or to traditions, it is clear that a unicameral parliament will naturally prove itself to be more efficient. The legislative process will be faster and the legislative evolution will track shorter periods of time between the moment of legislative initiative and the moment the legal provisions enter into force and produce legal effects that derive from a normative act. To some extent, there have been certain changes in the Romanian legislation in this regard, since through the revision of the initial form of the present constitution the competence each of the chambers of the national parliament enjoys has been radically altered. In the initial forms, in those situations when a legislative proposal was adopted in a different text by one of the parliamentary chambers then the one adopted by the other parliamentary chamber, a mediation committee had to be called that had the role of finding the text of the proposal acceptable for the representatives of both chambers and then the voting procedures were again resumed in order to get the proposal adopted. All

these procedures ended up getting so lengthy that, at times, the mere purpose considered at the initiation of the legislative proposal lost its interest and actuality, by the time the final vote for the new law was cast. Through the revision we mentioned previously, the parliamentary chambers were specialized on certain fields and so depending on its object of regulation and the field a proposal will be adopted in, it will be adopted in its final form by either one of the parliamentary chambers or the other, without taking into consideration the conditions or the text the other parliamentary chamber would have adopted, chamber that does not have competences in the unreserved field.

Concerning bicameralism, despite the criticisms brought to it, it however ensures that the first representative institution in the state operates without the possibility of reaching absolutistic behaviors. One parliamentary chamber that represents the nation, whatever this may be, would become a substitute for the nation itself and the absence of a counterweight, coming from the second parliamentary chamber, would lead to that sort of collective absolutism, perhaps more aggressive than the individual type, generated by the impossibility of holding liable the members of a collective body with so many members (Muraru & Tănăsescu, 2005, p.162). Be it either unicameral or bicameral parliament, in time, the ideal of instating distinct and separate state powers, ideal stated by Locke and justified by the need of not entrusting both the legislative power and the executive power to the same individual (Locke, 1952, p.157 in Manta P & Răvaș & Cilibiu & Manta C, 2014, p. 11) has settled the principle of separation of powers, principle that today is the foundation stone of constitutions. The legislative attributions, as well as the executive ones also, have been taken from the level of the absolutist leader and entrusted to more entities, be they unicameral or bicameral, as is the case of the legislative bodies, and this brings much more democracy and legitimacy.

The separation of state powers, aside those that have promoted it, represents a construction based on conceptions of collective order, of philosophical and legal nature (Dănișor, 2011, p.207), delineated over time by reference to social realities.

It is undeniable that, through this new mechanism, the legislative process now has an obvious speediness, compared to the previous situation, and each chamber works, on the allocated domains, almost like a unicameral parliament. In addition, the bicameral parliament ensures some stability, both legislatively and institutionally. Legislative stability is guaranteed by that fact that any legislative proposal passes through two parliamentary filters, the chamber where the procedure is first initiated in and after the decisional chamber. The institutional stability is however guaranteed by the fact that, given the way a singular parliamentary chamber is organized and functions, it could easily at some point be influenced or, even worse, be faced with some pressures, from different factors, that are very hard to resist to. The existence of a second parliamentary chamber turns the parliament into a much stronger institution when facing situations as the ones previously mentioned and if we keep in mind that we are referring to the most democratic institution of the country, then this justification is even more pertinent. Consequently, in case of a possible revision, which is not to be questioned, except regarding its temporary positioning, a bicameral parliament can prove to be a wise and useful solution especially during unstable times. However, the number of the members of the parliament or, more exactly, the formula used to establish their number, can gain a fundamental nature and in this process the numeric representation reports used in other countries can be taken under advisement, even of countries having even larger well represented legislative bodies.

The promulgation of laws represents the exclusive attribution of the presidential office. In the same time, promulgation represents a step previous to the moment the normative act starts producing legal effects. According to the Romanian Constitution, there are two promulgation terms. The initial term is of 20 days and the second one, in the chance the law is returned to the legislative forum that has adopted it or in the chance it was subject to the control exercised by the authority that holds the competence in the matter of constitutional control, is set at half of the duration of the initial term. However, in principle, the attention is not focused on these terms or in their succession over time, but on the legal force the decisions taken by the president of the state in the legislative process have, more precisely, at the end of the legislative process since promulgation represents a post-adoption operation.

The president of Romania does not hold an exclusive veto right whose effects would manifest in obstructing a law adopted by the parliament. But, the president has the possibility, as deduced from the previously exposed ideas, to request the legislative body to reexamine the adopted normative act. The decision of the head of the state to request that this activity be carried out does not coerce the parliament to amend or alter in any way the text of the law sent back by the president and the president cannot adopt this measures but one single time. Therefore, the attributions the president holds, in the legislative plan, allow him to verify and request amendments and also to delay the moment a law enters into force. However, under no circumstances can the president block the entering into force of a normative act that has been declared constitutional or that has not been checked under this aspect. The scholarly tendencies, and not only, seem to diverge into two logic finalities, in case of revision of the fundamental law: either the president of the state will have no attributions whatsoever in the process of adopting laws since its has the position of mediator between the three state powers and therefore must not be part of any, or, on the contrary, the president will be able to gain a true veto right and in such conditions will be able to block any law adopted by the parliament if that law does not share the position or the vision of the person holding the presidential function.

The president of a presidential republic holds obvious executive competences, while its counterpart from a parliamentary republic fulfils symbolic functions, such as mediation or representation without participating in the decision making process of adopting and applying laws.

The president of Romania is considered by some authors as holding the highest place within the executive power (Popescu & Manta & Răcean & Șuță, 2010, p.126). However, its position in the light of the constitutional provisions must be that of a mediator between powers and not of a party in one of these.

Aspects such as national sovereignty and the relations with European and north atlantic structures are for the first time provided in the text of a Romanian fundamental law and have been inserted previous to the adhesion to the two large international organizations. The last one represents a military structure aimed at purposes pertaining to security and defense, while the first, in its initial design, functioned considerably well as a predominantly economic union although lately, within this organization too, the political component gained a new stage, causing dissatisfactions. One example in the support of our statement is that of the British exit (Brexit), the effects of which are still early to conclude, especially given that even the opinions of experts are fundamentally opposite.

It is only natural that between an entity made up of more state and one member state to exist shared competences. The limits of these must however be very clearly settled and provided for, if aspects such as sovereignty or independence or other fundamental state traits are to be kept harbored from any disputes or contestations.

For example, between the European Union and the member states the competences are shared, excepting those areas where the treaties provide the possibility of an exclusive competence for the European structure (Diaconu & Crăciunescu, 2010, p.108).

At the same time, the apparition of a body having European judicial competences, although received with skepticism by specialists from the entire continent at first, has proven its usefulness and has earned the trust of European citizens after three decades of existence. The existence of a court with international judicial competence has become a land-mark and a guaranty, its decisions being more often invoked in national litigations in member states (L.-E. Pettiti - Reflexions, p. 27-28, in Chiriță, 2007, p.6), highlighting once more the impact this organism has in the field of justice, area so sensitive in any national system.

On the issue of sovereignty, the need for certain alterations of the constitutional text is more than necessary. This necessity derives from the fact that the present provisions were introduced in the text of the constitution previous to the moment Romania became a member of these organizations and given the new status gained after the adhesion and the multitude of relations generated by the complexity of the newly created legal relations, practically demand more clear provisions, including from a technical perspective. To this end, the fundamental provisions of the Romanian law seem to be in contradiction: if in its beginning the constitution states that “national sovereignty belongs to the Romanian people” (Romanian Constitution, art.2), towards its end different provisions establish that the regulations adopted by the EU, having a binding nature and contrary to the provisions existing in the national legislation (meaning those provisions adopted on the basis of national sovereignty) have mandatory force prior to national provisions (Romanian Constitution, art. 148, paragr. 2). It is not our desire to use these lines in order to phrase proposals, even if the scholarly literature has allocated large debates to this subject. However, we insist upon the need of approaching this issue more clearly, a very sensitive issue indeed, because us too, as any other person asked to give an official opinion on the matter would express itself, wish for more precise provisions that leave no room for contradictory interpretations or at least do not generate interpretations so different one from the other.

There are opinions at present that converge towards the idea that in a world with maximum materialistic inclinations the available space within a constitutional system for a fundamental law based on reason is more and more narrow (Losano, 2005, p. 94).

The major role of the constitution is given not merely by its actual content but also by the stability of the legislative system it can ensure in time, as well as the basis on which the most important state institution are organized and function on, blocking the political forces from repositioning the fundamental relations found at the core of state functioning at every government rotation. The fact that there are generic initiatives, coming from persons that do not hold the power for initiating a constitutional revision, but only use it for debates or scholarly purposes, and that aim at perfecting the content of the supreme law, must not be interpreted as negative from the very beginning. The role of the scholarly

literature is that of debating and proposing certain hypothesis that, if positively received, stand a chance of turning into positive law (in force).

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