

**PROVISIONS OF THE ROMANIAN CONSTITUTION
THAT CANNOT BE OBJECT TO REVISION
OF THE FUNDAMENTAL LAW**

Adelin UNGUREANU*

Motto:

*„A just law is not the one that has effects upon all,
but the one that is made for all”*

Joseph de Maistre

ABSTRACT: *The fundamental law represents, in an organization based on democracy and respect for principles, a normative act enjoying a higher degree of stability under a temporal aspect. A constitution produces legal effects and remains in force for a period of many years, and the revisions made through specific procedures are also rarely registered. The Romanian supreme law as well, although adopted a quarter of a century ago, has been subject only just one time to the revision procedure. However, through its initial provisions, the Constitution of Romania cannot be subject to legislative revisions if these aim any of the regulations that cannot be subject to revision. Consequently, four of the characteristics of the Romanian state, added certain other fundamental values: republican form of government, independence of justice, integrity of the territory, official Romanian language and political pluralism, as well as some conditionings connected with the contexts, according to which any alterations of the fundamental law concerning individual freedoms cannot be operated, all these cannot form the object of a constitutional law, altering or revising the present fundamental law.*

KEY-WORDS: *constitution, democracy, rights, effects, initiative, legislative procedures, referendum, republic, revision.*

JEL Code: *K10*

The fundamental law of a state creates the stability of the entire legislative system and, in the same time, sets guarantees, through its provisions, regarding compliance with the principles that stand as foundations of state organization. Although, in principle, supreme laws produce effects for a long period of time they can be subject to interventions upon its texts through the legislative levers that allow the alteration even of a state constitution. Hence, the present Constitution of Romania included, after entering into force at the end

* Lect. univ. dr – Universitatea din Petroșani, ROMANIA.

of 1991, has went through a complete revision process in the second half of 2003, not being the first Romanian fundamental law that has suffered certain alterations regarding the content of its provisions. Within the legislative system, the Constitution creates the general framework under the aspect of the basic provisions that set the organizations and functioning of the institutions of the Romanian state. (Velicu, 2008, p. 262).

If we admit that the birth of law is in direct connection with that of the state, and if these two have evolved together, the process is undergoing even in present. Society is under constant change, the legal reports tend to evolve and so new regulations are demanded, the necessity of a general legal frame being eloquent and perhaps even awaited. Then, the constitution is also a law and consequently can be subject to procedures of legislative technique that end with alterations of fundamental legal provisions. The effect is however substantial because the new provisions of the supreme law create the necessity of adapting the provisions of legal acts having an inferior legal force to the new content of the supreme law.

The revision of the constitution is not, however, a simple procedure - not under a technical-legislative aspect nor under the requirement of gathering a certain qualified majority or the acceptance of the electorate body of the revised provisions. Negotiations are carried out, the revised texts are subject to lengthy debates, if not even initiated by the population, in order for the revised constitution to finally produce legal effects. At times, the conclusion of the need to adopt a new Constitution can be reached, if the one already existing is surpassed by chronological realities and the alterations that must be made are many and important. Another reason for initiating a new supreme law could be represented by the lack of suppleness of the constitutional text, in the sense that certain legal institutions or certain provisions of it cannot be subject to any revision procedures.

Even from the moment the fundamental law was adopted, within the constituent national forum there were debates concerning the limitations setting the boundaries of revising the fundamental law. At that moment, in the beginning of the '90, it could not be foreseen when and especially what in particular from the content of the constitution would be subject to revision. Still, the discussions concerning the issue of the possibility of future interventions on the constitutional texts were contradictory and have left open the way for scholars as well as politicians to debate this topic for many years after the VIIth Constitution of Romania entered into force.

In its initial form, our supreme law was structured into 152 articles and one of these expressly indicated the limitations of any potential revision in time of the fundamental normative act (Romanian Constitution – initial form, 1991, art. 148). Although after more than a decade the supreme law was subject to an ample process of revision and all the procedural steps have been fully taken, although the number of articles is now higher, the constitutional provisions concerning the limits of revision have been left unaltered. Strictly under a formal aspect, the article suffered a minor revision being given a different number since all the articles from the Romanian constitution, after republishing, had been renumbered. Continuing our analysis under this aspect, any time the present law would be subject to revision in time, be it more or less complex and envisaging a higher or lower number of articles from the total number, the dispositive content regarding the limitations of revisions will remain intact.

The greater the number of provisions of a supreme law that are declared un-revisable the more we can state that it presents a rigid character. On the other hand, the purpose of

limiting the possibility of revision is a positive one, since it shelters the citizen from possible legislative abuses that a formation or group that detains state power could commit by violating certain fundamental principles, creating to this end even the constitutional framework that could legitimize their decisions.

Certain aspects regarding the characteristics of the Romanian state cannot be subject to alterations by constitutional laws. Similarly, the moment of carrying out a legislative intervention upon the constitutional text cannot be absolute, anytime, and the constitutional text contains specific provisions for these situations. Carrying on with a detailed analysis we will take into consideration, in our endeavor, reporting directly to the constitution of the country, the notions that cannot be subject to revisions.

The characteristics of the Romanian state, as independent, undividable, national and unitary state cannot be subject to constitutional alterations. These four values are expressly enumerated in the first paragraph of the supreme law, confirming therefore the meaning they carry and, at the same time, establishing the existence of our state on the world map. Critical spirit determines any analyst to observe that, in the first constitutional article are invoked, in the same norm, five fundamental characteristics of the Romanian state. However, the principle of legal symmetry is not fully complied with since only four, already mentioned, state characteristics are enumerated among the revision limitations. The sovereign character, although expressly mentioned in the beginning of the law, confirmed by the scholarly doctrine but also through so many international legal provisions as an essential attribute of state functioning and, in the same time, as guardian of the right to make its own decisions of state auto-government, sovereignty is not found among the other attributes enumerated in the constitutional text as limitations of constitution revision processes. It goes without saying that the mere enumeration of this characteristic in the constitutional provisions consecrates the existence and compliance with this democratic value, for it represents one of the most important state traits. Sovereignty stands at the very base of state power exercise and of decision making processes concerning state organization or functioning. However, to the question relating to the reason why this particular state characteristic was left out from the list of un-revisable constitutional provisions, although a lot of interpretations can be made, the legal text does not present any argument. Relating the issue to facts, sovereignty represents a trait that can be subject to revision and this idea is confirmed by the transfer of a part of sovereignty to the European Union decision making bodies (Năstase, 2007, p. 200) even if such a decision must be analyzed in length and the stand taken by society in general must have priority in such a possible decision.

Concerning state independence, under no circumstances can there be allowed any sort of infringements, for its loss would lead to state instability, including upon state existence or one element or more elements that define the Romanian state. Obtained almost a century and half ago, independence cannot represent, according to the Constitution today in force, subject for debates for a possible revision. Procedurally, the Constitutional Court, the legislative authority either direct or through its bodies, as I will mention, and the society will react with particular legal arguments in those cases when, under any form, a possible legislative initiative that would aim at revising this essential characteristic of the Romanian state would materialize. However, indivisibility reunites in some sort some of the elements that define our state. If we take into consideration the territory and the citizens or if we add to these already mentioned also power organization, in other words

the sovereign exercise of state power, all these cannot be separated. By dividing these, a serious violation of the constitutional provisions would take place and in order to ensure the stability of this characteristic over time the National Constituent Assembly has decided that indivisibility represents a value that cannot be taken into consideration for future legislative initiatives exercised in the field of constitutional laws. Obviously, the authority that holds competence in matters of constitutionality is the Constitutional Court, considered as a political – jurisdictional public authority, the political nature being deduced from the manner in which it is structurally formed since the judges are designated by political entities and the jurisdictional one results from the very nature of its activity (Muraru & Tănăsescu, 2006, p. 252). From a procedural perspective, the revision procedure of the supreme law happens only after the Constitutional Court verifies the initiative to revise the constitution and the decision given in this scenario follows the project/initiative for revision and has a conformity character for the legislative authority (www.ccr.ro). Returning to the authority holding the legislative power, it is obvious that this will show interest to ensure that everything it elaborates conforms with the fundamental provisions that make up the objective law. Since it has certain structures with clear attributions in the legislative field, both from a technical point of view and of the content, any overstepping past the revisable limitations of the constitution must be pointed out by the Legislative Council as well (Vida, 2012, p.140), as consultative body of the unique legislative authority.

Unity refers to both demographic aspects and territorial ones but mostly to organization and functioning ones. To better understand we must take into consideration the states organized as federative states or even state confederations. In these cases, we have more authorities that hold the same type of state power, as is the case of federal authorities (of the entire federate state) and bodies that belong to each federation (member state). In Romania, however, entrusting state power to a single, unique set of state bodies represents a certainty and the fix limitations introduced through the provisions of the supreme law has decided before-hand over any infringement or attempt to federalize the country or to create administrations enjoying a wide autonomous character within the state.

The national state characteristic is obvious, since the majority population has in common an entire set of elements: traditions, language, culture, history and all these define the Romanian nation. It is, however, also true that beside this nation, on the same territory, live other national minorities and the supreme law, but also the subsequent legal normativity, is in line with international regulations that expressly provide for the rights and freedoms that must be recognized to any minority citizen.

The government form represents, for any state in the world, a defining option regarding the general way of organizing state institutions. The government form stands as the foundation upon which the state lays its main institutions and, in the same time, reciprocal reports are built on between state institutions or between these and the citizens of the state in question. Although there are partisans of a certain form of government and in the scholarly literature have been and still are invoked many arguments for and counter-arguments for a certain form of government, there is still not and we don't believe it possible to have an objective hierarchy. Both forms of government - monarchy or republic - are generic forms of state government and in the last one hundred years, Romania has had both of them. Each of these types can take many versions: monarchies can be absolute

or constitutional and even these can take some divisions and other classifications. Similarly, republics can be presidential or parliamentary or we can find them under other forms, resulted from the combination of the principles that define the first two.

The constitutional text in force at present in our country established the republic as government form. The fundamental provision does not mention, however, which version of republic and thus creates the possibility, based on the provisions of this constitution, to either opt for a parliamentary republic or for the presidential type. Initially, at the time it was adopted, but also after the revision procedure, 12 years later the moment of its adoption, the choice was made for an undefined, in an absolute manner, republic, meaning that there isn't any provision that indicates a bigger authority or importance of the decisions made by the Parliament or the President. The semi-presidential republic borrows principles and characteristics from both forms of republic, but not entirely. Therefore, we have an electoral system that allows the election of the head of the state after the model of the presidential republic but his attributions are specific (limited) just like in the case of the president elected by the Parliament. Just as well as this type of republic is named semi-presidential republic it could be called semi-parliamentary since the alternation of its characteristics is the same. However, invoking the first state function in the form of government could help create a different perception of the issue.

In the two and a half decades, the public space has been the permanent host for ongoing debates and pretexts and motivations have been invoked, more or less of a legal nature but having a pronounced social allure or even deviating towards demagogy to support the idea of making a choice for one of the two classic types of republic, especially since the provisions of the present supreme law do not prohibit such an action. In the same time however, permanent accusations have been made that the choice of the form of state government should not be the privilege of the representative entity and that the people itself should decide this. In fact, this criticism always addressed the fact that the form of government has been introduced in the list of constitutional provisions that cannot be revised for as long as the most important law of the country produces legal effects. There have been and still are many opinions that sustain the idea that such a prohibitive provision should not have been set or, if this outcome was desired it would have been extremely useful to consult the population in the procedure, and to organize a referendum so that the Romanian electorate body could have chosen for itself the type of government: republic or monarchy. On the other hand, those that did not consider such a form of population consultation necessary could find arguments to support this in the fact that the constitutional text at the moment of its adoption and later of its revision was accepted by the population anyway and was validated through national referendums. Although under a strict legal analysis, indeed the fundamental law cannot enter into force lacking popular approval, the chosen method was a strict procedural one: the electorate had to practically choose between having a constitution and not having one and then later validate some alterations that aimed certain areas such as the legislative system, fundamental duties and others. It is my belief that there should have been a consultation of the population, especially since until the moment the constitution entered into force elections had been organized creating thus the perfect framework for the population to choose also the form of government. At present there still are many voices, mostly from the political arena or the civil society that maintain the idea that such a popular consultation should take place, as soon as possible. It is obvious that also from a technical point of view, this action could

be carried out in a period not that far away, but the fundamental issue is completely different. Under no circumstances can the Constitutional Court admit the violation of article 152 according to which the republic form of government cannot be subject to revision. So we ask ourselves the following question: what would the legal effects of such a consultation be? Only to confirm the already chosen form? What if the electorate were to choose the other form of government? The abolishment of the present fundamental law would become imperative? We do not know the solution but it is clear that this is how things happen when formal decisions are taken, without looking into the foundations of an issue and without adequately solving a fundamental problem for the country!

Until any measures can be taken or even initiated, or, better stated, until technically under legal aspect a viable solution can be identified, the limitations set by the constituent forum in the dawn of the '90 are of absolute character. I return to the idea exposed some paragraphs ago, idea that I consider to be correct. There is not an objective, generally accepted or even acceptable hierarchy that could place one of the two forms of government over the other, as being superior. The idea that must be distinguished is that of giving the population the possibility to choose, as one of the fundamental rule of democracy.

Decisions are taken by people and human activity is perfectible and the same can be stated about legislation as well.

Law is specific to human beings. Without people, it is impossible to give legal meaning to goods, obligations (Titulescu, 2008, p. 65), freedoms or any other components that are object to different reports and classifications.

Another provision that cannot be revised, according to the present constitutional content, is the one concerning territorial integrity of the country. In this case, as expected, there have not been any contestations or contrary opinions. However, I will make a short analysis of this disposition, purely under a theoretical aspect, in the following phrases. State boundaries have shifted along the hundreds of years, many times contrary to the will of the inhabitants of the territories surrounding the Carpathians. It is not inexact to mention that, unfortunately, Romania faced difficult and major territorial issues with some neighboring countries, finalized in diverse permutations of boundaries. It is enough to look at the last two centuries in order to understand this. Therefore, territory integrity aimed, without any possibility of denial, to ensure that the country could not give up under any form or any procedure parts of the territory, and this is a laudatory and obviously positive aspect. More so, under national identity considerations, it is a reality that Romanian territories are, even today, outside state borders, due to certain reasons and as a consequence of certain international contexts that are not the purpose of the present paper. Although under territorial aspects, the borders of our state have not modified after the Second World War, still, in 2009, somethings shifter under territorial concerns. Following judicial procedures in front of an international court, an island area re-entered inside Romanian territory, according to the final decision of the International Court of Justice.

Another provision having a prohibitive character under its revision possibilities is the one concerning the independence of justice. Naturally, even from the beginning, the constitutional text mentions the applicability of the principle of separation of powers in the state and the judicial power is one of the three. Justice represents a sensitive area for any state and its independence, although repeated in many legislative acts and not only in

our country, under a practical aspect, has always clashed with external interests that influenced it or even derailed it from its reason of being due to mechanism from within the justice itself. It is normal that, in order to have a functional state and for the governmental marry-go-around not to give birth to negative effects for the citizens, attached to the former power or administration, justice must function in the same parameters, without being influenced or tempted to either grant protection or accuse certain spheres from the political or economic area.

The supreme law of the country regulates, through provisions enjoying fundamental nature, in an entire chapter (the VIth), the judicial authority. The interdictions set through the constitutional texts as limitations of revision, are not equivalent to the intangibility of the entire chapter evoked. The aspect that cannot be subject to any legislative alterations is the independence itself of justice, but the aspects concerning the organization, functioning and adaptation of some mechanism are subject to legislative procedure. Not only in law, but also in fact, the revision from 2003 aimed this chapter also and, from the total number of 11 articles that is comprised of, not less than 7 have been revised and now have a different normative content. It is obvious that those provisions that make opposable to everyone the independence of justice have remained and will remain for the future in force. In order to enhance the legal effects of positioning justice in society, in one article that concerns justice, it was decided to add/insert a new paragraph regarding the impartiality, unique nature and equality of justice for all individuals. (Revised Romanian Constitution, art. 124, par. 2).

The massive alterations, both from a volume point of view and incidence, that were made to the present Constitution, in no way has the independence of justice been influenced. In fact, there have not even been accusations or findings made to this end. On the contrary, the independent character of justice has been confirmed over the passing of time. However, some mentions have to be made. The adopting of regulations concerning the statute of judges, the organization and functioning of the courts of justice or other provisions that do not tackle the decisional foundation at the level of courts of justice must not be overlapped, in their meaning, with the independence of justice per se, as a concept because such a scenario would risk leading to legislative gridlocks of the system and this would lead to certain negative consequences.

In the same time, an independent justice and even more so the existence of some constitutional guarantees of its independence represent a solid base for the functioning of the rule of law and of respecting individual freedoms but also of ensuring the normal functioning of the state.

The final format of the constitutional text, resulted from the deliberative activity of the Constituent Assembly and assumed by the electorate by a referendum, has set more than one limitations over the possibility to revise some fundamental provisions, as we have mentioned already in the previous paragraphs or are about to mention. One of these refers to the need of ensuring, through the supreme law, the recognition of political pluralism, which was given this way a principle value.

The history of Romanian political parties, in their proper form, begins from the second half of the XIXth century. Two major interventions have taken place upon the native political life. The first one consisted of excluding these from the political stage and implicitly from the legislative decision-making processes in the year 1938 and the other by accepting as foundation the existence of a unique political force for more than half a

century. These two aspects, materialized in the desire to prevent them from ever happening again, were probably taken into consideration in the moment when the decision was made to set political pluralism as the rule in the general organization of the political life, based on a constitution that guarantees the perpetuation of the invoked principle.

Unveiling more ideology programs and more electoral platforms give not only for the Romanian electorate the possibility to make a choice but represent, in the same time, a factor of democratic stability and stop the installation of an oligarchy or monocracy types of regimes that would avert any form of free manifestation and our state has already had its share of such experiences. It has, at times, been stated that pluralism, as well, can have negative effects, especially by creating a large number of political forces. And this is indeed true! However, there are possibilities of selecting these and not only of legislative nature but also by instituting an electoral threshold. Nonetheless, it is clear that between the version of having an insufficient number of political forces and the alternative of having solely one, regardless of its name, the first version is preferable. Even the option of having two parties that functions on a general level in some states in the world still represent a version of political pluralism.

Against the excessive political division and the facilitation of the access within decision-making forums of certain political forces enjoying very weak support from the population and since this would merely represent a political instrument for the big parties, the organic law regulating this field has opted for setting an electoral threshold. If this threshold is not met during election procedures the political force in question virtually remains outside the decision-making sphere. This limitation of access must remain a reasonable one, amounting to a few percentages because a very low electoral threshold looses its efficiency and distorts the scope of its creation while a very high threshold would become an obstacle for the access of political formations and this, in turn, would distort not only the representative element resulted from the electoral process but also the right to be elected.

The existence of more than one political force is, without doubt, benefic for the democratic stability. On the other hand, however, when the national interest demands certain attitudes, there exists the possibility, some would say only on a theoretical level, that, purely out of electoral reasons, the active political forces do not act in unison but, on the contrary, totally different and this would have serious consequences. There are in place, certainly, legal provisions and legal instrument that sanction such formations. Regardless, the idea that was meant to be enlightened is that any democratic provisions can have certain limitations. This is also a reason why democracy is benefic – it determined the population and its representatives to identify new legal solutions in order to perfect normative acts.

One last provisions expressly mentioned by the fundamental text, that cannot be subject to any revisions is the one concerning the official language used on the territory of the Romanian state. The same fundamental act, even from its first title, mentions that the Romanian language is the one holding this quality (Romanian Constitution, art. 13). There are states that recognize on their territories more official languages, but this is not the case in a national, unitary state as is the Romanian one. Still, it must expressly be mentioned that the existence of an official language must under no circumstances be interpreted as an abridgment for the use, on the territory of the same country by the national minorities, whatever or whomever these might be, of their own languages or dialects. More so, after

the revision of the fundamental normative act it has been created the possibility for the Romanian citizens that belong to a national minority to use their own language in front of a court of justice and that this would not limit the judicial procedure that undergoes in the official state language.

Both at the moment the present fundamental law was adopted as well when it was revised, Romania was not yet a member of the European Union. According to European regulations, the official language of each member state keeps this quality within the union and this confers a new status for the Romanian language.

The constitutional provisions concerning the impossibility of revising this characteristic are absolutely natural and pertain to an elementary simple legal logic for once the state characteristics are consecrated, as previously detailed, adding the official trait to the used language falls within the same normative intercede and the same effects over time, more specifically the impossibility of revisions the status of official language the Romanian language has. Beyond any circumstances, the existence of an official state language does not restrain the right of foreign citizens and of persons that do not have any citizenship to use, on the territory of our state their own language, as it does not restrain the right of Romanian citizens to learn and use any foreign language. The official character that the Constitution acknowledges for the Romanian language implies drawing up procedures and documentations at institutional levels taking into consideration this fact. This is not specific solely to Romania and other world state, at their turn position the official language in the interactions between institutions and citizens.

To sum up, the fundamental text expressly provides for the interdiction to revise four characteristics of the Romanian state as well as five other supreme values protected through the fundamental law. In order to ensure the respect of human rights, an institution with such attributions has been expressly constituted in our state. The main activity of the Constitutional Court is to verify, at all times, whether the fundamental text is complied with when new legal provisions are adopted or in case these are applied in a defensive procedure, in this second hypothesis, called exception of unconstitutionality. Concerning the compliance with the interdiction to modify the provisions that represents limitations of revisions, the Court will always maintain a clear and trenchant standing and will defend these. On the other hand, since these provisions refer to obvious aspects that do not leave any room for interpretation, any initiative for a constitutional law is highly unlikely to be promoted to this end because this would be the equivalent of a violation of the law and the public opinion would be difficult to convince to accept the violation of the provisions of the fundamental law. We have to keep in mind that, in the end, the electorate body has the final word through the referendum that needs to be organized in order to approve any alteration of the fundamental law, as a mandatory step in the revision procedure.

Taking into consideration the second paragraph of the constitutional article that expressly sets the limitations of revisions, we deduce a fundamental legal provisions that refers to aspects that are not determined but, nonetheless, a part of the fundamental law. According to this paragraph, no fundamental right or freedom can be eliminated or the guarantees that derive from complying with these rights can be abolished. Fundamental rights make up almost an entire title of the supreme law. An enumeration of these, in accordance with their nominalization in the constitutional text, includes: access to culture; right to be elected; right to be elected in the European Parliament; right to associate; right to private property; right to defense; right to go on strike; right to information; right to

education; right to health care; right to a healthy environment; right to inheritance; right to life and physical and mental integrity; right to petition; right to vote; right of the person injured by a public authority; family; interdiction of forced labor; inviolability of residence; freedom of movement; freedom of conscience, freedom of speech; economic freedom; individual freedom; freedom of gatherings; work and social protection of work; standard of living; protection of children and young persons; protection of persons with disabilities; secret of correspondence; private, family and intimate life. All these rights have a fundamental nature and therefore, as it is precisely mentioned by the constitutional text, neither can be eliminated from its provisions. In the same time, all set guarantees concerning them must be maintained to the letter. This last mention seems to be extremely useful because it is possible, without abolishing the right itself so complying with this particular constitutional limitation, to bring through a revision law a limitation to the possibilities that the holder of a certain fundamental and subjective law has by changing the prerogatives granted by that right according with the initial regulation. The Romanian fundamental law contains even provisions that concerning the restraint of the exercise of certain rights in special situations (for example: protection of national security, calamities or disasters) or other situations according with article 53. The restraint of the exercise of certain freedoms, such as the contractual one if the restraint is done outside the limitations of the mentioned article, will attract the unconstitutional character of the normative act that would regulate such a restraint of a fundamental right. (Dănișor DC & Dogaru & Dănișor G, 2008, p. 532).

For the purpose of protecting fundamental rights, especially in relations between individuals and the state or state authorities, a special institution has been created, with according attributions, after the model of other European states and also functional at European Union level and this is the Ombudsman, regulated through the constitutional provisions. The functioning process of this entity represents an additional guarantee of compliance with citizen rights. However, I find it hard to be acceptable the fact that, although individual rights have gained fundamental character, they are also mentioned in the organic legislation or provided for in international provisions or treaties and there is still much talk about not respecting them exactly as they have been formulated in the legal texts. Without commenting whether this really happens or not, the great volume of clues of such a behavior and the resulting consequences raise, however, some questions concerning the efficiency of the existing legal instruments even if, as we have already stated, these seem to be enough and have considerable legal force.

On the issue of the moment that can be chosen to make legislative interventions upon the present text of the constitution, the last paragraph of the article that sets the limitations for revising the constitution refers expressly to three situations that are incompatible, as chronological associations, with any step of the procedure for revisions the fundamental law.

According to this paragraph, during war or under a stage or siege or emergency, under no circumstances can be carried out technical – legislative operations to revise the supreme law, regardless of the legal institutions or provisions that are meant to be revise. In other words, during periods of time having a profound uncertainty or threat character interventions upon the fundamental law are not permitted. The logic behind this interdiction is a very well chosen one, since during times when the individual rights suffer restraints in their exercise the intervention upon the constitutional legislative framework

would be anything but democratic. It is nonetheless true, and history proves this in so many cases, that during uncertain times the existing rules and compliance to these have not always formed a principle to be taken into account. It would be best that during situations as these, those invoked remain at a hypothetical level for the will of the nation, and not only the nation we belong to, is not to reach a point of armed conflicts or other types of disputes.

After analyzing some aspects of comparative law we can delineate a vast appreciation of what entails not only constitutionalism in other states but also what the procedures are and limitations for revising the fundamental texts of other state, with consecrated democratic regimes. So, the supreme law adopted in Italy, two years after the end of the last planetary war, a single limitation for revision is provided for expressly. The form of government, in this case the republic, cannot be subject to revision through constitutional laws. Besides this, there are no other particular limitations that would make rigid the alteration in time of the supreme law. Solely under a procedural aspect, the constitutional project must be adopted separately by each parliamentary chamber, at a certain time interval, and the possibility of validating the revised provisions through a referendum is also provided for (Constitution of Italy from 1947, articles 138 and 139). The Spanish supreme law does not, either, restrain the possibility of modifying the constitutional text and the regulations concern the procedure of adopting and the political-social context. Therefore, during times of war or other such states: exceptional, siege or emergency, the fundamental law cannot be amended (Constitution of Spain from 1978, articles 116 and 169).

The Constitution of Romania turns in 2016 a quarter of century from the moment of its adoption. Since it has been revised only once, we can state that in comparison to some of the other normative acts that preceded it, it represents a fundamental legislative document enjoying a great stability. Along the time, we have had constitutions that underwent more than 10 revision procedures or yet others that only remained in force for a few years. Under a certain characterization, the political and legal stability of a state is determined by its constitutional stability. It is recommended for the supreme law not to undergo revision or abolishment procedures often, but it is not less true that the phrasing *state evolves in the same pace as law* is reflected also in the periodical need to harmonize legislation with social needs and tendencies. Therefore, periodically, certain legislative adjustments are imposed, including at the level of the fundamental law. We point out that, no long after the present constitution entered into force, there were talks of modifying it, materialized 12 years after its entering into force. Then, after its revision, in a short period of time, the perspective of certain new modifications started to be the subject of debate in both social and political media and perhaps even of a potential abolishment and elaboration of a new supreme law. The arguments invoked consisted of the fact that the limitations of the present constitution are too wide and do not allow the evolution of the state according with certain tendencies.

Certainly, there will still be made interventions upon the present constitutional text if the choice of the legislative authority or of the population will be to maintain the constitution presently in force. At shorter or longer time intervals such legislative interventions are necessary. Regardless of how good a normative act is drawn up, at a certain moment in time it becomes possible for it to no longer be appropriate to the new realities or requirements of the society. More so, any law can objectively or not be

characterized by contradictory contents, by situations that are not regulated through legal provisions, are lacunar or difficult to interpret (Mihai, 2008, p. 336). If the decision will be made, at a certain point in time, to abolish the constitution, under a historic analysis, the Constitution that followed the 1989 revolution will be placed next to the one from 1923 as one of the fundamental law having a profound democratic character. Each supreme law has its specificity, especially if we take into account the social, political and historical context it was elaborated in. Criticized or applauded, Romania turns in 2016 exactly one and a half century of authentic constitutionalism and this fact cannot be denied. We are a state that, regardless of the historic circumstances, for 150 years has had a stable legislative foundation, although many times influenced by different factors, including external ones, and thus has succeeded in maintaining, against odds, the idea of constitutionalism and the durability of Romanian constitutionalism throughout the decades.

CONCLUSION

Considering that a basic law (a constitutional form) is hard to review by procedures prescribed by the regulatory text itself, it is a guarantee of the constitutional regime. Without such a foundation, virtually every political force would have got the power to amend the supreme law. Very complex procedure discourages initiatives without substance, so that they are completed must have strong political support, 2/3 or even three quarters of all lawmakers or citizens' broad support.

On the other hand, the need to amend the supreme law is a natural possibility. Society evolves and priorities or social needs are reassessed. Then generations addressing people, unlike certain events impacting life, so the

legal generic set by their predecessors might seem to be considered inefficient or obsolete. However, to preserve certain values, the Romanian supreme law as the Italian or Spanish limited legal institutions for changing. Without being reversed, which are outlined in this material, in basically they do not subject to public debate too publicized exception being form of government chosen point on which I have already pronounced.

Beyond the political and electoral guarantees, manifested in the parliamentary occasion, the adoption of a constitutional law and beyond the position flexible or inflexible on some possible amendments to the supreme law, the Constitutional Court found that a specialized unity should be verifying the constitutionality of laws and implicit defense amending the law limits fundamental. Political and jurisdictional institutions should have the if this institution will be effective and Constitution may be revised whenever desired, observing in detail the procedures and restrictions amending defaults. There is no question that the current Constitution of Romania will be changed, but eventually when will this happen, and also deduce although the law doctrine constitutional that the constitution must be stable and sustainable over time, I although embrace the same opinion, I do not see as impossible to bring into discussion the possible eight Constitution.

REFERENCES

- The Romanian Constitution
- The Italian Republic Constitution, translation by Alexandrina Popescu, All beck Publishing House, 1998, art. 138, 139
- The Spanish Constitution, translation by Mihaela Prisăcaru, C.H. Beck Publishing House, 2006, Bucharest, art.116, 169
- Dănișor, Dan Claudiu; Dogaru, Ion; Dănișor, Gheorghe, *General Theory of Law*, C.H. Beck Publishing House, 2nd edition, Bucharest, 2008, p. 532
- Mihai, Gheorghe *Foundations of Law: Probation in Positive Law*, vol. VI, C.H. Beck Publishing House, Bucharest, 2008, p.336
- Muraru, Ioan; Tănăsescu, Elena Simina, *Constitutional Law and Political Institutions*, vol. II, C.H. Beck Publishing House, 12nd edition, Bucharest, 2006, p.252
- Năstase, Adrian, *European Romania: a Social-Democrat Political Project*, MondoMedia Publishing House, Bucharest, 2007, p.200,
- Titulescu, Nicolae, *Essay on a General Theory of Eventual Rights*, C.H. Beck Publishing House, Bucharest, 2008, p.65
- Velicu, George, *Defense and Armed Conflicts Right*, Sitech Publishing House, Craiova, 2008, p .262
- Vida, Ioan (2012), *Legal Technique: Introduction in the Theory and Technique of Legislative Procedure*, Universul Juridic Publishing House, 5th revised edition, Bucharest, 2012, p.140
- <https://www.ccr.ro/Verificarea-constituionalitii-iniatiivelor-de-revizuire-a-Constituiei> (accessed 21.04.2016)
-
-
-