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THE CONSTITUTIONAL REFORM IN ROMANIA

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The Constitution is, par excellence, the fundamental law, the legal and political settlement of a state. All other normative acts must be so designed that they do not contravene the Constitution. Therefore, between the Constitution and other normative acts there are some differences that highlight the supremacy of the Constitution. The constitutional revision can be supported and initiated when the social realities are changing, and these changes are so significant that some constitutional provisions no longer meet the reality or they tend to stifle real life in social relationships that are rapidly developing and changing.

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INTRODUCTION

In the Romanian history and legal language, decisions which ensured political order were placed under various names such as: solid laws, fundamental laws, establishment, codex, regulation, constitution or constituent¹.

By mid-nineteenth century, different concepts were used, until, in 1866, the solution of a constitution was imposed. In everyday language, the term represented a compromise between the various Romanian political views, a feature that disappeared in the Constitution, as recast in the years 1938-1991.

The Constitution, as a written set of rules, an upper customary law, absolutely necessary for a state, was elaborated in the socio-political environments of the Principalities, by differentiating and crystallising some fundamental principles. In the center of the linguistic, historical and political

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¹ Edda Binder Iijima, *The Concept of Constitution in the History of Romanian Thinking*, in V. NEUMANN, A. HEINEN, ROMANIA'S HISTORY THROUGH CONCEPTS 299 and subseq (Polirom Publishing House, Bucharest 2010).

debate regarding the constitutional system in Moldavia and Wallachia, respectively in Romania, the focus was on the fundamental principles of the state. The first attempt at administrative reorganization was due to the Cărvunarilor Constitution of 1822. A first step in the formation of the Romanian nation and of the state was the Constitution of 1866. With it, the concept of Constitution becomes a part of the daily social-political languages.

The evolution of the Romanian constitutional thinking was done in response to the fundamental laws of the state imposed from the outside, as a reaction to concrete political consequences thereof. The period between 1821 and 1866 is characterized by the development of two complementary avenues on the evolution of the thinking and the drawing up of the Constitution²:

One-way is the claims of the middle and lower-ranking nobles in terms of participation in political life. The development of political awareness in this part of the nobility was due to their more frequent contacts with the West and the studies abroad, especially in France, which facilitated the assimilation of modern political and legal concepts and the practical lessons about developments.

The other direction on the development of the drafting of the Constitution was due to the intervention of the Great Powers. First, Russia has codified through several agreements with the suzerain power³ the constitutional principles of the rule of law for Moldova and Wallachia, therefore imposing to them the Organic Regulations (1831/1832)⁴.

The Constitution of 1866 met the criteria of a basic law, as it has been passed by the sovereign people represented by the Constituent Assembly. The Belgian constitution was the model: its attractiveness lies in the success of the introduction in Belgium of a constitutional monarchy with a foreign ruler. The Constitution of 1866 was a European document; it placed the country among the constitutional states of the continent. Developed by respecting the principle of the sovereignty of the people, the new Constitution stipulated a bicameral regime of the representatives and the separation of the powers of the state, defined the decision-making powers of the institutions of the state, regulated the access to power and guaranteed civil rights. The radical liberals, the conservatives from the middle and lower nobility, as well as a group of intellectuals and craftsmen have secured access to government. Although they ended the traditional power of the boyars, they excluded from power two social strata, Jews and peasants.

² Edda Binder Iijima, *op. cit.*, at 303.

³ Convention of Akkerman in 1826 or The Peace from Adrianopol in 1829.

⁴ Later, the Great Powers would take over the task of reorganizing the Principalities by Paris Convention in 1858.

Despite its progressive elements, it can be said that the fundamental law of 1866 implemented an exclusive “national code”, by which discriminations were stated based on religion and social inequality.

The Constitution was modified in 1879, 1884 and 1917. The new Constitution in March 1923 essentially took over the decisions of the 1866 Constitution. The absence of a political consensus in case of the 1923 Constitution was seen in the crisis of the royal house (1926), in the return of Carol II (1930) and in the legal system, through radical and violent actions of the Legionnaire Movement.

The crisis of the state and of the society in the 30s led to the drafting of the new Constitution of 1938, decreed by Carol II, which was a violation of the basic principles of the constitutional idea from 1866. A separation of powers no longer existed; the authority and decision-making power were concentrated in the hands of the king. As a historical model, it referred to the constitutional project of Alexandru Ioan Cuza in 1863, which stipulated the government only through the Prince and the legitimacy of the new order directly through people (call for plebiscite). The Constitution of Carol II was suspended due to the 1940 territorial concessions to the Soviet Union and Hungary and with leaving of the political scene by its author.

General Ion Antonescu ruled Romania from 1940 to 1944 in the absence of a Constitution and in a provisional state legislature. Following the decision of the king Mihai I arms were turned against the fascists, and a royal decree in August 1944 formalized the old Constitution of 1923. Its provisions on the separation of powers and the guarantee of civil rights were undermined again in 1947, after the fraudulent takeover of power by the communists with the support of the Soviet Union. The abdication of King Mihai I opened the road to the proclamation of the Romanian People’s Communist Republic.

The Constitutions of 1948, 1952 and 1965 meant a paradigm shift in terms of content, language and semantics of the constitutional text, also imposed and controlled by the exertion of external pressure. The concept of Constitution has been preserved, but its meaning altogether targeted a different political and social reality for the Romanians. The reassessment of the concept of a Romanian nation was made in the 1965 Constitution by unbundling the principles of the socialist internationalism and of the Soviet claim to authority. This repealed the autonomous rights of the minorities and postulated an indivisible and inalienable state territory.

I. THE 1991 CONSTITUTION—ELABORATION, ADOPTION AND APPROVAL

After the Romanian Revolution of December 1989, in the political and

legal process of rediscovery and revival of parliamentary we can distinguish two periods: before the elections of 20 May 1990 and after the convening of the Constituent Assembly, resulting from these elections⁵. In the first period, the beginning is the creation of National Salvation Front, as a result of the popular uprising in December 1989. Following the decision of the National Salvation Front to transform into a political party, it changed the name of the National Salvation Front Council in the Provisional Council for National Unity⁶, in February of 1990. The main act of the Provisional Council was the Decree-Law no. 92/1990, which covered the main authorities of the political regime—the bicameral Parliament consisting of the House of Representatives and of the Senate, the Romanian President elected by universal, equal, direct and secret, freely expressed ballot and the Government, of a parliamentary origin, as well as the electoral system based on the principle of proportional representation⁷.

After the Romanian Revolution of 1989 that overthrew the totalitarian communist regime, the Constituent Assembly established by elections of the House of Representatives and of the Senate⁸ approved the establishment of a Commission for drafting of a draft of the Constitution⁹, for the adoption of a new fundamental law that reflects the profound changes in the political, social and economic order, by establishing a new democratic system, a

⁵ MARIAN ENACHE, *PARLIAMENTARY DEMOCRACY* 46 and subseq (Universul Juridic Publishing House, Bucharest 2012).

⁶ For a broader development, see Marian Enache, *Mihai Constantinescu*, in *THE REBIRTH OF PARLIAMENTARY IN ROMANIA* (Polirom Publishing House, Bucharest 2001).

⁷ Decree-Law no. 92/1990 for the election of the Parliament and the President of Romania, published in the Official Gazette of Romania, Part I, no. 35 of 18th of March 1990, repealed by Law no. 69/1992 on the election of the President of Romania, published in the Official Gazette of Romania, Part I, no. 164 of 16th of July 1992, in turn repealed by Law no. 370/2004 on the election of the President of Romania, republished in the Official Gazette of Romania, Part I, no. 650 of 12th of September 2011, with subsequent amendments. Decree-Law no. 92/1990 was, in fact, a small constitution, an act of constitutional character that foreshadowed some of the principles of the state organization established by the 1991 Constitution, such as the bicameral structure of Parliament and the principle of separation of legislative, executive and judicial powers.

⁸ On 20th of May 1990, Romania's bicameral parliament held its first free elections after the communist period, in accordance with Decree-Law no. 92/1990 for the election of the Parliament and the President of Romania, issued by the Provisional Council of National Union and published in the Official Gazette of Romania, Part I, no. 35 of 18th of March 1990. Decree-Law no. 92/1990 was repealed by Law no. 69/1992 on the election of the President of Romania, published in the Official Gazette of Romania, Part I, no. 164 of 16th of July 1992.

⁹ By Decision of the Constituent Assembly no. 1/1990 on the Regulation of the Constituent Assembly, republished in the Official Gazette of Romania, Part I, no. 42 of 2nd of March 1991, with subsequent amendments. The Commission was established on the basis of the existing political algorithm which resulted in the Constituent Assembly after the parliamentary elections of 20th of May 1990. Thus, the Commission was composed of 28 members, including 13 representatives of the F.S.N., 2 representatives of the P.N.L., 2 representatives of the U.D.M.R., 1 representative of the P.N.Ț.-C.D., and representatives of the national minorities and of the main universities in the country.

political pluralism, the separation of powers, the recognition and respect for the rule of law, as well as for the rights and freedoms of citizens.

After initially approving and improving the theses of the Constitution by the Constituent Assembly, the Constitution draft drawn up by the commission was presented in a final form for the discussion of the political forum that, through amendments made by all political parties, adopted the Constitution on 21 November 1991, subsequently submitted to the approval of the popular referendum¹⁰ on 8 December 1991. With 8,464,624 (77.3%) votes out of a total of 10,948,468 participants, Romania's new democratic Constitution was ratified and entered into force on the same date¹¹.

Since the Revolution of December 1989, Romania finally broke ties with the communist-anachronistic structures; the new country's constitutional edifice inherently rejects the existence of a single party, opposes any monocratic tendency of a dictatorship and leaves no chance for distortion of the political and social space with totalitarian leadership methods.

The new Constitution, stemming from constitutional Romanian traditions, is anchored in the modern concepts of contemporary constitutional law and of public international law. The genesis and the legitimacy of the new Constitution is the very Romanian Revolution of 22 December 1989. The Constitution as a whole, promotes the rights and freedoms of citizens, on the assumption that the ratio between what should be allowed in a democratic society and what should be prohibited is ordered by the common good.

The fundamental act approved by Parliament includes not only a broad repertoire of the rights and freedoms of citizens, including the right to private property, but also a whole arsenal of political and legal guarantees.

Within the system of public authorities, the bicameral structured Parliament, constituting a fundamental center of the political and legislative power, has, in the economy of the constitutional provisions, a distinct place with differentiated tasks, enabling it to exercise the functions of control and regulation as a representative organ of the nation, resulted from free elections.

The Romanian presidential institution is an essential component of the Executive and a symbol of national unity, in which the President, being elected directly by the people, for a limited time, through the independence from political parties, becomes a mediating factor in the functioning of State

¹⁰ The organization and the holding of the national referendum on the Constitution of Romania was regulated by Law no. 67/1991, published in the Official Gazette of Romania, Part I, no. 236 of 23rd of November 1991.

¹¹ Data provided by the Statement of the Central Electoral Bureau on the outcome of the national referendum on the Constitution of Romania, which took place on 8th of December 1991, published in the Official Gazette of Romania, Part I, no. 250 of 14th of December 1991.

powers and of the society.

The Government, an authority conducting domestic and foreign policy of the country, acts under the direct control of Parliament representatives who, through specific means of control, sanction the potential excesses of the Executive.

Local government observes the principles of local autonomy and of the decentralization of public services, enabling local communities to develop their own power to administer specific interests, within the framework of free elections.

For the third of the state powers, the judiciary, constitutional rules are intended for it to stand, unequivocally, under the coordinates of the rule of law¹².

For the Army, a decisive factor in the victory of the Revolution and a stability pillar of our democracy, being completely depoliticized, by making it subordinate solely to the will of the people, it was given, by the new Constitution, the well-deserved dignity and honor.

The freedom of speech in the Romanian society is no longer a crime, severely repressed, but a means of expression of opinions, attitudes and beliefs that converge towards raising the quality of the education and of the social awareness.

A distinctive feature of our Constitution is that it has organically integrated useful institutions of modern constitutional law. Thus, in the system of the guarantees of the citizen's rights was set the institution of the Ombudsman, a legal figure inspired by the Swedish Ombudsman, which has spread to many countries of the world. The Constitutional Court should also be highlighted and its role as a guarantor of the supremacy of the Constitution.

During the time when the 1991 Constitution was applied until the 2003 review, we could find that its provisions have proven fully viable, contributing to the formation of a new political system in Romania, a new constitutional and legal order in which the institutions, the structures and principles of the rule of law, the market economy based on the free enterprise, as well as the recognition and the guarantee of the rights and freedoms of citizens were perceived and rooted in the public consciousness.

Some of the main features that characterize the 1991 Constitution are as follows:

- the principle of non-retroactivity of the law was included for the first time in the Constitution, giving it a constitutional standing;

¹² The rule of law, the independence and the tenure of judges, the establishment of the Public Ministry, the authenticity of the rights to defense are some of the constitutional guarantees in the sphere of the justice enshrined in the supreme values of the Romanian society.

- the regulation of the Ombudsman¹³;
- the regulation of the Constitutional Court and of its role as guarantor of the supremacy of the Constitution;
- the regulation of the Economic and Social Council;
- the regulation of the Superior Council of Magistracy and the guaranteeing, in this way, of an independent judiciary;
- the constitutionalising of the law, reporting of all ordinary legislation to the requirements, values and imperatives of the Constitution. It is noteworthy the influence the Constitutional Court (a first), after the European model, which ensures the supremacy of the Constitution in the relations between public authorities and by checking the constitutionality of laws by *a priori* and *a posteriori* control. The jurisprudence of the Constitutional Court is relevant in this regard.

II. THE REVIEW OF THE CONSTITUTION IN 2003

The issue of constitutional revision is first a matter of policy and legislative drafting practice and, later, a purely doctrinal one. The constitutional revision can be supported and initiated when social realities are changing, and these changes are so significant that some constitutional provisions no longer correspond to reality or they tend to stifle real life as it regards to rapidly developing and transforming¹⁴ social relationships.

Since the adoption of the 1991 Constitution and until its review in 2003, the Romanian state and society have developed in a European-style constitutional democracy. In 2003, the Romanian people expressed its decisive option of an integration into the Euro-Atlantic structures.

In those circumstances, the operation of reviewing, amending texts of the 1991 Constitution became necessary. The 2003 revision was aimed essentially at introducing specific regulations to allow Romania to join the European Union and NATO. The drafting Committee¹⁵ of the text to revise

¹³ Given correspondent in the institution of the European Ombudsman.

¹⁴ MARIAN ENACHE, *THE REVISION OF THE CONSTITUTION* 9 (Universul Juridic Publishing House, Bucharest 2012).

¹⁵ *The Committee to Develop the Legislative Proposal on the Revision of the Constitution* was established under Parliament Decision no. 23/2002, published in the Official Gazette of Romania, Part I, no. 453 of 27th of June 2002, and was made on the basis of the political algorithm of 21 deputies and senators with voting rights (9 were designated by the P.S.D. Parliamentary Group, 5 were designated by the P.R.M. Parliamentary Group, 2 each were designated by the P.D. Parliamentary Group, by the P.N.L. Parliamentary Group and, respectively, by the U.D.M.R. Parliamentary Group, and the Parliamentary Group of the National Minorities appointed one deputy), a member of the Government (Acsinte Gaspar – Minister for Relations with the Parliament), a representative appointed by the President Romania (Mihai Constantinescu – presidential advisor) and the Ombudsman (Ioan Muraru).

the Constitution and the Revision Assembly did not limit themselves only to this end, and they proposed the reconsideration of other texts of the 1991 Constitution, adopting new solutions on the organization of public authorities, as well as some new mechanisms and procedures for their operation.

Obviously, the Revision Assembly was held to observe, in their efforts to amend the Constitution, the imperative limits¹⁶ expressly provided for in Art. 148 of the Constitution of 1991. We present below the main changes to the Constitution brought by the Law on the revision of the Constitution no. 429/2003, approved by national referendum¹⁷ on 18-19 October 2003.

Access to culture was guaranteed. A new category of rights was introduced: the freedom of the individual to develop his spirit can not be restricted; the state must ensure the preservation and promotion of cultural spiritual identity of Romania in the world.

Also introduced was the right to a healthy environment, ensuring the legislative framework for exercising this right.

With regard to political rights, candidates for particular functions of the representative institutions of the state have to be at least 23 years of age for the Chamber of Deputies, at least 33 years for the Senate and at least 35 years for the President. Before this change the minimum age for candidacy for the position of senator and of President was the same, namely 35 years.

Employers' organizations have received constitutional recognition and are treated equally with the unions. Also, guaranteeing the right to work remained in its liberal version of freedom of choice, and not in the social-democrat one, as the obligation of the state to ensure a job for each person; social protection measures were supplemented with professional training.

Private property is guaranteed, the expropriation based on ethnic, religious, political or other criteria is prohibited; before the review, the constitutional provisions were limited the protection of this right.

Free access of persons to an economic activity, free enterprise, and their exercise under the law shall be guaranteed, and citizens are entitled to all forms of social insurance, public or private, as well as to the measures of

¹⁶ The provisions on the national, independent, unitary and indivisible character of the Romanian State, the Republican form of government, the territorial integrity, the independence of the judiciary, the political pluralism and the official language shall not be subject to revision. Also, no revision shall be made if it results in the suppression of rights and freedoms of citizens or of their guarantees. The Constitution can not be revised during a state of siege or emergency, or in wartime

¹⁷ The results of the national referendum were confirmed by the Constitutional Court Decision no. 3/2003 to confirm the result of the national referendum of 18th-19th of October 2003 on the Law amending the Constitution of Romania, published in the Official Gazette of Romania, Part I, no. 758 of 29th of October 2003.

social assistance according to law, a change which allows the express existence of private social insurance forms along with public ones and mentions distinct social assistance measures.

Disabled persons shall enjoy special protection, the state ensures the rule of a national policy of equal opportunities, prevention and treatment of disability, for the effective participation of people with disabilities in community life.

Military Duty for Romanian citizens was regulated by an organic law, and the compulsory nature of military service was eliminated.

The Ombudsman can be seized only with requests from individuals and not from businesses; he shall be assisted by two deputies; the term of office was extended from 4 to 5 years, and the task of his appointment was given in the competence of Parliament as a whole, whereas some of these provisions are already contained in the organic law governing the organization and functioning of the Ombudsman.

The minimum number of citizens who can initiate a legislative proposal has been reduced from 250,000 to 100,000; this change is part of the general trend of the constitutional revision in 2003, which wanted to create an environment favorable to participation of citizens in public life.

Legal documents and procedures before local authorities can be achieved in minority languages, in accordance with the provisions of a future organic law.

The right to vote in local elections and in those held for the election of the European Parliament was granted to all EU citizens resident in the country, after Romania's accession to the European Union; this provision was necessary and mandatory for all candidate countries for the accession to the European Union, under the *communautaire acquis*, which has to be accepted and applied as such from the beginning by countries wishing to join the European Union.

The Romanian state is based not only on the unity, but also on the solidarity of the Romanian people; the change on social solidarity can be justified by the increased importance given to the concepts of solidarity and social protection under the European construction and integration.

The differentiation of competencies of both Houses of Parliament and the slight decrease of the areas where joint sittings are mandatory, together with the abolition of the mediation procedure, were accompanied by the setting of time limits for the examining of the draft law in the first reading (45 days for ordinary laws and 60 days for codes of a larger scale). If these limits are exceeded, the draft laws will be considered as tacitly adopted and will be automatically sent to the other House for debate; the second

Chamber shall decide definitively on that bill; the domain of the organic law seems a little low; the differentiating of competencies of both Houses is an important step and technical changes related to enactment are likely to expedite the procedure of adoption of laws, while offering prompt solutions for any bottlenecks that might arise due to the maintenance of the Parliament bicameral structure. The delimitation of competencies of both Houses can not be regarded as a success, as practice has shown that in many cases it can actually reach a decision of the lawmaking Chamber, considering that legislative initiatives are adopted tacitly by the first Chamber notified.

Laws shall be published in the Official Gazette of Romania, Part I and come into force 3 days after their publication and not on the date of publication. This change is very important, since it enabled a better enforcement of laws, avoiding certain situations produced in the past in which judges and court hearings entering first thing in the morning could not objectively be familiar with laws, new or modified, which were published in that day and were applicable in cases to be decided by them.

The duration of the presidential mandate is different from that of the 4 years parliamentary term, and it is of 5 years. This change occurred during the debates in the Chamber of Deputies, the Senate agreed with it, and it is important to ensure continuity of the idea of state institutions.

Impeachment of the President may be decided by the Chamber of Deputies and the Senate in joint session, with a two thirds majority; it causes the suspension of the President; the court jurisdiction belongs to the High Court of Cassation and Justice; this change was required to the extent that the procedures relating to the liability of the President were not specified, the applicable rules being, *mutatis mutandis*, those on members of the Parliament.

The changing of the composition of the Government, which entails a change in its political structure, can be made only with the approval of Parliament, on the Prime-Minister's proposal, with the appointment of new ministers by the President of Romania. The President can not however propose the changing of the Prime-Minister; this addition was intended to preserve the semi-presidential essence of the Romanian political system, through participating in any decision on the structure of the Government of both the Prime-Minister and the President, with the mandatory approval of Parliament.

Either of the two Houses of Parliament may adopt simple motions that outline their position on issues of internal or international policy or on issues that were the subject of an interpellation.

Government liability for a bill only lead to the adoption of that draft amendments proposed by Parliament and accepted by the Government.

The adoption of emergency ordinances is allowed only in exceptional cases that can not be postponed, but the Government must justify the urgency. However, if the first Chamber notified with the approval of such ordinances does not adopt it within 30 days, the ordinance shall be considered adopted and will be forwarded to the second Chamber. Parliament will have to debate in an emergency procedure such an ordinance; this change was necessary in the context of Romanian legislation, where legislative instability was accompanied by primary regulatory powers that the Government had, and sometimes abused, but was poorly made.

Local government is based on the principles of autonomy and decentralization. The Prefect leads the decentralized services of ministries and of other central authorities in the territory; between the prefect and the local councils and mayors there are no subordination relationships.

The appointment of judges and all other decisions relating to their career will be proposed to the Romanian President only by the Superior Council of Magistracy. The Supreme Court became The High Court of Cassation and Justice and ensures the uniform interpretation and application of the law by all courts.

As we said above, the 2003 review aimed essentially at introducing specific regulations to allow Romania to join the European Union and NATO. These resulted in Title VI of the Romanian Constitution, republished, respectively in art. 148 and 149. From a legal perspective, a country's accession to the European Union requires ratifying several international treaties, generically named by the Constitution as constitutive treaties of the European Union. Prior to the revision of 2003, the Romanian Constitution had general provisions on the ratification of international treaties¹⁸ and special provisions regarding only the just interpretation and application of treaties on international human rights¹⁹, but did not include provisions on the statutory transfer of state powers to international organizations or on the joint exercise with other countries of competencies

¹⁸ Art. 11 of the 1991 Constitution stated on para. (1) that "The Romanian State pledges to fulfill as such and in good faith its obligations as deriving from the treaties it is a party to", and on para. (2) that "Treaties ratified by Parliament, according to the law, are part of national law".

¹⁹ Art. 20 of the 1991 Constitution stated on para. (1) that "Constitutional provisions concerning the citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the covenants and other treaties Romania is a party to", and on para. (2) that "Where any inconsistencies exist between the covenants and treaties on fundamental human rights Romania is a party to, and internal laws, the international regulations shall take precedence".

specific to state sovereignty. This objective was achieved through art. 148, which establishes specific procedural rules for the ratifying of such treaties. Given the nature, the scope and the specifics of the international organization concerned in case of art. 149 of the Constitution of Romania, republished, Romania's accession to the North Atlantic Treaty is fundamentally different from the joining to the European Union; in fact, the objectives pursued by the Romanian state in the two situations are different. However, the constituent power provided for the same type of special procedure for the accession to the European Union, namely the ratification of an international treaty by adopting a *sui generis* law in the joint session of the Parliament, with a majority of two thirds of Senators and Deputies.

The application of the revised Constitution in 2003 meant in some ways a breakthrough, but there were also some failures that have later generated new objections and debates, which set again the question of a new revision of the Constitution, both among politicians and specialists and among the public opinion.

CONCLUSION

The temptations for a constitutional revision have not stopped among governors, politicians, or public opinion. Many promoters of the idea of a permanent revision of the Constitution believe that policy failures in all fields were caused by imperfections of the Constitution. Therefore, for example, there are civil society groups that initiate independent projects on the revision or even on the adopting of a new Constitution, which they propose on a large audience for discussion (e.g. The Constitution of the Citizens²⁰ or The Constitution of the Citizens-version Cojocaru²¹).

We recall here that the last attempt to revise the Fundamental Law by members of Parliament was initiated by Parliament Decision no. 17/2013 on the establishment of the Joint Commission of the Chamber of Deputies and of the Senate for drawing the legislative proposal to revise the Constitution of Romania, published in the Official Gazette of Romania, Part I, no. 95 of 15 February 2013, with subsequent amendments. Thus, the composition of the Commission was established (23 deputies and senators belonging to the entire political spectrum), which has as a mission to finalize the objectives and the theses on the revision of the Constitution, based on proposals received from parliamentary groups, as well as the drawing up of the legislative proposal to revise the Constitution and of the legislative proposal

²⁰ Available at <http://constitutiacetatenilor.blogspot.ro>.

²¹ Available at <http://www.variantacojocaru.ro/?tag=constitutia-cetatenilor>.

on the organization and the conduct of the referendum on the Revision Law adopted by the Parliament. The Commission has effectively started working at the beginning of 2015.

The appetite for a permanent revision of the Constitution seems to dominate both the rulers and the politicians, who fancy too often and obsessive ideal schemes of constitutional revision, even if they are not appropriate or necessary. Is it about a substitution between the objectives of government programs more difficult to achieve and a so-called serious concern to modify an imperfect Constitution as the cause of all evils and failures of governments? Are the governments and a part of Romanian society focused on the exclusive fault of the Constitution, making it responsible for the failures of governments on public policy? Moreover, even if it were so, how are we to explain the failures of the parliaments and of the governments of legislature 2008-2012 and of 2012-2016 legislatures on the constitutional revision?

The new Parliament of Romania, a successful outcome after the 2012 elections of the Social Liberal Union who has achieved a score of 60% of the votes cast²², started out audacious and optimistic for a comprehensive and appropriate review. Currently, members of the Constitution Review Commission formed in 2013, despite the declaration by the Constitutional Court of 26 articles as “intrinsically unconstitutional”, try to recover under other editorial appearances what the Court found legally substantially unconstitutional. Is the contemplation of failure it so intense and is the ambition so great that one should try a proud and awkward enterprise to draw up a draft revision of the missed corpse, which was simply not removed even with the forceps of the Venice Commission?

Must the constitutional revision represent only an idea of improvisation of some partisan groups that alternate in the exercise of state power or a necessity to adopt constitutional solutions which are rational for the adaptation of the evolution of society as a whole? Therefore a reform of a society as a whole must be done at its normal time, neither too early, nor too late, when we are in the presence of determined conditionality of political changes. This is actually the specific difference between the Constitution, the fundamental law of a political order, and a law regulating social relations subsequent to those of a constitutional nature.

About this measure of a job well done, about the causes and the conditions in which constitutions should be revised there are more and more talks in the society, and discussions are held between Romanian specialists

²² Source: <http://www.becparlamentare2012.ro/rezultate.html>.

in constitutional law, political science, sociology and history²³. Opinions expressed in terms of the revision of the Constitution deal with the necessity and appropriateness of such an approach and converge on the idea that the process seems inadequate to the social realities and real needs of the Romanian democracy. Thus, if in the opinion of Professor Ioan Muraru the amendment of the Basic Law should be treated as an action of major responsibility, carried out with the support of the experts in the field, Professor Ion Alexandru argues that the purpose of the revision of the Constitution should be the strengthening of democracy, while Professor Genoveva Vrabie says that a constitutional revision is necessary, but for now, it is not appropriate, and Professor Mircea Criste shows that it should target for the consolidation of a genuine democracy and not some narrow, momentarily changes.

In the opinion of Professor Elena Simina Tănăsescu, any constitutional reform must be based on an analysis of political expediency, but also on a regulatory diagnosis and prognosis. In those circumstances, one might find that “sometimes it can be better not to alter the constitutional provisions that raise practical problems if it turns out that those are precisely the guarantees of the democracy and of the rule of law and the most effective ways of limiting the arbitrary power”²⁴.

The conclusion that emerges is that a new attempt to amend the Basic Law is not consistent with the current priorities of the Romanian society. Obviously, we always have to balance fairly the intense desire of some politicians to stand out and to quickly win the public prestige by the fact of being the authors of the review of the country’s Basic Law (the Constitution), with the imperatives of the constitutional stability of a smoothly, fluent and democratic process and of a truly democratic state.

Even after the 2003 revision, the Constitution of Romania continues to fulfill its mission sufficiently well to provide a framework and a measure for the power manifested in a state, to the extent that it may deserve a greater period of stability, at least until Romania’s political class should show that it understood that the Romanian state has stepped into the modern era through this fundamental law.

²³ See *The Opportunity of the Revision of the Constitution of Romania*, 5 “LAW”—LAW REVIEW 11—30 (2014).

²⁴ See Elena Simina Tănăsescu, *Should We Revise the Constitution of Romania?* 5 “LAW”—LAW REVIEW 11—13 (2014).