CONSTITUTION REVIEW – BETWEEN NECESSITY AND OPPORTUNITY

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Abstract

The present article aims to rediscuss the variables of constitutional revision.

This effort stems from the recent initiatives purporting "to reform the Constitutional Court of Romania" and observations regarding the "major deficit of parliamentary democracy in the legislative procedure", generated by the special procedures of "tacit adoption", "assuming responsibility" and the excess of legislative power on part of the Government, as expressed through ordinances.

Given a constitution needs a certain level of stability and the possibility to adapt to new, political and social realities, this article showcases the procedural rules and limits in relation to constitutional revision.

It selectively presents possible outcomes of a future constitutional revision – stemming from the observation of disfunctions manifested in the functioning of the constitutional-statal mechanism (particularly the parliamentary practice of tacitly adopting bills and legislative proposals and the governmental practices in the field of assuming responsibility before Parliament and of adopting emergency ordinances).

It showcases the constitutional and infraconstitutional framework regulating the organization and functioning of the Constitutional Court of Romania and remarks a recent bill to amend Law No. 47/1992.

Last but not least, it analyses whether constitutional amendments would actually play a part in consolidating the democratic regime of Romania if not paired with a reform of the political elite, reshaping the conduct of the main political and institutional actors.

Keywords: *fundamental right; democratic society; the Constitutional Court of Romania; legal disputes of constitutional nature*

1. Short introductory considerations

The resumption of the topic related to the review of the Constitution - which has been addressed in recent years in numerous specialized articles, is occasioned by the

recent legislative initiative on "CCR reform"[1], respectively by the doctrine comments regarding the "major deficiency of parliamentary democracy in the legislative process", generated by the special procedures of "tacit passing", „assuming responsibility" and by the excess of legislative power of the Government, expressed by G. and GEO[2].

We will not insist on the theoretical approaches of the "notion of constitution" - that etymologically comes from the Latin "constitutio" ("grounding" or "state of affairs"), summing up to invoke only the famous quote from Thomas Paine "each people has the Constitution they deserve and which suits them".

Romania's constitutional development has known several stages, depending on the historical period that the state has gone through.

Constitutional reforms correspond to every historical moment of great importance in the history of the modern Romanian state.

Constitutions have been the witnesses and expressions of the historical transformations that the Romanian society has known[3]. In other words, the constitution reflects the stage of the society development, it represents the "identity card" of a nation.

The Constitution from 1991 represents the rebirth of the national democracy, being appreciated from the perspective of international standards on constitutionalism.

Review of the Constitution of December 8, 1991 - made by Law No. 429/2003[4], approved by the referendum from October 18-19 the same year, was justified in particular, due to reasons related to Romania's accession to the European Union and NATO.

In each election cycle, when political life is "agitated", the need for a constitutional reform is discussed, the need and opportunity to review the Basic Law is discussed, but an assessment of how institutional and political actors have complied with the constitutional rules is omitted.

What should be emphasized - not as a positive note, is that the debates on the need to review the Basic Law do not start from strengthening the constitutional guarantees of fundamental rights and freedoms, from the need to strengthen constitutional democracy, but from the issues generated and analyzed in the laboratories of the parliamentary parties, being used as the topic of an electoral campaign.

Or, *the main objective and purpose of the Constitution review is - and must remain, to strengthen the constitutional democracy and to strengthen the rule of law.*

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[1] See PL-x 675/16.11.2020 – "Legislative proposal on amending and completing Law No. 47/1992 on the organization and operation of the Constitutional Court, available on the website *http://www.cdep.ro/pls/proiecte/upl_pck.lista?std=dz&prn=1*.

[2] See M. Voicu, *The major deficiency of the parliamentary democracy in the Romanian legislative process. Tacit passing. Taking responsibility. Legislative delegation*, in the "Legal Universe" Magazine No. 5/2020.

[3] I. Muraru, *Drept constituțional și instituții politice*, Actami Publishing House, 1998, p. 43.

[4] Published in the Official Gazette No. 758 from 29.10.2003.

2. Exigencies of the Constitution review

Law is and must be connected to history and the social environment.

By virtue of the fact that the objective realities, the political and the social activity are in permanent change and evolution, the legal reality is forced to keep up with the transformations that take place in different fields.

The constitutional provisions make no exception in this regard, especially since they are the expression, on a normative level, of some social realities in dynamics. In this regard, it is clear that the stability of constitutional rules cannot be imposed artificially, as such an approach would become a brake on the evolution of the social relations that these rules just express[5].

Located at the top of the pyramid of all normative acts, the Constitution serves as a benchmark for assessing the validity of all legal acts and facts.

Depending on how it is reviewed, constitutions can be flexible constitutions and rigid constitutions[6].

The Constitution from Romania of 1991 - reviewed in 2003, is a rigid constitution.

The holders of the right of initiative to review the Constitution - The President of Romania, at least one quarter of the number of deputies or senators, at least 500,000 citizens with the right to vote, are limited by art. 150[7], the constitutional text also regulates a series of conditions regarding the exercise of this right.

The procedure for reviewing the Constitution is enshrined in art. 151[8], which provisions were not amended during the 2003 review.

The initiator of the review has the obligation to submit the draft or legislative proposal, together with the opinion of the Legislative Council, to the Constitutional Court before notifying the Parliament.

The checking of the constitutionality of the initiatives for reviewing the Constitution is regulated by the provisions of art. 146 letter a), second sentence of the Constitution and by art. 19-22 of Law No. 47/1992.

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[5] A. Varga, *Constituționalitatea procesului legislativ*, Hamangiu Publishing House, Bucharest, 2007, p. 289.

[6] The classic example of a flexible constitution is the customary constitution, while written constitutions are, as a rule, rigid constitutions.

[7] Art. 150. *Review initiative* (1) The Constitution reviw may be initiated by the President of Romania following the Government proposal, by at least a quarter of the number of deputies or senators, as well as by at least 500,000 citizens with the right to vote. (2) Citizens initiating the Constitution review must come from at least half of the country's counties, and in each of these counties or in the municipality of Bucharest must be registered at least 20,000 signatures in support of this initiative.

[8] Art. 151. *Review procedure* (1) The review draft or proposal must be passed by the Chamber of Deputies and the Senate, by a majority of at least two-thirds of the members of each Chamber. (2) If no agreement is reached through the mediation procedure, the Chamber of Deputies and the Senate, in a joint session, decide with the vote of at least three quarters of the number of deputies and senators. (3) The review is final after its approval by referendum, organized no later than 30 days from the date of passing the review draft or proposal.

The increased procedural requirements enshrined in art. 151 (former art. 147) come to support the stability of the Fundamental Law related to the organic and ordinary laws, and the formal and material limits of the review are enshrined in art. 152 of the Constitution[9].

The constitutional doctrine reveals that the rigidity of a constitution does not preclude its review.

Constitutional rigidity is in fact a technical (constitutional) procedure that is legitimized by the stability over time of the constitution, as its defining feature. And the stability of the constitution is based, in its turn, on the reality that a constitution is a reform, it is the most complex reform, which expression takes time and, why not say, patience[10].

In essence, the balance between the stability and the dynamics of the Constitution must be seen as a guarantee of the constitutionality regime.

3. Necessity and opportunity of reviewing the Constitution

Justifiably, the specialized doctrine emphasized that when drafting the 1991 Constitution, the Constitutive Assembly sought to impose at the institutional level a logic of dispersion of power, but the political reality of the recent years has led to a major imbalance between powers in favor of the executive (in case the President and the Government). And since the Romanian (political) society does not seem to have the necessary antibodies to regulate extranormatively this extreme deviation of the practice towards the Constitution, one solution is to amend the fundamental law[11] (...).

There is no question of the need to amend the constitutional texts, some corrections to the operational levers of public authorities and the mechanisms for interaction between them. but we also believe that the most effective tools for change must be identified.

In other words, as it has been said in the literature, "a review of constitutional texts can be made whenever there is a real need to correlate between social and normative reality, provided that it is done wisely"[12].

[9] Art. 152. *Review limits* (1) The provisions of this Constitution regarding the national, independent, unitary and indivisible character of the Romanian state, the republican form of government, the integrity of the territory, the independence of the judiciary, political pluralism and the official language cannot be the object of review. (2) Also, no review can be made if it results in the suppression of the fundamental rights and freedoms of citizens or of their guarantees. (3) The Constitution may not be reviewed during a state of siege or a state of emergency, nor in time of war.

[10] For details, see I. Muraru, *Constitution review, a major liability action*, in the Magazine „Law" No. 5/2014.

[11] B. Dima, E.S. Tănăsescu, *Government system,* article available on the website *http://www.icj.ro/Materiale_7martie.pdf*.

[12] E.S. Tănăsescu, *Regarding the variables of the Constitution review*, article available on the website *https://www.juridice.ro/243339/prof-simina-tanasescu-despre-variabilele-revizuirii-constitutiei.html*.

There have been initiatives to review the Constitution of parliamentary origin[13], came from the citizens[14], as well as the presidential initiative[15]. These did not lead to passing the laws reviewing the Constitution; some were found to be unconstitutional since they violated the limits of the Constitution review, and others were not finalized in the parliamentary process[16].

The development of constitutions, of constitutionalism in general, represents a continuous phenomenon that can be achieved, mainly, in two main ways, namely the review of constitutions and their interpretation.

At this moment, we are no longer talking only about the texts of the Constitution, but about these texts from the fundamental law, in the interpretation given by the Constitutional Court. It is, therefore, an evolution of constitutionalism that must be taken into account in any present and future process of reviewing the Constitution[17].

What is certain is that at this moment the "health" of the political debate - including on the Constitution review, is a precarious one, fueled by the lack of constructive dialogue between the main state institutions and the current ambitions of the political class.

The Constitution review cannot and must not be the result of the interests and aims of the ruling party. Only when the Constitution review will be a goal to coagulate the parliamentary parties, when a political negotiation will take place between them, could we talk about an opportune moment for the amendment of the Fundamental Law.

The Constitution review should be approached not only from a theoretical perspective - in terms of constitutional regulations, but also in terms of opportunities, political and legal reasons that justify it or not.

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[13] In 1996, regarding art. 41 paragraph (7) of the 1991 Constitution, which regulated the presumption of lawful acquisition of property (Decision of the Constitutional Court No. 85 of September 3, 1996), in 2014, regarding several provisions, in fact the most comprehensive review proposal after 2003 (Decision of the Constitutional Court No. 80 of February 16, 2014); in 2019 regarding the amendment/completion of art. 37, 94 and 115 of the Constitution, in order to transpose the result of the consultative referendum of May 26, 2019, validated by the Decision of the Constitutional Court No. 2/27.06.2019 (Decision of the Constitutional Court No. 465 of July 18, 2019).

[14] In 2000, on the provisions of art. 41 paragraph (2) regarding the right of private property (Decision of the Constitutional Court No. 82 of April 27, 2000), in 2007 and, respectively, 2016 regarding the provisions of art. 48 regarding the Family (Decision of the Constitutional Court No. 6 of July 4, 2007 and Decision of the Constitutional Court No. 580 of July 20, 2016).

[15] In 2011, which covered several texts of the Constitution (Decision of the Constitutional Court No. 799 of June 17, 2011).

[16] See M. Enache, M. Safta, *The Constitutional Arch of Romania 1866-2016. Landmarks for the Constitution review*, article available on the website *https://www.ccr.ro/wp-content/uploads/2020/05/Arcul-constitutional-al-Romaniei2016_2.pdf*.

[17] T. Toader, M. Safta, *The evolution of constitutionalism in Romania*, in the Journal of Constitutional Law No. 1/2015, pp. 157-158.

4. Constitutional texts necessary to be reviewed in a future review

As we have shown, the special procedures of "tacit passing", "accountability" and the excess of legislative power of the Government have often been criticized. And the criticisms arose not from "didactic" considerations, from the desire for legal analysis of the constitutional rules, but were generated by the whirlwind of the consequences generated by the measures ordered by such procedures, by the incompatibility of the actions undertaken by the Government and the Parliament of Romania with the principles of the rule of law.

a) Tacit adoption of the draft law/legislative proposal

Article 75 of the Constitution of Romania, republished - with the marginal name "Chambers Referral", shares the legislative powers of the Chamber of Deputies and the Senate, makes a delimitation of the decision-making powers of the Chamber of Deputies and the Senate.

Each of the two Chambers of Parliament can have the quality of a Reflection Chamber or a Decision-making Chamber, depending on the provisions of paragraph 1 of art. 75 which establish the scope of draft laws or legislative proposals that are submitted for debate and passing - as a first notified chamber, either to the Senate or to the Chamber of Deputies.

We do not agree with the criticisms regarding the exclusion of equality of the two chambers and the introduction of the division of competences between them, agreeing with the opinion[18] according to which " The division of the powers of notification of the Chamber of Deputies and the Senate by the Constitution does not affect the legislative monopoly of the Parliament, which is competent to regulate legally anywhere, anytime, without restrictions, with the intention of observing the Constitution of Romania.

We also support the majority opinion expressed in the doctrine regarding the need to "rethink" the constitutional text that enshrines the procedure of tacit passing of the draft law/legislative proposal.

According to art. 75 para. (2) of the Constitution "The first notified Chamber shall rule within 45 days. For codes and other laws of special complexity, the deadline is 60 days. If these deadlines are exceeded, the draft laws or legislative proposals shall be deemed to have been passed".

Upon fulfillment of the deadline established in the mentioned constitutional rule, the right and obligation of the first notified Chamber to debate a legislative initiative

[18] I. Vida, in I. Muraru, E.S. Tănăsescu (coord.), *Constituția României. Comentariu pe articole*, C.H. Beck Publishing House, Bucharest, 2008, p. 714.

ceases (the law being considered passed in the form submitted by the initiator) and the right of the decision-making chamber to finally decide is born.

Thought by the constitutive power establihed as a necessary solution to avoid excessive procrastination of debates on draft laws or legislative proposals, the tacit passing was enshrined in Law No. 429/2003.

Unfortunately, tacit passing has become "a tacit excuse to avoid deliberation", with hundreds of legislative initiatives being tacitly passed in recent legislatures.

The issue of frequent tacit passing raises the suspicion that one reaches this point due to technical reasons (such as lack of quorum), given the ignorance of the text of the law proposal and not because, following reflection, parliamentarians decided that the text does not require debate or vote, because they unanimous agree with it. Indeed, the press has presented examples of draft laws considered hilarious or outright aberrant, indicating that they could not have been tacitly passed if parliamentarians had known their contents[19].

Recently, the tacit approval procedure reached the forefront of public debates after the Senate Plenum of 23.04.2020 noted the tacit passing of no less than 79 draft laws and legislative proposals. And the justified criticism - especially from civil society - emphasized that not only the principle of bicameralism had been violated, but also the principle of transparency in the legislative work of any bicameral, representative and democratic parliament, which necessarily involved debate and voting in every chamber.

Only one non-critical aspect needs to be pointed out: the fact that the tacit approval procedure does not operate in the decision-making chamber either, whether it is the ordinary legislative procedure or the procedure for approving/rejecting an emergency ordinance[20].

In order to avoid situations like the ones presented above - which often occur in the legislative process, we consider that the review of the constitutional text is necessary (art. 75 para. 2).

b) Commitment of the government's responsibility towards a draft law

Commitment of the government's liability towards a draft law - an indirect legislative way of passing a law, is known in doctrine and as a motion of censure.

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[19] M.L. Manea, *Tacit acceptance in the constitutional systems of the EU Member States*, in the Legislative Information Bulletin No. 2/2010, pp. 3-16, *apud* M. Voicu, *The major deficiency of parliamentary democracy in the legislative process in Romania. Tacit passing. Taking responsibility. Legislative delegation*, in the „Legal Universe" Magazine No. 5/2020.

[20] With reference to the latter procedure, it is ruled by art. 115 paragraph 5 of the Constitution "If within 30 days from submission, the notified Chamber does not rule on the ordinance, it is considered passed and sent to the other chamber that decides also in emergency procedure".

Article 114 para. (1) "The Government may undertake the responsibility before the Chamber of Deputies and the Senate, in a joint meeting, on a program, a general policy statement or a draft law".

In the opinion of Professor I. Deleanu[21], only the commitment of the Government's responsibility for a program or a general policy statement are relevant for the exercise of the function of parliamentary control, while the commitment of the Government's responsibility for a draft law is an action that falls within the scope of legislation.

Constitutional institution different from the ordinary legislative procedure provided by art. 75 of the Constitution, the commitment of the responsibility of the Government "is the only one where this particular form of liability from the public law also has direct legislative consequences, as it can end either with passing a normative act or with the dismissal of the executive"[22].

The institution of engaging the responsibility of the Government for a draft law, not being subject to any limitation or condition, has determined that the governmental practice should be characterized by excess of power.

Complex laws - with a high social interest, were passed as a result of the commitment of the Government. Their drafts were transformed into laws by simply passing the constitutional deadline of 3 days, calculated from the date of submitting the legislative project before the Parliament, and in its absence of a motion of censure.

The constitutional doctrine revealed that "since the constitutive legislator did not understand to make a distinction, it is up to the Government to outline the dimensions and contents of the draft law, the discussion slipping from the sphere of legislative technique to the sphere of political disputes"[23].

The introduction in the Basic Law - according to the French model, of an express provision limiting the scope of the areas that may be subject to the Government's commitment to a draft law, as well as the period of time when one may resort to such a procedure, would be a solution.

c) Legislative delegation

Legislative delegation - the artifice of the practice of governing in special situations, is established at the constitutional level in all modern states.

Etymologically, delegation means empowerment. The Government, although not having a direct legitimacy given by the people, not being elected, but appointed by the

[21] I. Deleanu, *Instituții și proceduri constituționale în dreptul român și comparat*, C.H. Beck Publishing House, Bucharest, 2006, p. 655.

[22] E.S. Tănăsescu, *Articolul 113. Moțiunea de cenzură*, in I. Muraru, E.S. Tănăsescu (coord.), *Constituția României. Comentariu pe articole*, C.H. Beck Publishing House, Bucharest, 2008, p. 1065.

[23] A. Iorgovan, *Constituția României revizuită – comentarii și explicații*, p. 218 and the following, *apud* D. Apostol-Tofan, *Articolul 113. Moțiunea de cenzură*, in I. Muraru, E.S. Tănăsescu (coord.), *Constituția României. Comentariu pe articole*, C.H. Beck Publishing House, Bucharest, 2008, p. 1075.

President on the basis of a vote of confidence from the Parliament, has most executive powers and - under constitutionally established conditions, may pass ordinances and emergency ordinances based on the delegation given by the Parliament or by the Basic Law itself.

Art. 115 of the Constitution provides two types of ordinances that can be passed by the Government.

Para. (1)-(3) of art. 115 enshrines the legislative delegation: "The Parliament may pass a special law empowering the Government to issue ordinances in areas not covered by organic laws" and "If the authorisation law requires so, the ordinances shall be subject to the approval of Parliament, according to the legislative procedure, until fulfillment of the authorisation deadline".

Para. 4)-8) of art. 115 allow the Government, without a delegation from the Parliament, to pass emergency ordinances.

Qualifying the legal regime of the ordinances passed by the Government, the court of constitutional contentious[24] has ruled: *"The Government has a normative competence derived either from an authorisation law or from the Constitution itself, with a special and limited nature, specific to an assignment competence. The exercise of this competence is also included in the area of executive power and consists in the possibility of issuing two categories of normative acts: simple ordinances and emergency ordinances".*

The constitutional requirements in authorizing the Government to issue ordinances under the conditions of art. 115 para. 1)-3) of the Constitution are the following: the existence of an authorization law from the Parliament, the regulations within the ordinances should not concern the field of organic laws, but only the field of ordinary laws, which they can amend or repeal, the authorization to issue ordinances can be only temporary. A general or principle authorization is contrary to the constitutional regulation, the consequence being that the expiration of the deadline until when the ordinances can be issued, mandatorily specified in the authorization law, entails the impossibility to issue ordinances or the non-existence of those thus issued; therefore, the Government may amend or repeal its own ordinances only within the authorization deadline or, possibly, on the basis of a new authorization. In addition, if the authorization law requires so, the ordinance is subject to the approval of the Parliament, according to the legislative procedure, until the fulfillment of the authorization deadline. The observance of the authorization deadline is established depending on the date when the ordinance was published in the Official Gazette of Romania, Part I.

The particular regime of the emergency ordinance is provided by art. 115 para. 4) - 6) of the Constitution and regulates: the cases where it can be issued - extraordinary situations which regulation cannot be postponed, the Government having the obligation

[24] See Decision No. 1.189/20.03.2011, published in the Official Gazette of Romania, Part I, No. 808 of November 16, 2011.

to justify the emergency within it; the entry into force - only after submission for debate in the emergency procedure to the competent Chamber to be notified and after its publication in the Official Gazette of Romania, Part I; the scope of the emergency ordinance - this can also be an organic law, in which case the passing law is approved with the majority provided by art. 76 para. (1) of the Constitution. According to the provisions of art. 115 para. (6) of the Constitution, however, the emergency ordinance cannot be passed in the field of constitutional laws, may not affect the regime of fundamental state institutions, rights, freedoms and duties provided by the Constitution, electoral rights and cannot concern measures of forced transfer of property into public property.

Defined in the doctrine as the mode of cooperation between the Parliament and the Government, on which basis the Government is invested, under certain conditions, with the exercise of a part of the legislative function, the legislative delegation should be an exception.

The reality of recent years proves otherwise; the institution of legislative delegation has long been inadmissibly used, the governmental practice proving unequivocally that the regulation of certain issues was achieved through the emergency ordinance without observing the requirements of the constitutional text (extraordinary situations which regulation cannot be postponed and the emergency reasons).

It was found as an "excusable" argument that many of the Government's emergency ordinances were necessary for the implementation of European Union legislation.

In the contents of the Opinion No. 685/2012[25], the Venice Commission states it does not deny that sometimes legislation needs to be passed without delay as to avoid serious risks to the country. However, it is noted that "the almost constant use of Government emergency ordinances is not the most appropriate method to do so. First, Parliament's procedures should be simplified as to allow the Parliament to pass ordinary laws more quickly. If it really were not possible to pass a large number of laws within a short period of time, the Parliament should rather use the instrument of legislative delegation and authorize - by special laws - the Government to pass urgent laws [para. (1)-(3) of art. 115 of the Constitution]. This would provide some flexibility in introducing urgent legislation outside the scope of organic laws".

There have been many situations where the unpredictability of the law has been increased, either due to certain emergency ordinances that were approved by

[25] Opinion on the compatibility with constitutional principles and the rule of law of the actions of the Romanian Government and Parliament with regard to other state institutions and the Government Emergency Ordinance amending Law No. 47/1992 on the organization and operation of the Constitutional Court and the Government Emergency Ordinance for amending and completing Law. 3/2000 regarding the organization and conducting of the referendrum in Romania" * Passed by the Venice Commission at the 93rd Plenary Session (Venice, 14-15 December 2012), available on the website *https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL AD(2012)026-rom.*

Parliament very late or due to some emergency ordinances that were rejected by the Parliament.

For this last hypothesis, the situation of GEO No. 55/2014 seems to be relevant for the regulation of some measures regarding the local public administration[26], also known as the "law of political migration of local elected officials".

Passing of the Government Emergency Ordinance No. 55/2014, led to the temporary abolishment of the provisions contained in art. 9 para. (2) lit. h^1) and art. 15 para. (2) lit. g^1), from Law No. 393/2004 on the Statute of locally elected officials, for a period of 45 days, from the moment of entry into force of the emergency ordinance. Through this regulation, locally elected officials were given the opportunity to change the party without losing their mandate, as provided by the electoral law.

The observation of the legislative procedure carried out regarding the Draft Law for the approval of GEO No. 55/2014 reveals that it was passed by the Chamber of Deputies on 02.10.2014 (as a result of exceeding the deadline of 30 days provided by art. 115 paragraph 5 of the Constitution of Romania, republished), and by the Senate - as a decision-making chamber, on 09.12.2014.

Through Decision No. 761/17.12.2014[27], C.C.R. admitted the objection of unconstitutionality and found that the provisions of the Law on the passing of the Government Emergency Ordinance No. 55/2014 for the regulation of some measures regarding the local public administration are unconstitutional.

According to the Decision, "the Parliament, based on art. 115 para. (8) and art. 147 para. (2) of the Constitution, shall regulate, by the law of rejection, the necessary measures regarding the legal effects caused during the period of enforcing the Government Emergency Ordinance No. 55/2014 in order to put them in agreement with the decision of the Constitutional Court".

The parliamentary procedure - resumed on 02.02.2015, following the CCR decision lasted no less than 2 years, being completed only on 29.03.2017, when the Law was sent to the President of Romania for promulgation.

Even if it was rejected by the Parliament - by Law No. 51/2017[28], the purpose of GEO No. 55/2014 - to allow the migration of locally elected officials and thus to influence the dynamics of the electro-central process, had been achieved.

According to a study conducted in January 2015 by Expert Forum, GEO No. 55/2014 led to the migration, from one party to another, of locally elected officials, as it follows: 552 mayors out of a total of 3172 (17.4%); 4607 - local councilors out of a total of 40,022 (13.8) and 184 - county councilors out of a total of 1,338 (11.5%).

[26] Published in the Official Gazette No. 646 from 02.09.2014.
[27] Published in the Official Gazette No. 46 from 20.01.2015.
[28] Published in the Official Gazette No. 248 from 11.04.2017.

We can thus say, without fear of error, that GEO. No. 55/2014 has caused direct legal consequences on the configuration of the political scene, on the activity of the local public administration authorities and, last but not least, on the legal order in Romania.

And perhaps precisely in order to give legitimacy to the factual situations recorded, the Parliament established by art. 2 of Law No. 51/2017 "All legal, political or other effects caused as a result of expressing the option by the persons provided by par. (1) of the single article of the Government Emergency Ordinance No. 55/2014, is kept in its entirety".

Judiciously and reasonably, the specialized doctrine [29] emphasized that "the compliance with the constitutional rules of reference and, therefore, the preservation of the exceptional nature of legislation by way of legislative delegation is the responsibility both of the Parliament and of the Government".

In order to avoid the repetition of such situations, we have the opinion that it is necessary to review the constitutional text.

One possible solution would be to regulate the legal cessation of the effects of the government emergency ordinance for the situation where they are not approved by the Parliament within a reasonable deadline (60/90 days).

We are also of the opinion that it is necessary to expressly establish what the constitutional contentious court has established through the jurisprudence, namely that the unconstitutionality flaw of an ordinance (simple or emergency) passed by the Government cannot be covered by the Parliament's approval of that ordinance, the law approving such an ordinance being itself unconstitutional.

5. Constitutional Court – the guarantor of the Constitution supremacy

Regardless of the model of constitutionality control[30] for which the states opted, the Constitutional Courts imposed themselves in the architecture of the rule of law, evolution facilitated by the institutional dialogue between them. Currently, the constitutional courts are also: the guarantors of the Constitution supremacy, all their duties being otherwise oriented towards the achievement of this goal; supreme judicial guarantors of the fundamental human rights; guarantees that oblige the state

[29] M. Safta, Interview – *https://europunkt.ro/2017/06/07/interviu-marieta-safta-secretar-de-stat-la-ministerul-justitiei-conservarea-caracterului-de-exceptie-al-legiferarii-pe-calea-delegarii-legislative-incumba-deo potriva-parlamentului-si-guvernului.*

[30] Currently, there are 2 models of constitutional control, respectively: a) the American model - where the constitutionality control is exercised through the courts; b) the European or Kelsian model, where control is exercised by a single, special and specialized body of constitutional jurisdiction.

institutions to remain within the constitutional limits of their competences, a function performed in various forms and ways; arbitrators or agents of legal and constitutional arbitration in the settlement of legal conflicts of a constitutional nature; protectors of minority rights; safety valve as to decrease the level of social pressure; the key to harmonizing the relationship between national and supranational values and for solving the conflicts between various constitutional systems[31].

The Constitutional Court of Romania is a political-jurisdictional public authority, independent from any other public authority, which is subject only to the Constitution and its organic law - Law No. 47/1992[32].

The structure of the Constitutional Court[33], the manner and conditions for the appointment of constitutional judges[34], the guarantees of the judges' mandate are regulated by art. 142-145 of the Constitution.

The Constitutional Court - which powers are set by art. 146 of the Constitution, is the single authority of constitutional jurisdiction in Romania that "says the law" on the compliance of unconstitutional law with the Basic Law and settles the legal disputes of constitutional nature between public authorities.

The finality pursued by this last duty – granted to the Court following the constitutional review from 2003, was to remove possible institutional blockages, respectively to settle some positive or negative conflicts of competence in a real case, and to not involve the Constitutional Court in the settlement of political conflicts.

The notification of the Court with the settlement of a legal conflict of constitutional nature can be made only by the President of Romania, one of the presidents of the two Chambers, the prime minister or the president of the Superior Council of Magistracy, as expressly provided by art. 146 paragraph 1 letter e) of the Constitution. The constitutional rule is developed by the provisions of art. 34-36 of Law No. 47/1992.

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[31] E. Tanchev, *Comparative implications of the constitutional control, in the Romanian Constitutional Court, 20 years of existence and 100 years of constitutional control*, Legal Universe 2013, pp. 42-59, *apud* T. Toader, M. Safta, *Judges' dialogue*, article available on the website *https://www.juridice.ro/essentials/43/dialogul-judecatorilor*.

[32] Law No. 47/1992 on the organization and operation of the Constitutional Court, published in the Official Gazette No. 101/1992, was amended and completed by Law No. 138/1997, Law No. 232/2004 and Law No. 177/2010.

[33] Art. 142 – *Structure*: (1) The Constitutional Court is the guarantor of the Constitution supremacy. (2) The Constitutional Court is composed of nine judges, appointed for a term of 9 years, that cannot be extended or renewed. (3) Three judges are appointed by the Chamber of Deputies, three by the Senate and three by the President of Romania. (4) The judges of the Constitutional Court elect, by secret ballot, its president, for a period of 3 years. (5) The Constitutional Court shall be renewed by one third of its judges, every 3 years, under the conditions provided by the organic law of the Court.

[34] Art. 143 – *Appointment condition*: Judges of the Constitutional Court must have superior legal training, high professional competence and at least 18 years of experience in legal activity or in higher legal education.

6. Regarding the necessity of reforming the Constitutional Court of Romania

Most political parties - with few arguments, but a lot of pathos, include as a first step in the future government project a constitutional reform, which aims - among other things, at "the reform of the C.C.R.".

The C.C.R. decisions which do not suit the political arch - often publicized, were charged with accusations of political partisanship, and an "open heart operation" was advanced as a solution.

It was proposed to "reform the C.C.R.", to modify the institutional architecture that regulates the operation of this institution and to decrease its duties.

Recently, in order to argue the solution, it went as far as accusing the C.C.R. of "crime against public health" for the decision to state as unconstitutional the GEO No. 1/1999 and, respectively GEO No. 34/2020 regarding the state of siege regime and the regime of the state of emergency.

With the power of evidence it results that a possible modification in the structure of the Constitutional Court, in the manner of appointment, in the duration and in the guarantees of the judges'mandate, as well as the eventual removal of some of its duties cannot be achieved by organic or ordinary law, but only by a law reviewing the Constitution (constitutional law).

Related to those aforementioned, the legislative initiative on "reforming the CCR" – PL-x 675/2020, invoked in the preamble (which among the proposals to amend and complete Law No. 47/1992 also aimed at limiting the professional categories that can run for judge of CCR, by granting this vocation exclusively to career magistrates and adding an additional condition to those provided in the Constitution, respectively the opinion of the High Council of Magistracy), logically and naturally was negatively endorsed by the Legislative Council[35].

Observing such a legislative initiative - obviously with political connotations, we agree with the doctrinal opinion [36] according to which "the preservation and strengthening of the independence of the Constitutional Court from politics could be achieved by providing the obligation of the opinion of the Constitutional Court to any amendment to its organic law".

The references of the initiator of the above-mentioned legislative proposal - in the Explanatory Memorandum, to the fact that the constitutional review court is

[35] The Opinion of the Legislative Council of 23.11.2020 emphasizes that changing the conditions for appointing the CCR judges, adding or removing some of them can only be achieved by a review of the Basic Law, so that the legislative solution „exceeds the constitutional framework, and cannot be promoted.

[36] M. Criste, *Landmarks of the Constitutional Reform*, article available on the website *http://www.icj.ro/Materiale_7martie.pdf*.

"subordinated to its political nature, the political imprint being strongly felt in every court decision", are not singular[37].

Without departing from the premise that the activity of the Court is beyond any critical comment, the qualification of the CCR decisions. as "airy-fairy" and the judges of the Court as "politically controlled" - coming from some state authorities, inciting the public opinion against C.C.R. – initiated on considerations derived from political "equations", cannot represent viable arguments for the C.C.R. reform.

Without a well-grounded constitutional argument - thoughtfully considered, without advancing viable solutions, "reforming the C.C.R." would amount to a "malformation," as a distinguished practitioner and law theorist has rightly remarkeds[38].

7. Brief conclusions

The constitutional doctrine rightly revealed that "there is no neutral constitutional review." The goals of a better organization of power often hide political conflicts. The constitutional effectiveness of a democracy is an important element of a country's strengths and image[39].

The question: "Is there a need for a Constitution review?", without avoiding the answer, we reserve the right to not advance "sharp solutions".

Without excluding the need and opportunity for a constitutional review, we believe that it is conditioned by the goals of the review - which should be selected thoughtfully and argued/and not by short-term political perspectives, that before we need a constitutional reform, we need a reform of the political system.

We do not challenge that some "enigmatic texts" with a low level of predictability should be reviewed, that constitutional rules with an "imprecise" content - which have often fueled constitutional legal conflicts between authorities, would require their rethinking and reformulation.

We also do not challenge the fact that there were decisions[40], respectively reasonings for the Court's decisions which have generated discussions and controversy in the public area, including in the legal field.

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[37] See *PNL intends to reform CCR after elections*, article available on the website *https://cursdeguvernare.ro/premierul-intentioneaza-reformarea-ccr-dupa-alegeri.html*, *In a solid democracy, the Constitutional Court is not the instrument of a political party*, article available on the website *https://www.bursa.ro/turcan-intr-o-democratie-solida-curtea-constitutionala-nu-este-instrumentul-unui-partid-politic-05591145*.

[38] See M. Voicu, *Constitutional jurisdictions in the EU. Brief observations on the structure of the constitutional courts, the appointment and qualification of their members: France, Italy, Belgium, Spain, Portugal, Poland, Romania*, available on the website*: www.juridice.ro/essentials/4334/jurisdictii-constitutionale-in-ue-observatii-succinte-asupra-compozitiei-curtilor-constitutionale-desemnarii-si-calificarii-membrilor-acestora*.

[39] D. Maus, *Constitutional review in European Union countries*, in the Public Law Magazine No. 5/2013, p. 20, article available on the website *http://www.icj.ro/Materiale_7martie.pdf*.

[40] See the Decision of the CCR Plenum No. 1/2017 on the rules for drafting separate or concurrent opinion, published in the Official Gazette No. 477 of June 23, 2017.

But we cannot ignore the fact that "the mere existence of the Constitutional Court reminds the political representatives that the political power acquired through elections is limited" and that - as the distinguished professor Ioan Delenu stated "*The grandeur or decadence of institutions (...) depends only on people who create them, populate them or profess them. Like people, like institutions, The rest is rhetoric*"[41].

[41] I. Deleanu, *Cuvântul autorului, Prolegomene juridice, apud* M. Voicu, *In memoriam prof. univ. dr. emerit Ion Deleanu. Ficţiunile juridice ale profesorului Deleanu*, in Universul Juridic nr. 1/2016.