

CONSTITUTION OF ROMANIA – IMPROVING WHAT WE HAVE OR CREATING A NEW LAW

Ioana Florina MINZU, PhD
“Athenaeum” University of Bucharest
ioana_minzu@yahoo.com

Abstract:

A Constitution is the most important law that a state has the fundamental one. It must inevitably reflect the historical moments in which is developed and reflects certain socio-political realities.

The economical, social and political changes and new realities, the political power, the mentalities and traditions of the Romanian people, the fact that we are members of the European Union and of NATO and even the resources of life must be the ones who dictate the Constitution of our country.

Any law requires, in time, certain adjustments. The possible modification, supplement or amendment of a Constitution must be regarded as an act of normality due to changes in society or some inconsistency between constitutional norms and social realities.

The specialists ask themselves if it is enough to change, to modify or to add new articles or paragraphs or is better to have a new Constitutional law, with its own structure, a new foundation and a new way of seeing and saying the principles of democracy.

The present article intends to analyze which of the two ways of changing the Constitution of one democratic state - the revision law and the recall followed by a new Constitutional law – is the one that should be operated in the case of Romania, in the present time.

Keywords: *Constitution, revision law, new constitutional law*

I. Introduction

Any law, once adopted and implemented, may be amended, supplemented, sometimes even repealed, in accordance with the changes in society in order to respond to new challenges and to design future situations, or due to distorted interpretation and application of its provisions, but also if there are of deficiencies incurred by its application.

Although the Constitution revision is no longer in the first places on the political parties' agenda or on public agenda, the entitled question regarding the need for and the opportunity of a revision remained.

National Constitutions inevitably reflect historical time characteristics in which they have been elaborated and show certain social-economic and political realities, and a possible proposal of amending it should be seen as an act of normality, in terms of the changes in society or some inconsistency between constitutional rules and social realities. It can be said the mere discussion of the fundamental rule revision indicates that the society has essentially changed.

II. The revision of the Romanian Constitution after 1989

Political events in 1989 led to the recall of the 1965 Constitution and to a new fundamental text. Constitution of 1991 was adapted to the realities of that time and its revision in 2003 was necessary due to situational dynamics of the moment. The fundamental act was thus aligned to new political, economic, social realities, domestic and international.

The revision of a constitution is a distinctiveness method, particular and special, due to its self-importance and its provisions relevance, which take precedence over other normative acts. The constitutional text should contain provisions specifying who can initiate the review, what authorities or persons have the jurisdiction to revision it and what is the procedure to be followed.

According to article 150 from the Constitution of Romania, republished,¹ the “revision of the Constitution may be initiated by the President of Romania on the proposal of the Government, by at least one quarter of the number of Deputies or Senators, as well as by at least 500,000 citizens with the right to vote. The citizens who initiate the revision of the Constitution must belong to at least half the number of the counties in the country, and in each of the respective counties or in the Municipality of Bucharest, at least 20,000 signatures must be recorded in support of this initiative”. “The draft or proposal of revision must be adopted by the Chamber of Deputies and the Senate, by a majority of at least two thirds of the members of each Chamber. If no agreement can be reached by a mediation procedure, the Chamber of Deputies and the Senate shall decide thereupon, in joint sitting, by the vote of at least three quarters of the number of Deputies and Senators. The revision shall be final after the approval by a referendum held within 30 days of the date of passing the draft or proposal of revision.” (Article 151)

The Constitution of Romania, like any other constitution, is based on certain fundamental principles which are the essence of the political system of the state.

¹ <http://www.cdep.ro/pls/dic/site.page?id=371>.

Article 152 establish some limits of the revision¹ “the provisions of this Constitution with regard to the national, independent, unitary and indivisible character of the Romanian State, the republican form of government, territorial integrity, independence of justice, political pluralism and official language shall not be subject to revision. Likewise, no revision shall be made if it results in the suppression of the citizens' fundamental rights and freedoms, or of the safeguards thereof. The Constitution shall not be revised during a state of siege or emergency, or in wartime.”

This is why, before making a proposal of a text version there must be set some general principles that will form the frame and the structure for the new fundamental act.

In the case of Romania, in 1990, the texts which have given rise to effervescence discussions have made reference to national unitary character of the state, form of government, the principle of separation of powers in the state, private property guarantee. The 1991 Constitution established the transition from communism, as a dictatorial regime, to a democratic one, a rule-of-law state with the Republic as form of government, bicameral structure of the Parliament and political pluralism, in which the rights and liberties of citizens were guaranteed.

From the date of the Constitution adoption up to the time of its revision, in Romania have been substantial changes on all plans. The amendments made in 2003 noticed in particular the Euro-Atlantic integration, but also aspects concerning the term of office for the President, the responsibilities of the members of the two Chambers of Parliament, of the Constitutional Court and of the Superior Council of the Magistracy, and also a more precise and explicit constitutional provision in general.

During the period from 2003 to 2010, although there have been, in some instances, numerous debates regarding the usefulness and the need for a Constitution revision, it has not been drawn up a draft law in this respect.

Subsequently, the need for a new revision has been obvious in the political disputes in the years 2007 and 2012, when the President of Romania was suspended, also when the Constitution has been interpreted by the representatives of political parties, and not only by them, in different ways, depending on their own interests, but also in political crises in 2009 and 2012 when two motions of censure² have been adopted in a single legislature - 2008-2012. The same conclusion, of the revision, has resulted after the analysis of the economic crisis in 2008-2009.

Romanian citizens consider necessary to preserve and protect their values, traditions, interests, institutions, as well as to establish a general

¹ EU Member States Constitutions that contain provisions that establish limits of the revision: France, Germany, Greece, Cyprus and Luxembourg.

² <http://www.cdep.ro/pls/parlam/motiuni.lista>.

framework that will set the functioning of the state and of the public authorities, freedoms and duties, fundamental rights and the economy by any imprudent, foolish legislative approach, made in the interests of certain groups and in the general disadvantage.

The INSCOP survey, made in 2013, shows that 78.8 percent of the interviewed people think that the existing Constitution needs a revision and 21.2 percent of the respondents believe that the revision is remotely required. Approximately 75% believe that the process of revision is necessary at this point in time and 24.3 % consider that the review should not be speeded up. Almost 60 percent of the respondents believe that significant changes should be made, 20% claim that the current form should be replaced by a new constitutional text and 20% consider that the existing text needs only small adjustments.¹

In 2010, on the proposal of the Government, by virtue of his prerogatives, the President of Romania has presented to the Parliament the draft bill of revising the Constitution (PL-x 492/2011).² The legislative changes³ proposed aimed: a unicameral structure of the Parliament with a maximum number of 300 MPs - proposals justified by the option expressed in that direction of the majority of the citizens who have participated at the national referendum on 22 November 2009; the procedure of suspending the President of Romania; restriction of interim president prerogatives; changes in the structure and in the way of electing the president and the members of Superior Council of the Magistracy; provisions regarding confiscating the fortune acquired unlawful.

On the matter of this project, the Constitutional Court, by Decision No. 799/2011⁴, by a majority of the votes cast, has established that, although the bill of revising the Constitution was initiated in compliance with the provisions of the Romanian Constitution, there are unconstitutional paragraphs or in conflict with other legal provisions in force, and some should be re-examined.

Following this Decision and the reject report drawn up by the Committee for Legal Matters, Discipline, and Immunities, the Chamber of Deputies' plenary rejected definitively the draft law in 2013.

¹ Constitutional Forum Report, p. 51-52.

² http://www.cdep.ro/pls/proiecte/upl_pck.proiect?idp=12163.

³ They include the recall of one article, the introduction of two new articles, and the amendment of other 57.

⁴ Official Gazette of Romania, Part I, No. 440/23 June 2011.

On 11 February 2013, the Parliament of Romania has established a special common Commission of the Chamber of Deputies and the Senate for drawing up the legislative proposals aiming the revising of the Constitution¹.

At the first meeting,² the Commission adopted the setting up of the Constitutional Forum, as an advisory and independent structure, with the goal of organizing debates with the theme of revising the Constitution, to gather proposals made by civil society and to draw up a comprehensive report on this subject.³ The Forum Report includes observations and amendment proposals for more than half the constitutional articles.

Following the debate on amendments made by the civil society and by the parliamentary groups, in total more than 500 amendments, at the end of June 2013, the Commission draw up a legislative text for the revision of the Constitution⁴, adopted with 17 votes “for” and one abstention⁵. Subsequently, on the basis of this text, the Commission has elaborated a legislative proposal⁶ for the revision of the Romanian Constitution, which included the Legislative Council observations and those of the representatives of the Venice Commission. The Constitutional Court, by Decision No 80/2014⁷, has established that the proposal was initiated with compliance with the provisions of Article 150 of the Constitution, but some paragraphs exceed the limits of the revision provided in Article 152 and brings into the attention of the Parliament the elimination, the re-writing and the reorganization of some paragraphs and articles.

In 2013 also has been drawn up a citizenship legislative initiative⁸ of revision of the Constitution, which received a negative opinion from the Legislative Council. In its Preamble it is written that “the current disastrous state of Romanian economy and society is the result of the defective way in which has been created the Constitution adopted in 1991 and the revised one

¹ The Commission has been set up by the Parliament Decision No. 17/2013, and its subsequent amendments, published in the Official Gazette of Romania, Part I, No. 95/15 February 2013. <http://www.cdep.ro/pls/parlam/structura.co?cam=0&idc=114>.

² A Constitutional Forum was created for the revision from 2003.

³ Constitutional Forum Report 2013, p.7 and 13.

⁴ http://www.senat.ro/UploadFisiere%5Cbb175b74-8e6b-4603-8589-d27a014a2dc0%5Cprop.de_revizuire_a_Constitutiei_-_final_-_25_iunie_2013.pdf.

⁵ <http://www.mediafax.ro/politic/proiectul-de-revizuire-a-constitutiei-adoptat-de-comisia-de-resort-cum-arata-noua-constitutie-vezi-documentul-10984439>. The PD-L and PP-DD representatives withdrew from the discussions of the Commission, as they were dissatisfied with the way in which the debate has been organized. They have not been present at the meeting in which it was given the final vote on the project. The UDMR representative has abstained from voting.

⁶ <http://www.senat.ro/afisarelistafisiere.aspx?pagina=BB175B74-8E6B-4603-8589-D27A014A2DC0-06.02.2014>.

⁷ Official Gazette of Romania, Part I, No. 246/07 April 2014.

⁸ Official Gazette of Romania, Part I, No. 100/10 February 2014.

in 2003, by the manner in which the text of the Constitution defined the relationship between people and the state, by the manner in which the responsibilities of the different components of the state have been defined and by the inter-relationship between them". The bill proposes that a number of 132 articles and titles should be amended and completed, to repeal other 2, as well as the introduction of 27 new articles, 2 sections and 7 chapters.

III. A revision or a new law?

The revision or the adoption of a new constitutional law should be regarded and analyzed with serious consideration. Sometimes it is perhaps better to keep what you have than to create something under the impulse of the moment. The Constitution shouldn't be revised only through the past events significations or uncertain future events. A compromise solution to calm down a political situation at a given moment in time will become, certainly, harmful over time.

The Constitution in force, adopted in 1991 and revised in 2003, largely provides the general operating framework of the state. It is true that can be raised questions about some of its aspects, with the purposes of their clarification in order not to give an opportunity to biased interpretations.

Studies, stakeholder consultations and analyses in this respect carried out by Romanian specialists in constitutional law reflect two aspects: most of them indicate that the amending is necessary at this point in time - by revision or a new law, the rest claim a revision, but not at this time.

The revision of the Constitution of Romania appear to be an obvious need based on two major considerations: the national valid referendum from 2009, whose result should be transposed into normative acts by the legislative authority, and some disagreements between the provisions in force and current realities.

In favour of adapting the constitutional provisions to the new realities can be brought more important arguments: general interests of the state, development of the democracy, the role of political parties, of state institutions and of the civil society, adaptation to EU standards, elements of dysfunction resulting from the application of the legal acts in the past few years, aspects of economic nature, the current state of foreign and security policy.

Constitutional reform processes are closely linked to and influenced by the national context, past history, the degree of democracy in a society, the geo-political and international context.

The revision of the fundamental rule means changing the text in accordance with the procedure laid down in the Constitution. The introduction into the constitutional text of the provisions relating to its

revision is a measure taken to provide the possibility to adapt it to the time realities within its provisions produce their effects. Although one of the ground rules that must be taken into account in drawing up a fundamental document is the principle of the legal act stability, this does not mean that, from time to time, when the situation calls for it, the laws may not be changed.

Over time there have been various debates regarding two different revisions of the Constitution: a partial/relative revision - which involves amending, completion and repeal of some texts, adding new articles or paragraphs - and a total replacement of the text. Up to this moment it has not been established if the revision is just a modification or may also be a repealing and if partial revision procedure must be different from that of total revision.¹ Both, the revision and the repeal, involve many theoretical, technical and practical processes.

Our Constitution does not contain any provision which makes reference to or defines the concepts of partial or total revision, both approaches being legal.

It is necessary to be taken into account that, sometimes, by partial revision, it is avoided a future repealing. It must be observed that, in 1990, it was strictly necessary to repeal the old constitution and in 2013 it was enough to amend the existing text.

In the same time, should also be analyzed the provisions which, according to the constitution, cannot be revised. The aspects that cannot be revised can be repealed in the case of adoption of a new Constitution? If it is necessary to revise one of these articles, which are seen as fundamental rules, it means it's a simple amendment or a complete change of the law? Full revision should be understood as replacing a constitutional document with another one, namely a full modification of the text, or as a modification of the set of basic principles?

At the level of the Member States of the European Union it was found that a complete revision of the Constitution has been carried out in the case of Austria (1994), Belgium (1993) and Finland (2000), and a partly one in the case of the other states like France (2005, 2007, 2008), Italy (2002 and 2003), Belgium (22 times from 2000 to present), Germany (53 revisions from 1949 until the present time), Austria (23 amendments between 1983-1995, 120 revisions between 1996-2004).²

The legislative bill initiated by the President of Romania, the legislative initiative in 2013, as well as the Constitutional Forum Report in

¹ The Constitution of Austria contains provisions according to which the procedures for partial and total revision are different (Article 44). The total revision is a substantial modification or removal of one/several fundamental principles.

²<http://www.ecln.net/national-constitutions.html>.

2013, although they include the amending of various articles, some of them suggesting fundamental changes, they all propose the amendment and completion of the existing Constitution and not its repeal and the adoption of a new law. Not even the text proposed by the parliamentary Committee for the revision speaks about a new law.

The main conclusion, set out in the texts for revision and in the studies carried out by the experts, until the present moment, is that it is necessary to revise what we have and not to adopt a new constitution law. But what we must necessarily clarify, before we start this complex process, is what should be revised and in what direction, and when it is the appropriate moment to carry out this revision.

IV. Conclusions

At this point in time, any possible constitutional modification would give the opportunity to the Romanian society to have one of the most modern European Constitution because will be adapted to the nowadays realities, will be based on its own specific background and history, but also on the others European states past experience. Constitutional model of the South-Eastern Europe states, who have a similar past and history, as well as that of Western states, much more developed and with a rich democratic experience, may provide an inexhaustible source of analysis.

Unfortunately, a law cannot be perfect and give rise only to positive effects and benefits for all. In the attempt of making it as perfect as possible, any legal act must be adapted to the complex, continuous and constant changes in the economic, social and political environment, domestic and international. Legal act are part of a dynamic process which will never be completed, but may be permanently adapted and streamlined.

The existing situation in Romania does not imply necessarily a radical change so as the fundamental text must be replaced, as it was in 1990. On the other hand, the high number of aspects which the proposals made would like to be revised create another constitutional frame and a new structure.

To say, precisely and unequivocally, that it is better to revise what we have or to create something new, without taking into account the reality forever and perpetually in motion, it is a difficult thing to accomplish, considering that there are arguments for and against both possibilities.

BIBLIOGRAFY

1. Constitutia Romaniei (2010), Editura Monitorul Oficial R.A., Bucharest
2. Bocancea, Sorin (coord.) (2013) - Constitutia Romaniei. Opinii esentiale pentru legea fundamentala, Editura Institutul European
3. Ciochină, Daniela - Consideratii privind recodificarea dreptului privat in Romania, in volumul Conferintei Recodificarea dreptului privat in Europa Centrala si de Est intre nevoia de refoma si traditie, Universitatea Vasile Goldis din Arad, 2012
4. Duculescu, Victor, Georgeta Duculescu (2002) – Revizuirea Constitutiei – Istoric. Drept comparat. Documente. Opinii -, Editura Lumina Lex, Bucharest
5. Enache, Marian (2012) – Revizuirea Constitutiei Romaniei, Editura Universul Juridic, Bucharest
6. European Parliament, Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs (2014) - National Constitutional Avenues for Further EU Integration, Study, Brussels
http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493046/IPOL-JURI_ET%282014%29493046_EN.pdf
7. Le Pillouer, Arnaud (2009) - De la révision à l’abrogation de la constitution: les termes du débat, Jus Politicum no.3/décembre 2009. http://www.juspoliticum.com/IMG/pdf/JP3_lepillouer.pdf.
8. Constitutional Forum Report 2013, coordinators Todor Arpad and Irina Ionescu, Pro Democratia Association, Bucharest, 2013.