

## THE FUNDAMENTAL LAW – A REVIEW?

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### ABSTRACT

*Constitutional revisions, in the majority of them, are determined by internal considerations, considerations that can be of a political or legal nature, revisions through which political commitments are introduced into the constitutional texts through cosmetic changes, thus creating the premises for constitutional and legislative reform.*

**KEYWORDS:** Constitution, revision, President, Parliament, Government, Referendum

### INTRODUCTION

In the Constitution of Romania, through the revision of 2003, new constitutional provisions were introduced for the creation of the constitutional legal framework necessary for the integration of our country into the Euro-Atlantic structures, thus introducing two articles: article 148, called "Integration into the European Union", and article 149 called "Accession to the North Atlantic Treaty".

The provisions of the current Constitution have not allowed any institution to concentrate power excessively, but its provisions contain a potential for inter-institutional conflict, both with regard to the power relations within the executive, between the President and the Prime Minister, as well as with regard to the relations of power between the central executive authorities and the legislative forum.

### 1. POSSIBLE REVISION PROPOSALS

We thus question the structure of the Parliament, is a bicameral Parliament too dense, too slow in the elaboration of normative acts? Should this parliamentary structure be revised and thus move to a flexible, unicameral Parliament, according to the 2009 referendum? We argue for bicameralism by maintaining the principle of specialization of the chambers in terms of the exercise of the legislative function, but also by the fact that the bicameral structure of the Parliament is found in the democratic tradition of the Romanian people.

The method of electing parliamentarians is seen as being able to be part of the package of constitutional norms subject to revision, through the provision according to which the presence in Parliament, next to the elected parliamentarians, of some representatives of the interests of local communities, of the university, economic and financial environment is necessary.

The number of parliamentarians has always raised political discussions, a topic used in electoral campaigns as a weapon with quite a lot of success

In the 2009 referendum, Romanians demanded a unicameral Parliament and a maximum of 300 parliamentarians. The Constitutional Court maintained that "the referendum

is consultative and produces an indirect effect, in the sense that it requires the intervention of other bodies, most often the legislative ones, in order to implement the will expressed by the electoral body", and the referendum remained without effect.

It is also worth analyzing a revision proposal by which the trasists lose their mandate with the date of resignation from the political formation from which they ran in the elections, having as an argument the fact that the parliamentary mandate is obtained from the voters and not from the party, however, we have the situation in which the respective parliamentarian will continue his mandate as an independent and will be able to vote according to his political convictions.

The report on the imperative mandate and the assimilated practices, adopted by the Venice Commission, at the 79th plenary session, on June 12-13, 2009, states that "one of the problems faced by modern democracies, from the perspective of parliamentary stability and respect for voters' options is represented by the practice of elected officials leaving the parties on whose electoral lists they were elected. Once elected, deputies are primarily responsible to the voters who voted for them, not to the political party they belong to . This follows from the fact that the mandate was entrusted to them by the people, not by the party. Therefore, the resignation or dismissal of a deputy from a party should not lead to his exclusion from Parliament."

The term of office of the president, according to the 2003 revision of the Constitution, is 5 years, and it was then desired that by changing the term of office from 4 to 5 years, the President would be separated from the party from which he comes or which supports him. Having the role of mediator between the powers of the state, as well as between the state and society, we could propose, as a revision, the existence of a unique mandate for the president, a mandate that would determine the President not to be permanently in an electoral campaign in order to win a new mandate and focus on achieving the general interest.

The constitutional provision by which the President can revoke and appoint, at the proposal of the Prime Minister, some members of the Government, could be subject to an amendment. As the Constitution now provides, the Parliament is excluded from the procedure for recalling and appointing ministers. We believe that the introduction of the Parliament, through the obligation to obtain the vote of the parliamentarians in this procedure, would guarantee the democratic legitimacy of the Government.

According to the current provisions of the Constitution, after consulting the presidents of the two Chambers and the leaders of the parliamentary groups, the President of Romania can dissolve the Parliament, if it has not given the vote of confidence for the formation of the Government within 60 days from the first request and only after the rejection of at least two investment requests.

Another situation in which the Parliament can be dissolved should be analyzed, a situation that is not provided for in the current fundamental law, the one in which the Parliament is dissolved by law in the situation where the President suspended under the conditions of art. 95 is not dismissed by referendum with the majority of votes validly cast. Here we can discuss a political sanction applied to the Parliament, the sanction applied to the legislator appears as a natural consequence in the mechanism of the functioning of the state institutions within the constitutional democracy, since the decision of the Parliament does not have popular support, manifested in a democratic way through a referendum.

## **CONCLUSIONS**

Not infrequently, following the elections, we have the situation where no political party has obtained that majority of 50 plus 1 of the number of voters, a majority that would give the party the opportunity to present a candidate for the position of prime minister to the president. The current constitutional regulation grants the President unlimited competence in nominating the candidate for the position of prime minister, any person chosen by him can be proposed.

If the phrase were to be inserted in the constitutional text during the future review "The President nominates the candidate for the position of Prime Minister the person chosen by the parliamentary majority, and if there is no such majority, the President will negotiate with all parties or political alliances represented in Parliament until a majority is reached to nominate a candidate for the position of Prime Minister -minister", we would avoid institutional blockages between the President and the parliamentary majority and would ensure the formation of the Government.

Revision of a constitution represents, first of all, an essentially political problem both in terms of assessing its necessity and opportunity, as well as establishing its objectives.

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