

ROMANIAN CONSTITUTIONAL LAW AT A CROSSROADS - BETWEEN THE IMPERATIVES OF THE FUTURE AND NOSTALGIA OF THE PAST

Valentin- Stelian BADESCU, PhD.

Associate researcher of the Institute of Legal Research of the Romanian
Academy.
valentinbadescu@yahoo.com

Abstract

Issues listed on the title of the work announced in occasion give me some reflections on this issue even more as the title of the material, Romanian constitutional right is at a crossroads - between the imperatives of the future and nostalgia of the past. Very true statement. As one who had some concerns in this regard and tried by some papers to have my say on how it is done in concrete constitutional democracy and how it works practically rule of law in our country we have found it necessary to draw up several opinions . In principle I agree that there have been great efforts to reform the Romanian constitutional reality recognized part of Euro-Atlantic bodies of which Romania is part, however, are overshadowed or even challenged by various analyzes that highlight the existence of failures or serious shortcomings in our constitutionalism which, unfortunately, not much can be fully challenged, they are visible and perceived as such even in the reality of the constitutional system. This article attempts to cap the contemporary law issues analyzed multidisciplinary author previous other materials through innovative approaches, the proposed solutions, the originality of the research scientific, regarded even by right relationships with the principle of proportionality and the specifics of their interaction.
Keyword: constitution, constitutional law, constitutional system, tradition, originality, proportionality

1.Argumentum

This article appeared under the auspices of the journal "Journal of Law and Administrative Sciences", in Romania presents some considerations about the existential crisis of the current Romanian constitutional right under EU law hammer and anvil Romania's constitutional tradition. This is why the historical investigation of any state constitutional development must dovetail with the legal research and analysis of policy documents and generally historical sources. All the documents submitted is designed as an appeal to the political history of the Romanian state, which is beyond the value of historiography, a treasure of the

current generations of politicians can extract the essence of Romanian political thought traditional to revive the values of parliamentarianism, boldness and generations of revolutionary sacrifice and unflagging effort to remove and overcome obstacles to modern development of the country ".

According to Wikipedia, the free encyclopedia, constitutional law establishes the fundamental principles of the structure of social-economic and the organization of state power, governing relations between different parts of the state and between the state and citizens relationships embodied in the fundamental rights and duties thereof. Constitutional law regulating social relations fundamental to the process of introducing, maintaining and exercising power, is the main branch in the legal system. This requires that all other legal rules of other branches of law to conform to constitutional provisions that objective is achieved basically by controlling the constitutionality of laws, which in Romania is ensured by the Constitutional Court. On the work of the Constitutional Court and its role in the formulas will return conclusive.

Constitutional law is the branch of law which is made up of legal rules governing fundamental social relations that occur in the establishment, maintenance and exercise of state power. The notion of constitutional law should not be confused with that constitution. This is the most important component of constitutional law, but not the whole; more in some States constitutional law even where there is no constitution. In our country we have the Constitution, the 1991 Constitution as amended and supplemented by the Law amending the Constitution of Romania no.429/2003.

2. Romanian Constitutional law and advance the transition between the joys of science

Issues listed on the title of the work announced in occasion give me some reflections on this issue even more as the title of the material, Romanian constitutional right is at a crossroads - between the imperatives of the future and nostalgia of the past. Very true statement. As one who had some concerns in this regard and tried by some papers to have my say on how it is done in concrete

constitutional democracy and how it works practically rule of law in our country we have found it necessary to draw up several opinions . In principle I agree that there have been great efforts to reform the Romanian constitutional reality recognized part of bodies Euro Atlantic of which Romania is part, however, are overshadowed or even challenged by various analyzes that highlight the existence of failures or serious shortcomings in our constitutionalism which, unfortunately, not much can be fully challenged, they are visible and perceived as such even in the reality of the constitutional system. The constitutional system in our country has been the subject of extensive analysis and sometimes competent, both in academic courses or monographs, as well as various reports presented at national and international debates or European or international bodies.

The general impression is that, at least in terms of constitutional law, reform and modernization cause some reduction of the role played by public law in general and especially of the constitutional understood as an entity of common law in the whole of mechanisms regulating legal social change. At the same time, nobody can deny that the areas from which the public right to withdraw, does not cease to bear the stamp of legal element, the law in general. In fact, they are not abandoned by public law than to return to private law, which assumes the role of common law. It is also understandable that the state and its administration can not dispense resource legal with all the protest legitimate against formalism abusive and counterproductive certain rules and techniques (exempli gratia, the rules of the restitution or education or health). Advantage regulation rigorous functioning of social relations that arise in carrying state is unquestionable because, whether the regulation of relations within the administration or those arising in relations with the environment, law offers a wide range of possibilities solving. That is why we consider that the constitutional reform would have to propose, in our opinion, strengthening the rule should be devised a new policy regarding the role and functions of law. This can be done, not as a program designed and served up, but as an empirical building, designed by reality and

issues of state life. Moreover, it appears that businesses and, in part, and the administrative, which is involved in the reform have become very sensitive to drafting the legal text. This, because the upgrading involves creating a legal environment relatively constant, it is guaranteed certainty of legally (see aspiration of managers to an improved business environment and constant) and where you defend against legal practices, resulting from fluctuating and unpredictable behavior, such as those of an auditing body that reveals surprising qualities and applicability of outdated rules, appreciated, usually as obsolete or unusable in a different context than the one who gave birth. Rediscovering such rules have the effect of material paralyzing a service can not only increase the feeling of legal uncertainty, especially if, until now, the same provisions that have become contentious, had been considered and the users and the service providers, as obsolete and practically unusable outgoing therefore obsolete.

3. About the need to revise the current Constitution of Romania

Today, according to the intentions of policymakers makers, we are again in the same situation which requires this need. Before referring to the present situation, it is necessary to emphasize that the 2003 revision was a more controversial note, as regards both the organization and conduct of the referendum and the opportunity. For these reasons, many critics were attached to some changes that have been made by Law Review. It seems to me that when reviewing the 2003 - in terms of timeliness was not well chosen for the following reasons:

- At the time prefigured under the Treaty establishing a Constitution for Europe "appearance of so-called" European Constitution ". This indirect advertising and corrections subsequent national constitutional texts of member countries. Therefore, the revision was precipitated. At that time justified a greater concern and interest in the regulations that foreshadowed the European level in order to advance the best interests of Romania. In fact, that time was surpassed by invoking the "necessity" and "urgency" review.

- In fact, the 2003 revision was mostly resulted in only specific modifications imposed by political decision-makers at that time and according to the interest

they had had. There were no proper impact studies and not targeted as a major objective to improve constitutional provisions. In this regard, we can say that many of the new regulations that were adopted by Law Review, were limited to changes extrajudicial - dictated by political interests, some of which have generated controversy, others are considered to be even more poor made only original text tenure as president, his inability to dismiss from office the prime minister, extending the powers of the Constitutional Court, the property, soil and subsoil riches etc. Regarding the current revision of the Constitution that are expected, unlike the previous one, we consider that this time is appropriate, given the occurrence of unforeseen circumstances in relations between the powers. But we express great reservations about the real expression of interest to improve current regulations or achieving goals is required. From the statements and intentions expressed by policymakers, not emerged so far than the same concerns in amending the provisions punctual (more or less justified) and not the desire to improve the substance of all regulations (either through additions, alterations needed or of eliminating any possibility that lead to arbitrary interpretation).

Also in terms of timeliness - to which we have already expressed the view in that it is justified, while stressing the need that in some cases it is necessary to "fix" some texts that have been modified with the first review. Unquestionably no original text, as it was thought at the time, before being revised - it could not foresee or anticipate situations that arose subsequently, but many regulations that were adopted at the first review had generated many controversies justified and highlighted the recent realities.

By the arguments presented above, in agreement with other authors dare to formulate some observations and proposals to revise the current Constitution. So we appreciate that clarification is needed on the form of government, the structure of Parliament - which involves consulting the population, which has not been done so far. In our case we opt for a parliamentary republic, motivated by the fact that the possibility of preventing the concentration of power in the hands

of a single owner, which is a guarantee to prevent slip to a dictatorial regime. For this reason we consider that the restriction and expansion of presidential prerogatives conferred on the judiciary. As regards the judiciary and I add also that accountability is justified by pulling it to the magistrate responsible for judicial errors. Both required defense magistrate - by requiring professional insurance and continuation of the project "JURINDEX" - which, although originally sprang a welcome from within the judiciary was supported by CSM subsequently, however, it was diverted from its goals and objectives. Also to prevent the concentration of power in the hands of a single owner, justified a bicameral parliament and not unicameral, thus ensuring a control function more effectively in the legislature. In the number of MPs indisputable that today is excessive and that a reduction is justified according to population. We also believe that effective parliamentary work, is in strict accordance with the "quality" of each senator or deputy. Therefore it considers it necessary existence of necessary filters and selection criteria more stringent to prevent reaching the Parliament of individuals with training, level of training, education and morale.

Another critical issue is the one concerning the regulation of separation, independence and balance of powers, inter-relationship with other institutions, other factors of power, to prevent any slippage or dictatorial tendencies, in order to provide a guarantee and a normal functionality of powers, independence own effective mutual control and real separation of judicial functions that they have. Not least - determination and delimitation of competences and powers, removing any doubt, including in terms of terminology. To see how well regulated relations between these powers, we start with the following example, in Article 1 (4), entitled Romanian State, there are three powers (legislative, executive and judicial) - and that the State shall be held the principle of separation and balance - in the framework of constitutional democracy. In subsequent provisions - specifically Chapter VI, but we find that one of the powers (the judiciary), becomes "authority". Before any assessment of compliance / non-compliance with this principle of separation and balance of powers, mentioned in Article 1, to

see first - the extent to which these constitutional provisions are consistent with each other. Specifically, we refer to the provisions of paragraph 132 (1) of the Constitution - headed 'The prosecutors ', stating inter alia that their work is carried out" under the authority of the Minister of Justice "and under, the" hierarchical control ".

A few observations on this text can be made, due to the fact that, as we all know, almost all members of the government headed by Prime Minister, were and are political enlisted. Therefore, justice minister in the executive actually becomes a means regardless of party affiliation or recognition to "declare" it as "independent". Another remark: the text of this article speaks only of legality, impartiality and hierarchical control, authority of the minister of justice, the principle of "independence", accidentally or not - absent. We ask: if this principle would be found alongside the other principles mentioned would have been inconsistent terminology with "hierarchical control" or the latter no longer justify their existence? We think so. Talking about independence to be "hierarchical control" is a matter antagonistic at least illogical. Could this be the explanation "omitted" to mention in the text the principle of independence, or was thought to be understood?! We have reservations in this regard and we consider that in reality, political decision-makers did not want independence of this institution, for the simple fact that the DPP remains a lever of power important that political forces have not been missing until the present. This is why the position of Public Prosecutions in the judiciary was and is still a controversial issue / unresolved. The wording "under the authority of the Minister of Justice" - believe, that this is not in fact only a "sweetener" and masking apparent by substitution / avoidance of the term "subordination". It seems to me also that any provision prosecutors once by a state official among other powers, in total contradiction with the principle of "impartiality" and represents a serious threat to democracy. Not infrequently, for the "impartiality" of a prosecutor, was asked: "How can it be impartial, given that it must not only obey the law but also the mandatory provisions given by the Minister of Justice?" No less controversial is the status of

"judge" gave the prosecutor, on the other hand, the position and role of the Public Ministry in the judiciary. Referring to the institution find that, in agreement with title wearer ("Prosecutor's office ..."), it continues to be "attached" all courts at all levels - factually, in the judiciary, taking place -and work according to the same principle: that of "hierarchical control". Relevant is that still conferred powers identical to those of the judiciary, instead of this institution to be in an equal footing with the defense. We have in mind regarding this "inequality" not only status, duties and powers conferred to him the prosecutor, but including its physical position in the court proceedings. In a plastic expression, it stood at a "altitude difference" in relation to defense.

Another example, in Article 142 paragraph (2) and (3) regulating the "structure" of the Constitutional Court states that of the 9 judges making up, three are appointed by the Chamber of Deputies, three by the Senate and three by the President Romania. What conclusion can we come off the contents of this text? Firstly that the prerogative of appointing judges to the Constitutional Court equally does not return all the powers listed in Article 1 of the Constitution. The only power of the three, being only the legislature (the two chambers of Parliament). Then the executive and judiciary were "less equal" in relation to the legislature. Finally, that instead of the other two powers "omitted" appeared "other power" - the President conferred the detriment of the executive and judiciary, which have been substituted. Equally true is the fact that increasingly more executive power - by the multitude of ordinances and legislative packages (more or less assumed), came to substitute its turn Legislature, which he turned into her "court of review". Undoubtedly this situation is actually existing political will and thinking the adoption of the 1991 Constitution, including the time of the review. In the spirit of the principles of separation, equality and balance between powers (established constitutional), one wonders however whether, in line with these principles - would have been more fair that the legislature (both houses) to only 3 proposals and not 6 executive in its turn to make three proposals - and instead of the president, the judiciary to make three?

Before any changes or reformulations, it also requires a thorough and careful check of the consistency of the constitutional text with the Treaties and pacts which Romania has signed and it is a party. On the other hand, consider need to be regulated as accurately (in principle, purpose and objectives) some provisions that cannot be distorted by arbitrary interpretations or by references to special regulations, other law enforcement. Both practice and doctrine have shown consistently that the constitutional provisions cannot and should not be the be all encompassing, but sending proceeds to "other laws, orders, regulations and application instructions" - which are then modified ordinance in any way they can not alter or contravene the constitutional text, can not be hijacked meaning and purpose of these provisions. Also, we consider that, of utmost importance are the laws of organization and functioning of institutions, powers and duties conferred on them - which is why, in this direction are necessary clarification at the constitutional level. We refer to a number of institutions such as the Constitutional Court, the Superior Council of Magistracy, the National Anticorruption Directorate, and the National Agency for Integrity, the Ombudsman, the Legislative Council, etc. In agreement with the author cited above, we consider that should the last two exemplified - Legislative Council, which should have extensive powers in terms of legislative technique, systematization and not purely advisory and Ombudsman which turned into a mouthpiece which "intermediates" link citizens with governments to expand their skills, because in fact they no longer have a role "more decorative. Regarding the Constitutional Court, outside the examples stated above, I add that what powers conferred under the review of 2003 are far too extensive. We believe that they should be confined to those related only resolve exceptions of unconstitutionality of laws. Moreover, these skills in the interwar period were undertaken by the High Court of Cassation, who opts for. In case there is the same formula, except change the law on organization and functioning of the Constitutional Court, the manner of appointment of the 9 judges - imposed their other selection criteria and the exclusion of any political algorithm. This is required to be removed from

many other institutions such as the Supreme Council of Magistracy, the intelligence services, the National Integrity Agency, the National Council for Study of the Securities Archives, the National Audiovisual Council, Ministry of Defense, Ministry of Interior, Justice, Parquet and many other institutions - on which are becoming more interference from political factor, thus emphasizing a tendency to manipulate the law and independence impairment. More specifically, these reasons and others expressed by the author of these lines in other works on other occasions, that reasons for authors analyze the material they present Constitution of Romania in the future Constitutional Court should simply abolished!

Also highlight other examples where we believe changes are necessary. Thus, another regulation that we deem beneficial to retrieve the new text: the obligation of all officials and those assimilated to conduct regular medical control on tenure, including before the takeover. We refer to the need to examine and neuropsychological evaluations. Regarding Article 75 on "Notification of the Chambers" we consider totally unacceptable provisions of paragraph (2) which considers that the draft laws or legislative proposals were adopted for exceeding limits of 45 and 60 days. We consider absolutely necessary to change the text. The same is true of the emergency ordinances, against which imposes a restriction, including cases of excessive accountability through the promotion of "legislative package". Can such situations be avoided some of the effects caused by them. We refer to cases where the law is not adopted or situations when ordinances are being circumvented provisions of the organic law, or which are contrary to constitutional principles. Lastly, we emphasize the need for impact studies compulsory for all organic laws and parliamentary debates. They are absolutely necessary and the provisions establishing the limits and conditions review. In conclusion, no real separation of powers and independence, the relations between them cannot speak of the existence of a rule of law or democracy.

These issues and many others that reputed specialists in the field have emphasized the material much more extensive and well documented, including comparative law, can only be remedied by a new constitution; it cannot offer Romania the future. We have another constitution! A Constitution for Romania and Romanian. The current Constitution has turned Romania into a colony transnational financial oligarchy.

4. Constitution for Romania

Why we need a new constitution? The Constitution is the fundamental law of every people. Constitution underpins the entire legal system, the entire set of laws, rules governing relations between members of a people. The Constitution is the one that decides whether people live in freedom or in slavery in welfare and dignity, or the poverty and humility.

You can not just law if the Basic Law is crooked. You can not eradicate corruption if the Basic Law allows the adoption of laws that defends thieves and states that can not be confiscated possessions whose origin can not be justified. You can not be a free sovereign nation and as long as the Basic Law entitles "representatives" traitors to conclude treaties which deprives people of sovereignty, which allows foreigners to buy land capital and the country and the people to be consulted.

Romanian Constitution adopted in December 1991 and revised in October 2003, the Romanian people deprived of sovereignty and national wealth has brought Romania's colony in the state of transnational financial oligarchy and the Romanian people in slavery. The Romanian people needs a new constitution that would restore sovereignty, to restore property rights to his country, capital and national territory, to release the occupation financial oligarchy transnational him out of state from slavery to regain a sovereign and prosperous nation.

The current Constitution of Romania proved wholly inadequate for the aspirations and the aspirations of the Romanian people, trying hard over the last 70 years of its history, starting with the implementation of the Molotov-Ribbentrop Pact, continuing with the coup of 23 August 1944, by which communist regime

was installed in Romania, with the coup of 22 December 1989, under which the current oligarchic regime was installed, with 26 years of destruction and pillage of productive wealth accumulated over centuries Romanian.

Released from the communist regime through the supreme sacrifice of the more than 1,000 young Romanian killed in the bloody days of December 1989, the Romanian people, with the capital accumulated in his work during the communist regime, have the ability and was entitled to build a economics democratic and efficient, to assure freedom, welfare and happiness, and the opportunity to build a truly democratic state, a state's, the people who serve him, to defend the rights and freedoms. With the accumulated capital and labor, highly qualified, he had in 1990, the Romanian people had today, pensions and salaries, as budget revenues, four times higher than it has, the his life would have been among the highest in Europe and the world. Unfortunately, the authors of the coup in December 1989 captured the Romanian state, which they turned into instruments of plunder of people and their enrichment. With the help of the Constitution, the laws adopted on its basis, the government robbed and were enriched. Destroyed, demolished thousands of plants and factories built by Romanian, which sold them as scrap metal and other materials, with the collected money and bought luxury consumer goods - villas, SUVs, yachts etc. Most of the national capital was passed into foreign ownership, the so-called privatization by selling at ridiculous prices of thousands of enterprises, factories, factories, commercial premises and offices, banks, etc., built with the sweat and more privations by Romanian citizens. So a new constitution and a new constitutional right to serve the interests of Romanians

5. About the new constitutional Romanian

5.1. Preliminary issues

Given that laws were passed thousands and thousands of ordinances and given that dozens of acts suffered very many changes, it seems that the reform and modernization of the state should put more emphasis on coding. Beginning done in this direction is very useful, although opinions are divided, even if a fierce

critic of the current massive codification of Romanian law - enacting new legislative codes (civil - 01.10.2011, civil procedure - 02/15/2013 penal and criminal procedure - 1/29/2014), brought a number of changes in Romanian legal environment - an advocate unconditional codification. We consider that the adoption of a new constitution, we can talk about promoting in Parliament an Administrative Procedure Code and Administrative Code to promote and unleashing administrative law, along with the Constitution.

5.2. About a new Romanian administrative law

Both theorists and practitioners of public administration agree coding, hoping for a reclamation laws in various fields and obtaining hygiene Legal, generating then a reduction in field interpretations and thus of properties abusive certain legal rules. In this way would restore the regulatory function of law, including in relations between authorities and administrative services. Specific conditions of our country in an effort to assimilate the *acquis communautaire*, and modernizing administration reform have generated a decrease in the volume of legislation but rather an increase in the density of legal administrative system. In these circumstances, the logic of managerial had to live with the facts, myths and attitudes characteristic of our world legal regulations. Incidentally, here as in other countries, it may signal a real paradox of reform and modernization of public administration. Policy reform and modernization of the administration, the whole "revolution efficiency" derives its obviously, the resources of liberal ideas that extol market, following the promotion of so-called culture of enterprise, but to be functional, you have to resort to the law, is part of administrative law rules and principles which gave them a kind of mythical status. As one can easily find the values that builds on reform and modernization of the administration are not recognized until recently and which were made permanent, especially administrative law. In administrative law generally the right of the public service in particular, it prescribes and makes operating policy of modernization through reform, we will not only discover rules that constitute restrictions or benefits, but a

whole organized grouping of faith collective it is constituted as a foundation of a kind of imaginary constructions of the next administration.

Developing managerial practices typical market economy, could or ought to significantly reduce the structured through as a public service administration in general, but with all the changes expected and some even made, they continue to draw legitimacy the law and still relies on rules and behavior is not very favorable or promoted by public management.

The question often is whether profitable public service is a process that goes beyond public law as keep followers up-minimal state or contractualist, thereby question the utility of public law. The answer involves a broader review. One of the biggest paradigm of our legal system heavily influenced by French political and legal culture, is this division: public law and private law. No matter what shape policies Administration Reform encounter this binomial, invoking the most often a gap between the two sections of our legal system. Actors concrete reforms efficiently use this bipolarity of legal, especially since the rules of the game in the process of modernization and reform are still unclear, if not absent, they changed-sometimes the whim of subjects-their using it and by perceptions on the right that they have and where it is mixed with some legal database of empirically verifiable assumptions and beliefs ideological belonging area.

The question is that of whether, or how far, public management can be designed within a framework provided by public law, while the real actors of the reform texting, more or less direct, which public law considers as the most rigid legal framework composed of obsolete legal norms, prohibiting any type of modern leadership, managerial. So it is criticized, not right in general, but public law and, in particular, administrative law. Also retaining critical opinions should not disqualify a priori plan and public law. Such views have emerged by chance, but because of bureaucratic behavior, manifested in some sectors of the public administration reform allergic to, as it is conceived by a formal literature political, legal or infra-legal. Otherwise, find a support such behavior in public law in that, to some extent, he favors making permanent economic privileges which some

fear they could lose. However, we must not be fooled by this speech, clearly ideological, which blames the public right of all evils in society and government reform must be based on law, not to criticize, provided to establish the exact extent and not needlessly exacerbated the judicial function within the public administration authorities and services. We know that attention to a greater efficiency of the public service provides public communities of all categories, the temptation exceeds public law field. This trend seems to be necessary and natural to that reproaches and criticism made by managers on the organization and functioning of state institutions and enterprises rely on private right qualities. Today, perhaps more than in the past, we wonder if the legal protection of the two areas, public and private, has the same role he had always and if this bipolarity of legal need or may be given, provided that full legal area is undergoing restructuring and of the liberal capitalism more strongly proclaims personal interest at the expense of the general. To give more and then we get!

5.3. The general interest in contemporary law

With the introduction of the concepts of general interest, public order and public power state not only has some concepts, but also the necessary levers to regulate constitutionally ra-social ports. Between this kind of leverage and the European Union law can barely be making a joint without any tension. The legal concept EU gives less importance to the public and tends to impose measures such as those designed to limit the area which traditionally is in the public administration or measures consist in capturing certain operating rules, specific public services and the public sector in general. In this way, it can produce in a certain way, a legal assimilation between public and private, which gradually are subject to the same rules and regulations. To correlate the internal standard with the spirit and rules of the European Union was necessary to amend the legal provision within the meaning of the principles of subsidiarity and proportionality. On the role of the principles of law and constitutional right below.

6. The role of proportionality in contemporary constitutional law

Proportionality is a modern synthesis of classical principles of law. This principle is at home right outside and imposed the state and legal system rather late. Law principle of proportionality implies that ideas of reasonableness, fairness, tolerance, and adequacy measures necessary to state the facts and the legitimate aim pursued. It appears that the principle enshrined in legal instruments of European Union law in the constitutions of states, but the National Constitution explains, research increasingly common concerns and especially the identification of its size. Proportionality is not only a principle of rational law, but at the same time, it is a principle of positive law, a principle normative value. Thus, proportionality is a legal test that focused on the legitimacy of state power interference in the exercise of fundamental rights and freedoms.

This principle is explicitly or implicitly enshrined in international legal instruments or constitutions of most democratic countries. Constitution expressly states that principle in art. 53, but there are other constitutional provisions that it involves. In constitutional law, the proportionality principle also applies especially in the protection of human rights and fundamental freedoms. It is considered as an effective criterion to judge the legitimacy of the intervention of state authorities to limit certain rights situation. The principle of proportionality is present in the public law of most European Union countries. However, some distinctions must be made: a) establish the principle that countries have made explicit in the constitution and legislation (Portugal, Switzerland etc.), and b) countries where it is not expressly mentioned in legislation or case law. The latter can include: Greece, Belgium, Luxembourg etc.; c) countries where this principle applies to public law.

Understanding the difficulties legal principle of proportionality, since its content depends on a certain philosophical view about justice. Legal doctrine, from antiquity to the present, evokes proportionality to mean the idea of order, balance, compared rational measure of the fair. Proportionality is not only a principle of rational law, but at the same time, it is a principle of positive law, a principle normative value. Thus, proportionality is a legal test that focused on the

legitimacy of state power interference in the exercise of fundamental rights and fundamental freedoms.

This principle is explicitly or implicitly enshrined in international legal instruments or constitutions of most democratic countries. Constitution expressly states that principle in art. 53, but there are other constitutional provisions that it involves. The literature states that the principle of proportionality is present in most countries the civil rights of the Community. However, some distinctions must be made:

1. Establish the principle that countries have made explicit in the constitution and legislation (Portugal, Switzerland etc.), and on the other hand, countries where it is not expressly mentioned in legislation or case law. The latter can include: Greece, Belgium, Luxembourg etc.;

2. Countries where this principle applies to public law as a whole (ex. France and Switzerland), and on the other countries in which its use is limited to the scope of EU law.

In constitutional law, the proportionality principle also applies especially in the protection of human rights and fundamental freedoms. It is considered as an effective criterion to judge the legitimacy of state intervention in the situation authorities limit certain rights and legal understanding of the principle of proportionality in constitutional law presents difficulties, as its contents depends on a certain philosophical view about justice. Legal doctrine, from antiquity to the present, indication proportionality evokes the idea of order, balance, and compared rational measure of the fair. Proportionality is not only a principle of rational law, but at the same time, it is a principle of positive law, a principle normative value. Thus, proportionality is a legal test that focused on the state power legitimacy interference in the exercise of fundamental rights and freedoms. Moreover, even if the principle of proportionality is not expressly upheld the constitution of a state doctrine and jurisprudence considers as part of the concept of rule of law, a phrase which implies addition adage Legal known

news doctrine of specialty, but also transparency, consistency and consensus, especially when it is a New Constitution.

7. Instead of conclusions. Transparency, coherence and consensus - the three pillars of the New Constitution foundation for Romania's future

We need constitutional right? For us Romanians there, especially Caragiale, he created software that works by Romanian people. All descend from one character Caragiale that want it or not. Like I said, if you meet any Romanian or a Romanian situation and it seems that you cannot deduct from any typology Caragiale means that you read carefully the author. I would like to say a few words about the greatest satisfaction that a researcher can have a lawyer. For someone who cannot live without reading without writing for someone who makes the question and inquisitiveness meaning of his life, for someone who comes to appreciate the ideas above all and people only to the extent that embodies an idea, ie a researcher, there is one great happiness: discovering the correspondences between the law and the world. Satisfaction immense that researchers' lawyer discovers that nothing that happens is not really new, that all man's problems today, absolutely all, without rest, are found in Shakespeare or Caragiale or further, the ancient is not necessarily auspicious. This satisfaction is not necessarily being enriched. I think that the discovery of equivalence between what is written in books and what we live should, rather, to depress. Me, for instance, it was depressed discovery that politicians behave with people today in Romania, following the writings of Aristophanes perfect. Even the Romanian people today are the same as in his writings of the Athenian people 2500 years ago! And politicians are the same and situations are largely the same, and their outcome is unchanged. How could I not grasp depression? How not to become misanthropic clear when you see how boring is limited and redundant human being? How not to become pessimistic? But no. The researcher has acquired not know where the ability to move beyond such states. Le lives and exceeds them. Instead it sad discovery that nothing is new under the sun enjoying it. Satisfaction

identifying as refined typologies which then recognizes in previous lectures is often sparkling, and his vanity are only flares.

And finally, the apex of sophistication is to find that even the discovery that there is nothing truly new under the sun is not new! Already, the joy of finding that your own discovery is not new and, moreover, that even this conclusion, the impossibility of existence of a new really is not yours, but it was the beginning of the world said, is emotion Alexandrian specific researcher. How can anyone live like hamsters enjoy noting that running on their wheel, the small cage? Not more than those who do not realize this? Not more than those who imagine that the world is always new, because every day brings something different than the other, that people are infinitely diverse, that the world is constantly changing, that we live in an endless kaleidoscope of news? Sure. Undoubtedly. But those who enjoy the illusion unrepeatable are not researchers. For their happiness it is precisely to find the opposite that the world revolves around him after the three pillars of the New Constitution - transparency, coherence and consensus foundation for Romania's future.

Transparency can be achieved only by "architect" legislative building, both personally and especially professional quality I believe that this involves great responsibility! It is a great responsibility to carry out this endeavor so important for Romanian society. One of the few qualities of architect (using the singular and not plural because when you go out as need something call a committee) is the professional law and this quality, the maker to draft revision of the Constitution perceive as a culmination of a long professional careers exceptional. It is a great honor for a man to take part in this delicate process and with a great legal, political and social. Now we Iorgovan's Constitution, as amended! The new Constitution of who will be? There is a kind of satisfaction most important professional like any other, that of work well done, but also contentment translated into effective involvement in the development and modernization of Romania.

We know also that the revision of a constitution is a delicate exercise in democracy and political negotiation, an expression of "understanding" reached after laborious negotiations, the political forces of the country. Architect's role constitutionally is to listen to all sides to reconcile all opinions actors involved, to overcome the constitutional review and to ensure the fulfillment of the ultimate goal of it, to modernize the constitutional regulations in relation to reality Romanian society. The proposal for the training and consulting a Scientific Council, which includes the best specialists in constitutional law in the country, is based on the belief that She is the undeniable experience in the construction of the new Constitution. It is not only a practical necessity, but an intrinsic need to appeal to those who are best placed to make a valuable contribution to what is meant to be a modern constitution and adapt to social, economic and political Romania.

Considering the importance of this process, it requires "open doors", both those directly interested or willing to submit amendments, and the media to ensure that much needed transparency. It's about institutional transparency as it is a legal text that concerns us all and it is natural that all those interested to take part in the design process of the new Constitution text. Regarding the Venice Commission, the final text of the proposal for revision must be sent to the Commission for an advisory opinion since the new Constitution is the fundamental law, the Romanian modern state, unitary, European, reflecting the will of the people and translates into solidarity between citizens of this nation, who have a common goal of modernizing the rule of law. From here we can analyze the function of integrating the Constitution, especially considering the effects it will produce both the citizen and for state institutions: the new rules, standards of conduct, visions democratic, a new set of values and principles, all corresponding requirements and contemporary Romanian society needs. Externally, the revision of the fundamental law of the state has been and is an approach long debated and appreciated, the European Union considering both

the constructive approach of Romania, consistency, presenting an overview of the institutional structures of Romania, the rights and obligations of citizens.

Bibliography

1. Ioan Alexandru, *Există o criză a dreptului public?* în revista *Academica* nr. 11/12/2014, pp. 81-89;
2. Ioan Alexandru, *Administrația publică – Teorii, realități, perspective*, Editura Lumina-Lex, București, 2003.
3. Andrei Constantin, *Propuneri privind revizuirea Constituției actuale a României*, Comunicare prezentată la Sesiunea științifică, *Știință și codificare în România* a Institutului de Cercetări Juridice, București, 2012, pp. 650-657.
4. J. Caillosse, J. Hardy, *Droit et modernisation administrative*. La Documentation française, Paris, 2000;
5. J. Hardy, *Le service public en question, Politiques et management public*, vol. 14, no. 3, septembrie 1996, pp. 45–66;
6. Marius Andreescu, *Proportionalitatea, ca principiu constituțional*, material preluat de pe site-ul: <http://www.universuljuridic.ro/proportionalitatea-ca-principiu-constitucional/>
7. Valentin – Stelian Bădescu, *QUO VADIS CURTEA CONSTITUTIONALĂ A ROMÂNIEI?* *Revue Européenne du droit social*, Supplement, year 2015, pp. 8-18.
8. Cristian Ionescu, *Dezvoltarea constituțională a României*, Editura C.H. Beck, Bucuresti, 2016;
9. Ioan Muraru, Elena Simina Tănăsescu, *Drept constituțional și instituții politice*, Editura C.H. Beck, București, 2016;
10. Marieta Safta, *Drept constituțional și instituții politice*, Editura Hamangiu, București, 2016.