

METHODS OF REVISING THE CONSTITUTION OF THE REPUBLIC OF MOLDOVA

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1. *The principle of the Constitution stability is a distinct guarantee of the supreme law, alongside the lower provisions, which is necessary to ensure its supremacy. This principle can only be guaranteed by establishing clear and rigid review of the Constitution. There are two ways of revising the Constitution in the Republic of Moldova: the first one is the review made by the Parliament, which is regulated by the Constitution, and the other, is deduced by interpreting the Constitution - through a referendum. The later one is considered to be doubtful and risky, and the final decision should be taken by the Constitutional Court.*

Key words: Constitution, stability of the Constitution, review of the Constitution, ways of the Constitution review.

Given its indispensable quality, the supremacy of the constitution results in maximizing the responsibility and importance of applying it in social and legal relations on a daily basis. This responsibility should be imposed as an essential task first in the Parliament, which is supposed to interpret its provisions through organic law, and then amongst citizens or foreigners who are entitled to the fundamental right to report any inappropriate application of constitutional norms by competent public authorities.

For effective collaboration between the actors involved in the implementation of constitutional norms, it is necessary to take into account the fundamental principle, i.e. the stability of the constitution, established by doctrine and constitutional jurisprudence,. The principle of constitutional stability imposes the rule, according to which constitution, as fundamental law, is immutable as an act that contains permanent provisions, aiming at the constancy of state power and ensuring the safety of legal relations. Therefore, having provided the principle of stability of Moldovan Constitution in the Decision No. 7 of 4 March 2016, the Constitutional Court of the Republic of Moldova stated that "the stability of Constitution is one of the preconditions for ensuring the continuity of the state. In addition, it is designed to respect the constitutional order and law as well as to ensure the implementation of objectives set in the Constitution, forming the foundation of the Constitution itself."⁸⁷

⁸⁷ Hotărârea Curții Constituționale privind controlul constituționalității unor prevederi ale Legii nr.1115-XIV din 5 iulie 2000 cu privire la modificarea și completarea Constituției Republicii Moldova (modul de alegere a Președintelui) (Sesizarea nr.48b/2015) nr. 7 din 04.03.2016. În: Monitorul Oficial nr.59-67/10 din 18.03.2016

To ensure public order, under the rule of law, the constitutional norms must be as constant as possible for people to shape their behavior, at least in accordance with these norms. This is because not every person who is under state jurisdiction has access to and knows legal norms. Moreover, not everyone has the capacity of interpreting the legal norms of legislative acts in the spirit of the legislation. It is thus not in vain that, as a rule, the constitution is written and systematized to become useful for the citizen in his relationships with the power. In this regard, Thomas Paine's postulate "A constitution does not exist if one cannot put it in one's pocket" is imposed.⁸⁸

Apart from being a principle of the Constitution, the stability of constitution is a feature of the supreme law by reference to lower provisions. This statement is based on the fact that constitutional regulation is substantially different from legal regulation or other provisions, stipulated by legislative acts that are not legally binding to ensure the permanence of social development. In this regard, the scientist I.Guceac claimed that "The stability of Constitution provides the possibility of forming a durable system of law for the respective state and society functioning."⁸⁹

The necessity of imposing legal procedures different from those of the law that needs being revised accounts for the guarantee and juridical consequence of the stability of the Constitution, as a constitutional principle. Depending on the form of the Constitution, these procedures are expressly set out in the text of the Constitution itself, provided that it is in written form. In its Decision No. 7 of 4th March 2016, the Constitutional Court stated that in order to provide a certain degree of rigidity of the Constitution, "various technical ways to protect the stability of the Constitution are inserted in fundamental laws. This is a basic feature of all written constitutions (unlike ordinary laws), which contain provisions that allow their revision".⁹⁰

While under doctrinal influence initially, the principle of the stability of the Constitution resulted in further becoming of significant value, and being established in the Republic of Moldova through constitutional jurisdiction. Although the principle of Constitution stability is expressly regulated neither in the Constitution, nor in regulations, the Constitutional Court formulated this principle for the first time in Decision No. 57 of November 3, 1999. At that time, the Court found that "as a written and systematic document of supreme law in legal system, the Constitution of the Republic of Moldova is relatively rigid, i.e. it admits the revision of only the technical system previously established, regarding revision initiative (Art. 141), revision limits (Art.142) and its procedure (Art. 143). The Constitutional Court claims that the amendment to some provisions of the Constitution, eluding the provisions of Articles 141, 142 and 143 of the Constitution, would actually constitute a default revision, regardless of the reasons and process used, which would be a violation of the Constitution."⁹¹

Subsequently, in the Decision No. 7 of March 4, 2016 the Constitutional Court assigned an entire section to this principle, resulting in claiming unconstitutional the Law 1115-XIV of 5 July 2000 on amendments to the Constitution of the Republic of Moldova.⁹² In the Decision mentioned above, the Court not only determined the essence of the principle of Constitution stability, but also gave a broader explanation of its essence, anchoring it to the constitutional revision procedure. Thus, according to the Court, "The significance of Constitution stability would not be taken into account if they intervened in the text whenever certain social relations subject to legal regulation are altered (e.g. technological possibilities

⁸⁸ Harvey J. Kaye, *Thomas Paine And The Promise of America* (New York: Hill and Wang 2005). ISBN 0-8090-9344-8, 43.

⁸⁹ Guceac Ion, *Constituția la răscruce de milenii*, Academia de Științe a Moldovei, Institutul Cercetări Juridice și Politice. – Chișinău, 2013 (I.S.F.E. – P. „Tipografia Centrală”). – 416 p., p.119.

⁹⁰ Hotărârea Curții Constituționale privind controlul constituționalității unor prevederi ale Legii nr.1115-XIV din 5 iulie 2000 cu privire la modificarea și completarea Constituției Republicii Moldova (modul de alegere a Președintelui) (Sesizarea nr.48b/2015) nr. 7 din 04.03.2016. În: Monitorul Oficial nr.59-67/10 din 18.03.2016

⁹¹ Hotărârea nr.57 din 3 noiembrie 1999 privind interpretarea art.75, art. 141 alin.(2) și art.143 din Constituție. În: Monitorul Oficial al R.Moldova nr.124-125/68 din 11.11.1999.

⁹² Legea nr.1115-XIV din 5 iulie 2000 cu privire la modificarea și completarea Constituției Republicii Moldova. În: Monitorul Oficial al R.Moldova nr.88-90/661 din 28.07.2000.

of certain types of activities expand to the extent that it was perhaps impossible to predict when drafting the text of the Constitution)".

The consequence of raising the respective principle to the level of a constitutional principle resides in the increase in the level of responsibility and political stability for parliamentary majorities set out in the Parliament of Moldova. This axiom is especially important for constitutional majorities with their political activities that can degenerate into neglecting the rules for the Constitution revision. However, revision of the Constitution of the Republic of Moldova, made by the Legislative Constituent of 5 July 2000 was not due to the adoption of rules that would contradict the basic provisions of the Constitution, but due to the constitutional majority's negligence at the time regarding proceedings of the Constitution revision.

With reference to the methods of revising the Constitution, as we have already mentioned in previous research, it should be mentioned that the revision of the Constitution is a procedure for modifying the constitutional norms by applying special procedures expressly provided in the Constitution and other legal acts to amend the fundamental normative rules.⁹³ As it is seen from the content, it should be mentioned that this definition is applicable to written constitutions because customary constitutions are revised according to rules for modifying ordinary laws due to the lack of document called "the Constitution".

At the time of its adoption, the Constitution of the Republic of Moldova, stipulated one method of revising the Constitution provided by Art.143 – within the Parliament. This method of revising the Constitution was recognized as the only one until 1999, when political differences related to awarding the President some additional tasks peaked and the Constitution could not be revised due to the lack of constitutional majority in the parliament for revising it in this regard. We believe that at the time appeared the initiative to give the Moldovans a try to revise the Constitution directly through referendum.

When the first application regarding the interpretation of the Constitution on "whether or not the President of Moldova can request, using his presidential decree, the approval by referendum of the draft law on revising the Constitution" was addressed to the Constitutional Court, the Court in its Decision no 57 of 3 November 1999 found that "the provisions of Article 75 para. (2) of the Constitution, according to which the decisions taken by Republican referendum have supreme legal power, do not affect the revision of the Constitution, established by art. 141-143 of the Constitution, and do not stipulate any possibilities of amending certain provisions of the Constitution approved by the Parliament by any other way than provided by these articles."⁹⁴ Thus, in 1999 the Constitutional Court did not see any other way to revise the Constitution.

Later, in 2010, another parliamentary majority, which did not have a constitutional majority, called for a new interpretation of the Constitutional Court rules on the constitutional right of the Moldovans to adopt a new constitution by referendum. It is to mention that those who applied for interpreting the Constitution referred only to the right to adopt a new constitution by referendum and not to revise the existing one. However, the Constitutional Court, without accepting notification, by the Decision of 05.05.2010 interpreted the Constitution to allow revising it through referendum. Thus, the Court reasoned "the right of subjects provided in article 141 para. (1) of the Constitution to initiate, through referendum, the revision of other rules from the Constitution, in compliance with art. 2. Para.(1), Article 38, para. (1), Article 39 para. (1), Article 66 b) and Article 75 para. (1) of the Constitution".⁹⁵

Therefore, currently, by less certain interpretation of the Constitutional Court, in Moldova was established the second method to revise the Constitution - through constitutional referendum. Although there have been attempts to revise the Constitution in this way in the referendum of 5 September 2010, this

⁹³ CRIGAN Dragoș, *Aspecte terminologice aplicate procedurilor juridice de modificare a constituțiilor*. Revista națională de drept, nr.1 2016, p.25.

⁹⁴ Hotărârea Curții Constituționale nr.57 din 3 noiembrie 1999 privind interpretarea art.75, art. 141 alin.(2) și art.143 din Constituție. În: Monitorul Oficial al R.Moldova nr.124-125/68 din 11.11.1999.

⁹⁵ Decizia Curții Constituționale din 05.05.2010 asupra sesizării privind interpretarea art.141, art.142 și art.143 din Constituția Republicii Moldova. În: Monitorul Oficial nr.72-74/14 din 14.05.2010

referendum failed because of massive absenteeism of the electorate. Less than a third of the electorate participated in the referendum.⁹⁶

In connection with the opportunity to revise the Moldovan Constitution by referendum, there should be noted the comments of the Venice Commission in the report on constitutional amendments (CDL-AD (2010) 001 of 19 January 2010). It states "The existence of procedures rigid constitutional revision is an important principle of democratic constitutionalism, which encourages political stability, efficiency, legitimacy and quality of decision making and the protection of rights and interests of non-majority. [...] The main arena for constitutional amendment procedures should be the national Parliament, as the institution mostly capable of discussing and considering such issues. [...] **The recourse to a popular referendum to decide on amending the Constitution should be limited only to those political systems where this is required by the Constitution itself**, which is applied in accordance with established procedure, and should not be used as a tool to avoid parliamentary procedures or undermine the fundamental democratic principles and human rights."⁹⁷

However, in the end, the Constitutional Court Notice No. 1 of 22.09.2014 stated that "the Fundamental Law regulates two types of national referendums. One is initiated by President of the Republic of Moldova or the Parliament on issues of national interest referred to Article 66, 75 and 88 and the one, through which is approved the revision of the Constitution, governed by Article 142 para. (1)."⁹⁸ We believe that the Court has not yet pronounced definitely for the possibility of revising the Constitution by referendum. It is because from the text referred to above, it can be understood that the second type of referendum is not required for the adoption of the Law on amending the Constitution, but for the approval of the revision of the Constitution, which also represents another procedure. Along with this, from subsequent interpretations, however it may be understood the possibility of recourse to a referendum on the future adoption of a law amending the Constitution.

Concluding the above, in Moldova there are two ways of revising the Constitution:

- 1) revision of the Constitution directly by the Parliament, and
- 2) revision of the Constitution by referendum, as the Parliament stated.

The first way to revise the Constitution of the Republic of Moldova is expressly provided in the Constitution and does not raise any doubts on the appropriateness and legitimacy of it. Moreover, this method corresponds to the criteria established by the Venice Commission, which is expressly provided in the Constitution. Since the adoption of the Constitution, this method has been already applied in eight laws amending the Constitution, one of which is partially recognized unconstitutional due to negligence caused by the constituent legislator related to revision procedure.

The second method, by referendum, we believe, is still unclear, for which the Constitutional Court of Moldova is supposed to state its last word in this field. The uncertainty of this method, as we have previously stated, not only did not pass the constitutionality test, but also the people's test, being rejected by the Moldovans in a popular referendum of 5 September 2010. Referring to its uncertainty, several national researchers expressed their views on the matter. Thus, V. Zaporojan opined that "If we read carefully art. 143 (of the Constitution a.n.), as a special norm that governs the procedure of revising the Constitution, it provides the only constituent assembly, namely the Moldovan Parliament, which can amend the supreme law by a vote of two-thirds majority. Recourse to referendum is an extreme measure,

⁹⁶ Hotărârea Curții Constituționale nr.22 din 23.09.2010 cu privire la confirmarea rezultatelor referendumului republican constituțional din 5 septembrie 2010. În: Monitorul Oficial 191-193/23, 01.10.2010

⁹⁷ Raportul Comisiei de la Veneția privind amendamentele constituționale (CDL-AD(2010)001 din 19 ianuarie 2010). In: [http://www.venice.coe.int/webforms/documents/default.aspx?pdf=CDL-AD\(2010\)001-e&lang=fr](http://www.venice.coe.int/webforms/documents/default.aspx?pdf=CDL-AD(2010)001-e&lang=fr)

⁹⁸ Avizul Curții Constituționale nr.1 din 22.09.2014 asupra inițiativei de revizuire a articolelor 78, 85, 89, 91 și 135 din Constituția Republicii Moldova prin referendum republican (Sesizarea nr.48c/2014) //Monitorul Oficial 325-332/39, 31.10.2014

which may be the reason for questioning the legitimacy of such revision of the Constitution".⁹⁹ In this context, it is necessary to pay attention to the opinion of the Venice Commission from the act to which we referred to above in connection with the procedure for revising the Constitution by referendum. This method should be applied only "in accordance with the established procedure and it should not be used as a tool for preventing the Parliament procedures".

Any method applied in relation to revision of the Constitution, however, must meet the principle set out at the beginning of this study, and namely - the stability of the constitution. It is an undeniable principle of the state of law, which should be applied to procedures for revising the Constitution of the Republic of Moldova in order not to end up with other laws on revision of the Constitution adopted in the future and declared unconstitutional.