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## THE ROLE OF POLITICS AND THE TIME FACTOR FOR ESTIMATING CONSTITUTIONAL STABILITY

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## SUMMARY

Author analyzes the role of politics and the time factor for estimating constitutional stability. She draws a conclusion that the Constitution should be not a tool for politics, but a bound, framework for it. Moreover, the constitutional developments should express not the current political preferences and interests, but be superior to them and define fundamental legal framework for political actors and events. Moreover, taking into consideration the Author's viewpoint concerning the interrelations between the stability of the Constitution and time, she considers that it isn't expedient to mention a concrete period of time, in conditions of which the Constitution should stay in force to be considered stable.

**Key-words:** *constitutional stability, politics, time factor, constitutional and political culture, constitutional developments.*

As a rule, the stability of Constitution is presented as unchangeability of constitutional regulations in legal literature [4, p.632; 5; 6, p.189; 7, p.16; 10]. Moreover, politics and the timeframe of the existence and unchangeability of constitutional regulations are considered as the initial factors conditioning the existence of the discussed feature of Constitution. I have another viewpoint regarding the mentioned issue, which will be presented within the frames of the article.

In the contemporary science, the stability doesn't exclude changes. It expresses the possibility of the system to keep a **dynamic balance** during a long period

## ROLUL POLITICII ȘI AL FACTORULUI DE TIMP LA ESTIMAREA STABILITĂȚII CONSTITUȚIONALE

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## SUMAR

Autorul analizează probleme privind rolul politicii și al factorului de timp pentru estimarea stabilității constituționale. Se ajunge la concluzia că, pentru politică, Constituția trebuie să fie nu un instrument prin care se exprimă prioritățile și interesele politice, ea este superioară lor. Mai mult decât atât, evoluțiile constituționale nu ar trebui să exprime preferințele și interesele politice de moment, ci să definească cadrul legal fundamental pentru evenimentele politice și pentru actorii politici. Manifestând o opinie aparte privind interacțiunea dintre timp și stabilitate constituțională, autorul consideră că nu este oportun de menționat o perioadă concretă de timp în care, Constituția rămânând în vigoare, să poți vorbi de o stabilitate constituțională.

**Cuvinte-cheie:** *stabilitate constituțională, politica, factor de timp, cultură politică și constituțională, evoluție constituțională.*

of time [11, p.281] and to be unchangeable within the frames of time **in previously defined or reasonably expected conditions** [1].

From the viewpoint of Constitution „stability”, „changeability” and „development” are also not mutually exclusive terms. The essence of stability isn't based on the idea of preserving the system from changes, but on the idea of establishing opportunities for taking the mentioned changes into account. At the same time, the above-mentioned shouldn't presuppose a possibility to thoroughly change the „core”, „kernel”, the essence of the system. The reason is that each system has a concrete integrative quality, which forms the mentioned whole system and the initial condition, from which the transition to new positions takes place.

The above-mentioned leads us to a conclusion that



the term „stability of the Constitution” presupposes a possibility of changes, but such changes, within the frames of which the main quality of the system, the „core” of the Constitution is held.

Therefore, the stability is the characteristic of the Constitution, which presupposes its viability and unchangeability in the conditions of unchangeable social relations, taking into consideration the circumstance that in this case we speak not about the static, but the dynamic stability, when the „core”, the essence of the Constitution isn't subject to thorough changes, but the Constitution itself is able to adapt to changing social relations, being their initial regulator [8, p.141-146].

We believe that for the realization of the mentioned aim and the formation of the feature of stability the Constitution should be self-sufficient, which, to our mind, presupposes that the mechanisms necessary for the realization and protection of the Constitution, as well as for the regulation of social relations should be included in the Constitution, giving an opportunity to solve various arising problems on the basis of constitutional norms. At the same time, the above-mentioned doesn't mean that the Constitution should prescribe all the details of the regulation of social relations, but means that the Basic Law should give an opportunity to find necessary regulations for solving various arising problems, in other words, should have necessary and sufficient system of constitutional self-defense.

The feature of self-sufficiency also presupposes that besides regulating the existing social relations, the Constitution should raise corresponding aims, conditioning the development of the mentioned relations, to which the concrete social society should seek.

For being stable constitutional norms should also constitute an interrelated, systemic integrity. In case, when the Constitution prescribes norms, which separately define effective regulation, but together, as an integrity, aren't able to properly regulate the social relations, the Basic Law won't be able to implement its functions, hence, also be stable.

At the same time, notwithstanding the importance of the above-mentioned technique of determination of constitutional norms, during their realization the logic that there are not and can't be any conflicts between the constitutional regulations should be considered as initial. In other words, they should be interpreted not in an isolated and conflicting manner, but on the basis of their logical interconnections, considering the Constitution as a consistent, thorough document [9, p.21-31].

At the same time, though from the aspect of the stability of Constitution the mentioned constitutional solutions have an exceptional importance, not only the above-mentioned circumstances ensure the existence of the noted feature of the Basic Law.

For being stable the Constitution, among other circumstances, should be able to implement its functions, which is conditioned not only by the existence

of the above-mentioned constitutional solutions, but also by a number of external factors.

According to many authors the stability of the Constitution thoroughly depends on the political system. They believe that constitutions are subject to political actors and events and exist only during such a time-frame, within which they are expedient from the political point of view, and no more.

It should be noted that various research show that the stability of modern constitutions mostly depends on political stability, and the interruption of the balance of the state power in the result of armed upheavals, revolutions, etc. have the greatest impact on decreasing the viability of the Constitution. For example, 66% of the constitutions of the Latin American countries, which lost their effect in 1946-2000, were replaced just during these events [2].

We also believe that from the point of view of the discussed issue politics is an important factor, as the political environment has an undeniable impact on the choice of constitutional solutions and their factual realization. At the same time, we should take into consideration that this impact isn't unilateral, as the Constitution, in its turn, defines the rules, within the frames of which the state, hence, also the political power should act.

Therefore, the stability of the Constitution is conditioned not just by this or that change of correlation of political power, but generally, by the corresponding level of constitutional and political culture of the society.

Hence, we should be guided by the logic that the Constitution should be not a tool for the politics, but a bound, framework for it. Moreover, the constitutional developments should express not the current political preferences and interests, but be superior to them and define fundamental legal framework for political actors and events.

The next issue we would like to consider within the frames of this article is the interrelations between the stability of Constitution and time.

According to many authors time is the initial circumstance, conditioning the existence of the feature of stability of the Constitution. They consider that the stability of the Basic Law is conditioned by the durability of its force in time, i.e. by the circumstance how long it stays in force.

We believe that the effect of Constitution during a long period of time can be conditioned not only by the circumstance that the latter is a social agreement concerning the basic rules of the social existence and defines the fundamental values and principles, which are typical for the given historical stage of a social society, but by various political, social, economical and other factors.

For example, the Constitution of Columbia of 1886 was replaced just in 1991, being in force for 105 years. Nevertheless, the main reason for this was not its au-



thority, but unsuccessful attempts to convene constituent assembly.

Hence, we think that the Constitution is stable not because it isn't amended during a long period of time, but vice versa, it isn't often changed, as it prescribes the fundamental values and principles typical for the given historical stage of the social society, such structural solutions, which are necessary to organize the social life in accordance with constitutional norms and principles, as well as to make the constitutional norms and principles in conformity with the developing social relations.

The next question which arises in this context is the following: is there any concrete period of time, during which the Constitution should stay in force, to be considered stable?

According to Thomas Jefferson laws, including Constitution, should mechanically lose their force, taking as a basis the circumstance that today's majority can restrict just itself and today's minority, but it can't restrict the future majority and minority. He considered 19 years as the optimal period for the action of the Constitution, taking as a basis the average period of life generally and the average period of active life of adults during these years in Europe [3].

Taking into consideration our viewpoint concerning the interrelations between the stability of the Constitution and time, we consider that it isn't expedient to mention a concrete period of time, in conditions of which the Constitution should stay in force to be considered stable.

The action of the Constitution during a long period of time, when it is simultaneously the initial regulator of social relations, certainly, speaks about its viability, hence, also stability. But this doesn't theoretically exclude such a situation, when, acting even during a very short period of time, the discussed feature will be typical for the Basic Law. For example, in cases when the Constitution is replaced just because of the change of the political power.

Hence, we believe that it isn't expedient to mention a concrete period of time, which itself presupposes the existence of the feature of stability of the Constitution.

At the same time, the most acceptable situations are the ones, when the Constitution, which has been acting during a long period of time, is simultaneously the initial regulator of social relations, being in conformity with the process of their development, in which conditions the Constitution becomes viable, hence, also stable.

Summarizing the above-mentioned, it should be noted that the stability is the feature of the Constitution, which presupposes its viability in conditions of changing social relations.

At the same time, in this context we speak not about the static, but the dynamic stability, when the „core“, the essence of the Constitution isn't subject to fundamental changes, but the Basic Law itself is able

to adapt to developing social relations, to become a stimulus for their development, which presupposes that the latter should be self-sufficient, constitutional norms should constitute a correlated, systemic integrity, should regulate not only the existing social relations, but raise corresponding aims, conditioning the development of the mentioned relations and to which the given social society should seek, and in the result the Constitution should be able to effectively implement its functions.

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