

Romania's  
Constitutional  
Revision Dilemmas

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**Abstract:** The revision of any constitution at a given time responds to the needs of development of the society itself.

The revision of the Constitution is a function which is "negatively" delineated through substantial and procedural guarantees that restrict the revisionary legislator (Contiades, 2007). The strict Constitutions, among which lies the Romanian Constitution of 1991, explicitly provide for the special procedure for their revision and determine also a cluster of provisions that cannot be revised.

**Keywords:** procedure, revision's limitations, Venice Commission.

## Description of the legal procedure for the Constitution's revision

The utmost importance of the Constitution within the Romanian legal system is reflected, among others, by the procedure required for its revision, which differs from the one applied for the ordinary enactments within the Romanian legal system by being more complex and strict (formally, materially and temporally) and requiring higher voting majorities (Muraru, 2008).

In accordance with article 151 of the Romanian Constitution, the exercise of national sovereignty materialized by the initiative for the Constitution's revision belongs to the Romanian executive authority (i.e. the Romanian President, based on the Government's proposal), to the Romanian legislative authority (i.e. at least a quarter of the number of deputies or senators) or to the Romanian citizens (i.e. a number of 500,000 citizens with voting rights).

Citizens initiating the Constitution's revision must originate from at least half of Romania's counties and, at the same time, in each of such counties or in Bucharest 20,000 signatures must be registered in support of the revision initiative. This territorial distribution rule is established in order for a minimum degree of representation of the Romanian population to be reached.

The revision initiative, materialized in a revision project or proposal (the "Revision Project") shall be subject to the consultative endorsement of the Legislative Council (i.e. the specialized consultative body of the Romanian Parliament), as per article 3, paragraph (1) of the Law no. 73/1993 on the establishment, organization and functioning of the Legislative Council.

As per article 146 of the Constitution, the prerogative to verify whether the Constitution's revision initiative is constitutional (both from a normative and a procedural perspective) belongs to the Constitutional Court, which, in accordance with article 19 of Law no. 47/1992 on the organization and functioning of the Constitutional Court, within a term of 10 days as of the receipt of the Revision Project, together with the Legislative Council's endorsement, shall decide on the compliance of the Revision Project with the constitutional provisions.

Following the obtaining of the endorsements from the Legislative Council and, respectively, the Constitutional Court, the Revision Project shall be submitted, for adoption, to the Deputies Chamber and Senate,



which shall decide with a qualified majority of at least two thirds of the members of each of such Chambers. Such quorum is significantly higher than the one necessary for the adoption of organic or ordinary laws. (Muraru, 2008).

Should any discrepancies exist between the versions of the Revision Project adopted by each Chamber, the divergence shall be settled by resorting to a mediation procedure. The mediation procedure entails the designation of an equal number of representatives of each of the Deputies Chamber and Senate, assembled in a temporary joint commission. Said joint commission is vested to negotiate on the divergence points between the two aforesaid versions of Revision Law, for the purpose of agreeing a common version of such. However, given that the abovementioned joint commission is not a decision-making body, the version of the Revision Project negotiated by the joint commission shall be subject to the approval of each of the Romanian Parliament's Chambers.

In case that, after being subject to each of the Deputies Chamber and Senate vote, the adoption of a common version of the Revision Project has not been achieved, the two parliamentary Chambers shall decide on the adoption of the Revision Project, in a common meeting, with a majority of votes of at least three quarters of the total number of senators and deputies. Should the Revision Project be passed by the Parliament's Chambers in common meeting, the Constitutional Court shall pronounce ex officio on the constitutionality of such and, in case the Constitutional Court considers that the constitutional requirements for the Constitution's revision have been breached, its decision in this respect shall be transmitted to the Deputies Chamber and the Senate, in order for the Revision Project to be brought in line with the provisions of such Constitutional Court decision (Muraru & all, 2004). Furthermore, in order for the Constitution's revision to enter into force, it must be approved by a popular referendum, organized within at most 30 days as of the Revision Project's adoption date.

### **Limitations**

The Constitution's revision is materially limited only to aspects which do not refer to the national, independent, unitary and indivisible character of the Romanian State, the republican form of government, the territorial integrity of Romania, the independence of justice, the political pluralism and the official language.

Likewise, no revision of the Constitution should result in the suppression of fundamental rights and freedoms of citizens or of their guarantees. As regards temporal limitations in relation to the Constitution's revision, it is forbidden for such to be initiated during a state of siege or emergency, or during wartime, due to the exceptional character of said contexts, during which the national sovereignty is more difficult to be exercised.

### **Legal provisions regarding the revision of the Constitution of Romania from 2003**

As the Venice Commission stated at that time, it was thus an extensive revision informed by the first ten years of operation of the Constitution, rectifying the drawbacks of some of the earlier options taken by the constituent assembly, and seeking to prepare Romania for confident entry into the international and European organisations to which it does not yet belong.

Briefly, the revision:

- establishes the appropriate Constitutional framework and the juridical grounds for Romania's Euro-Atlantic integration; it harmonizes its provisions with the main regulations of the European Union; it stipulates the right of Romanian citizens to elect and to be elected in the European Parliament;

- includes the principle of separation and balance of the legislative, executive and judicial powers;
- consecrates the unity of the Romanian people and the solidarity of the Romanian citizens as bases of the State;
- guarantees equal access of men and women to public positions and dignities;
- stipulates the right of the parties to a fair, impartial trial, held within a reasonable lapse of time;
- stipulates that detention awaiting trial is ordained by the judge and only during the penal trial for 30 days at most; this period can be extended with at most 30 days at one time, but it cannot exceed 180 days;
- turns the Supreme Court of Justice into the High Court of Appeal and Justice, according to the tradition of the Romanian judiciary system;
- institutes the patrimonial responsibility of the State for prejudices caused by judicial errors of any nature, and
- stipulates the responsibility of the magistrates who exercised their function in bad faith or gross negligence;
- increases the role and the importance of the Higher Council of Magistrature as the warrant of the independence of justice and it includes representatives of the civil society in its composition;
- places the activity of penal investigation of the judiciary police under the direction and oversight of the public prosecutor offices attached to the courts of law;
- it stipulates that the State shall grant social scholarships to children and young people coming from underprivileged families and to those institutionalized;
- guarantees free access to the values of national and world culture;
- acknowledges the right of any person to live in a healthy environment;
- eliminates compulsory military service;
- stipulates the guarantee and the protection of private property, whoever the owner; nationalization and any other measures of forced transfer of assets to public property on political, social, ethnic, religious or other grounds, are strictly forbidden;
- stipulates the setting up of a national policy of equal opportunities for disabled persons;
- enhances the role of the Advocate of the People (Ombudsman), whose term of office shall be of 5 years instead of 4; the Ombudsman shall have the right to notify directly the Constitutional Court on the unconstitutional character of laws;
- sets up a clearer division of the legislative competences of the Chambers of Parliament in order to speed up the legislative activity and eliminate the stages of mediation and divergence;
- lowers the number of citizens that can promote a bill from 250,000 to 100,000;
- restricts parliamentary immunity to the votes or political opinions expressed in the exercise of office;
- lowers the age limit of candidates for the Senate to 33 years;

- extends the term of office for the President of Romania to 5 years and stipulates the right of the President to notify the Constitutional Court in order to solve the judicial conflicts of constitutional nature between public authorities;
- restricts the possibility for the Government to adopt emergency ordinances to exceptional situations whose regulation cannot be postponed, and it stipulates the obligation to motivate the emergency status of the ordinance within its contents;
- eliminates the possibility for the Parliament to annul the decisions of unconstitutionality of laws adopted by the Constitutional Court.

### **The actuality of the Romanian Constitution's Revision**

In the last two years, the prospective of a significant constitutional revision seemed possible.

In 2012, the Venice Commission stated that the events and several statements made at that time, demonstrated a worrying lack of respect among representatives of State institutions for the status of other State institutions, including the Constitutional Court as the guarantor of the supremacy of the Constitution.

The main issues of constitutional reform are inter-institutional relations (in particular regarding the role of the President), the reform of a range of institutions (including the Parliament, the Superior Council of Magistracy (CSM) and the Constitutional Court), the election and electoral laws, and the regionalization process.

According to the Government, the revision will not touch on substantive parts of the Constitution, but will consist in a 'delicate adjustment'. Regarding the role of the Constitutional Court, the Government declared that one of the reasons of the revision is to avoid future frequent recourse to the Court in the case of inter-institutional conflict. The new Constitution is to very clearly state the roles of the various institutions.

In the same time, a complex conflict over legal constitutionalism, and the role of the Constitutional Court (Vasilescu, 1994) in particular, can be observed in recent years. Since the 'upgrading' of the Romanian Constitutional Court to a full-blown ultimate arbiter in constitutional matters, it can be argued that the Romanian system has become closer to a form of legal constitutionalism. (Blokker, 2012).

### **Instead of conclusions**

As the Commission said, the respect for a Constitution cannot be limited to the literal execution of its operational provisions. The very nature of a Constitution is that, in addition to guaranteeing human rights, it provides a framework for the state institutions, sets out their powers and their obligations. The purpose of these provisions is to enable a smooth functioning of the institutions based on their loyal co-operation.

The Head of State, Parliament, Government, the Judiciary, all serve the common purpose of furthering the interests of the country as a whole, not the narrow interests of a single institution or the political party having nominated the office holder. Even if an institution is in a situation of power, when it is able to influence other state institutions, it has to do so with the interest of the State as a whole in mind, including, as a consequence, the interests of the other institutions and those of the parliamentary minority.

Still nowadays, the Romanian Constitution is subject to intense political and academic debate with respect to its revision. Reaching a well-balanced equilibrium between the whole parties involved might be the first virtue of any constitutional arrangements.

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