

Indicators for Measuring Constitutional Efficiency. An Evaluation of the Romanian Constitution after 30 Years

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Abstract

Explaining the concept of the effectiveness of the constitution requires, first, as in a mathematical equation, the identification of the classic criteria of normative validity of a fundamental law, i.e. the supremacy of the law, the separation and balance of powers, the existence of the rule of law, the effectiveness of the guarantees of respect for human rights, the application of specific sanctions in case of constitutional slippages. The introduction into this equation of some variables such as the optimal lifespan of a constitution, the stability of the fundamental law or the phenomenon of citizen participation is necessary to draw conclusions on some effects such as its success, legitimacy and felicity, as well as the happiness of its citizens. By applying this method of analysis to the Romanian Constitution of 1991, the study aims to verify whether it was able in its existence of three decades to ensure the achievement of its initial goals, as well as its normative and non-normative functions, which what should be reflected in its ability to regulate conflicts in the constitutional space, the force of imposing its specific norms and sanctions, to ensure the optimal and sustainable functioning of state institutions and to create and obtain the faithful employment of its beneficiaries in respecting its supremacy, as an expression of their ideal of a politically constituted society.

Keywords: indicators for measuring constitutional efficiency, the optimal lifespan of the constitution, constitutional felicity, citizens happiness.

JEL Classification: K40, K42

1. Introduction

Efforts to develop a theoretical corpus to determine the effectiveness of the law and hence the fundamental law that can be subjected to validation through observation or experimentation are hit by the lack of a consensus regarding a universally accepted theory in the field, a fact demonstrated by the multitude of explanatory approaches.

The term efficiency acquired, in the last century, a special use in the social sciences after its introduction in the theory of economics applied by Vilfredo Pareto, the entire social thought being decisively influenced by the Paretian legacy. In Pareto's conception, the science of economics has two forms, pure economics, which constitutes a first approximation of the phenomena and general conditions of economic equilibrium, as well as applied economics which studies the concrete conditions for achieving equilibrium, in which sense it borrows a series of investigative tools from other scientific disciplines such as history and sociology².

A social state, according to Pareto's definition, is "efficient" or "optimal" if an individual can improve someone's situation without this action leading to the worsening of someone else's situation. In its general sense, in terms of production activity, efficiency refers to the ratio between what is invested and the profit obtained. But when we talk about efficiency in the social system, the notions of investment and profit are converted into what represents individual costs on the one hand and access to public goods, on the other, which means that any social interaction involves a cost for the participants.

The term Pareto efficiency or Pareto efficient can be used in a relative sense - meaning that state A is *Pareto superior* to state B, - or in an absolute sense - as when a certain state is called *Pareto optimal*. A *Pareto superior* change can be defined as follows: any change that puts one member of society in a better position without making someone else's position worse is a Pareto improvement. Conversely, a change that violates the Pareto criterion is called *Pareto inferior*. The term Pareto optimum is used to refer to the state reached when one person's position cannot be further improved unless it makes another person worse off. In the sphere of laws, where the state can apply coercion,

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² Gheorghe Popescu, *Evoluția gândirii economice*, 4th edition, revised, added and updated, Ed. C.H. Beck, Bucharest, 2009, p. 754.

the normal Pareto criterion, which is based on free will, is not directly applicable³.

A democratic constitution in Arrow's theorem is one in which no individual dictates all public choices. An efficient constitution in Arrow's theorem is one that cannot be changed to advantage one person at the expense of another ("*Pareto efficiency*")⁴. The adoption of effective rules occurs as a result of a process of voluntary exchange, with individuals mutually agreeing to be bound by rules that restrict their future choices. The efficiency of the rules cannot be measured by an objective criterion imposed by an external observer, disregarding the processes from which they were born.

According to the contractualist perspective, rules are efficient if they take into account all the subjective opportunity costs experienced by individuals who have contracted with each other to establish the rules.

Efficient rules should make all individuals as rich as they want, given the full range of alternative social arrangements that could potentially be chosen. In this sense, Robert Cooter suggests that it is sufficient for a political constitution to produce mutual benefits from cooperation and cooperation itself must be preserved. Violations of mutual cooperation diminish the value of the constitutional agreement and ultimately translate into a lack of effectiveness of the constitutional terms.⁵

2. The stability of the fundamental law – the first indicator of the effectiveness of the constitution

Constitutional stability is defined as the durability in legal terms of the original constitution, the lifetime of the constitution being considered the time between the moment of adoption and the moment when a constitution in force is replaced by another constitution⁶. The durability of the constitution is considered to be an important phenomenon in political science primarily as a spirit or state that consists in the assent to restrict political life with rules that exceed the political struggle⁷.

Before examining the causes of constitutional longevity, in a study by the University of Illinois, USA, the authors Z Elkins, T. Ginsburg and J. Melton, consider it necessary to refer to an aspect with effects in terms of constitutional normativity, namely which would be the life span of a constitution in a democracy. From this point of view, constitutions are intended to stabilize and facilitate the functioning of political institutions, but it is also possible for them to outlive their usefulness and create problems in the political process, having the ability to even distort democracy. In this situation, they must be replaced⁸.

The group of researchers we referred to earlier have inventoried different lifespans of constitutions in various parts of the world. Thus, the average lifespan of a constitution is sixteen years compared to the constitutions of most countries, after 1789⁹, varying from one region to another and from one generation to another. For example, countries in Latin America and Africa have shorter life spans, with the typical African constitution lasting around ten years, and Latin America, the source of nearly a third of all constitutions, not exceeding 12.4 years, and on the other hand, the constitutions of Western Europe and Asia have an average lifespan of 32 and 19 years, respectively.

The countries of the O.E.C.D. they have constitutions with an average lifespan of 31 years, thus suggesting an association between economic benefits and constitutional stability. Unlike the trends in people's life expectancy, the life expectancy of a constitution does not show an increasing trend, so if until the Second World War the average lifespan of a constitution was 21 years, in current times

³ Ibid, p.33

⁴ Robert Cooter, *The Confluence of Justice and Efficiency in the Economic Analysis of Law*, from „The Selected Works of Robert Cooter”, December 2003, available online at https://works.bepress.com/robert_cooter/download, p. 14, consulted on 11.11.2022.

⁵ Ibid.

⁶ Gabriel L. Negretto, *The durability of constitutions in changing environments: explaining constitutional replacements in Latin America*, The Helen Kellogg Institute for International Studies, Working Paper # 350, p.1, 2008, available online at: https://kellogg.nd.edu/sites/default/files/old_files/documents/350_0.pdf, consulted on 11.11.2022.

⁷ Ibid., p. 3.

⁸ Zachary Elkins, Thomas Ginsburg, John Melton, *The Lifespan of Written Constitutions*, 2006, p.1, available online at http://jenni.uchicago.edu/WJP/Vienna_2008/Ginsburg-Lifespans-California.pdf, consulted on 11.11.2022

⁹ Ibid, p.12.

the average lifespan of existence decreased to 12 years.¹⁰

Elkins *et al.* consider two basic factors to which the constitution is related when its duration is discussed - the legitimacy of the adoption and the optimal adaptation (to future contexts - author's note).

Regarding the first of these factors, the adoption of the constitution is important especially when it takes place after a crisis or shock, a paradoxical aspect because, on the one hand, the idea of a crisis can facilitate effective negotiation as long as the alternative of no negotiation can be risky, and on the other hand, the crisis situation can complicate the rational considerations of some institutions and optimal options. But regardless of which institutions are chosen, the manner in which they are chosen is important, constitutions adopted on the basis of public input or having "public blessing" have a better chance of survival.

Constitutions with broad public support are more easily self-imposed and more capable of dealing with exogenous threats. Regarding optimal adaptation, Elkins *et al.* start from the consideration that a well-adapted constitution is the one that fits, first of all, the existing political environment at the time of its adoption.¹¹

In conditions where societies do not remain constant, exogenous changes intervene, different international configurations develop, and institutions change the political face of the societies they belong to, even a self-imposed constitution can suffer an imbalance if the benefits distributed between groups change by -over time. However, it is desired that a constitution written at time T1 be optimally suited at time T2 and therefore adjust as societies change. The authors identified two primary mechanisms through which constitutional changes intervene: formal amendments to the text or informal amendments resulting from interpretive changes.¹²

Thus, the optimal adaptation results from the interaction between the rigidity of the amendment and the possibility of legal reinterpretation of the constitution. The optimal level of flexibility is not universal for all countries, but is determined in the particular case of a constitution by both exogenous factors, such as the degree of technology or environmental changes, and endogenous factors, such as the responsiveness of political institutions and the foundations of legitimacy since the establishment of the constitutional scheme.

On the contrary, a rigid constitution that suits the society at the time of its inception will also be adequate later if the environmental changes are small, but the same constitution will function inadequately if the change is rapid.¹³

On the other hand, constitutions that are easily amended have little value in providing stable rules for political action. And these can disappear early because they do not serve one of the essential purposes of constitutions, that of stabilizing and facilitating policies. The authors we refer to, however, believe that there is an optimal level of adaptability for any given situation, which is neither too flexible nor too rigid.

Another factor that could be relevant to the need for adaptation is the initial specificity of the constitution, with constitutions from different states varying in terms of the level of detail they adopt. The existence of various examples¹⁴ can lead to the idea that those constitutions with a high degree of detail generate frequent amendments and the risk of changes related to minor aspects and subsequently, that those constitutions with a higher degree of generality allow a more flexible adaptation over time.

In order to test this hypothesis, they introduce some independent variables that capture internal features of the constitution and that can provide the predictability of constitutional stability, classified into structural factors and precipitation factors.¹⁵

Thus, the *structural factors* considered in the analysis of Z. Elkins, T. Ginsburg and J. Melton

¹⁰ Ibid, p. 12.

¹¹ Ibid, p. 12.

¹² Ibid, p. 20.

¹³ Ibid, p. 20.

¹⁴ Ibid, p. 20.

¹⁵ Ibid, p. 21.

are the following: public involvement, constitutional flexibility, legal analysis, the specificity of the constitution, the age of the state, economic development, democracy and common law. Except for the specificity, the other structural factors contribute to the resistance of the constitution, each influencing it in a certain sense or another. Public involvement in the process of ratification of the constitution increases its life expectancy regardless of whether the form is public promulgation or a constitutional convention with publicly elected representatives for the preparation of the constitutional text. As far as legal analysis is concerned, the primary mechanism for flexibility generated by legal interpretation is the presence of a court to coordinate this constitutional analysis, the court having the ability to reinterpret the text in a rather profound sense. This aspect provides the necessary flexibility in the face of exogenous shocks.¹⁶

Regarding the age of the state and the connection with the life expectancy of the constitution, the basic hypothesis is that states founded many years ago have constitutions with a higher life expectancy than newly established states. Also, the states characterized by an industrialized economy have better chances to successfully pass through a potential crisis, an aspect that gives stability to the constitutional framework, the same time of effect being found in the case of stable democracies.¹⁷

Precipitating factors are considered to generate in most cases the defeat of constitutions or significant constitutional changes, these being: defeats in military conflicts, state agreements usually imposed after armed conflicts, transitional regimes, occupations, coups and changes in executive leadership.¹⁸

Following the analysis they undertook, Elkins *et al.* drew a series of interesting conclusions regarding how constitutions resist or disappear due to the influence of various factors as listed previously. First of all, rich countries with a strong democratic heritage are more likely to have solid constitutions and the primary hypothesis regarding the influence of initial public legitimacy in the sense of the predictability of constitutional longevity is significantly verified.

Flexibility appears as a crucial factor determining constitutional longevity, constitutions that allow for amendments in a more accessible way are better able to withstand exogenous shocks associated with coups, wars and crises while rigid constitutions are risky. Formal rigidity can be overcome by flexible interpretation, but, on the other hand, there are indications of the correlation of this flexibility as an indicator with the disappearance of the constitution, the authors considering this variable insufficient to capture as faithfully as possible the effects of legal reinterpretation on the lifespan of the constitution.¹⁹

Moreover, constitutional stability is directly dependent on the duration of existence, so that the longer a constitution is in force, the more likely it is to reach an even older age.²⁰

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In the Romanian constitutional doctrine²¹, Professor T. Drăganu was the first author who considered that the prerequisite for the effectiveness of the constitution consists in ensuring its stability by taking the measures called to prevent a hasty revision of its norms that enshrine the fundamental institutions of the state.²²

In the same sense, more recently, I. Brad observes that the effectiveness of a constitution depends to a large extent on its internal structure²³, as well as the fact that the identification of the essential elements that a fundamental law must contain in order to achieve its goals for which was enacted as the conditions that must be met in order to achieve an effective limitation of power was

¹⁶ Ibid, p. 21.

¹⁷ Ibid, p. 21.

¹⁸ Ibid, p. 22.

¹⁹ Ibid, p. 22.

²⁰ Ibid, p. 22.

²¹ Lucian-Sorin Stănescu, *Models of analysis for the constitution efficiency concept. Level of debate in the Romanian constitutional doctrine* in, *Efficiency of Legal Norms*, Ed. Hamangiu, Cluj-Napoca, 2012, pp. 282-291.

²² Tudor Drăganu, *Drept constituțional și instituții politice – Tratat elementar-*, Vol. I, Ed. Lumina Lex, Bucharest, 2000, p. 46.

²³ Ion Brad, *The Efficiency of Constitutional Norms. Democracy and Constitutionalism*, in, *Efficiency of Legal Norms*, Ed. Hamangiu, Cluj-Napoca, 2012, p. 36.

from the beginning a difficult undertaking.

That being the case, the Constituent Assembly of 1991 opted for a rigid mechanism to ensure the stability of the Romanian Constitution, establishing a so-called "hard core" of it, enshrined in art. 152 - "Limits of revision"²⁴, thus joining a sufficiently widespread contemporary constitutional practice²⁵, but conforming, to the same extent, to a genuine autochthonous constitutional tradition (see the rigid nature of the Romanian Constitutions of 1866 and 1923). As such, in its three decades of existence, the Constitution of Romania has registered only one revision in 2003 through Law no. 429/2003²⁶, approved by the national referendum of October 18-19, 2003. Four other review initiatives (two parliamentary, one presidential and one popular) were rejected by the Constitutional Court of Romania in the period 1996-2007²⁷, and two initiatives were rejected during 2019 (one legislative²⁸ and the other popular²⁹).

A series of other initiatives to revise the Constitution of Romania launched especially after 2005 until now, some of them with a radical content³⁰ remained in the declarative stage, being abandoned at different procedural stages as a result of changes of will or political majority.³¹

The efficiency of the rigid character of our constitution can be debatable, if we take into account the fact that in the constitutional history of Romania, with some small exceptions, a Constitution has not lasted more than ten years without undergoing any modification. The situation is paradoxical given that all modern Romanian constitutions had a rigid character, being provided with complicated review mechanisms.

Although firm measures were taken against arbitrary tendencies to modify the constitutional text, this did not prevent successive revisions in relatively short terms, which created a "constitutional para-tradition"³² - according to the expression of professor Șt. Deaconu -, i.e. an unforeseen custom, but which is obstinately repeated and which we can classify without fear of making a mistake as part of the category of *contra legem* customs to which is added the dose of specific local practice. The Romanian Constitution of 1991 conforms to this constant trend in our constitutional history, being amended after 12 years of operation.

Second, another aspect of constitutional stability is presented by the problem of implied revision or false revision.

If the implied amendment consists in changing some of its provisions without resorting to the revision procedure provided for in the constitution itself, which, in our opinion, would be more difficult to achieve, a much more serious form of implied revision is false revision or constitutional fraud. This consists in the change through a legal amendment of the constitution of the political regime enshrined in the original text³³, without the corresponding prior revision of the fundamental law itself. Even the revision of the Romanian Constitution in 2003 was subject to this suspicion due to the large number of modified articles (more than 70) and the multiple changes made to the organization and functioning of some of the public authorities (President, Superior Council of Magistracy, legislative procedure, etc.).³⁴

Finally, even the material limits of constitutional revision, i.e. the areas declared unreviewable, do not remain immutable to future generations by virtue of the nation's inalienable right to amend its own constitution, established by the French Constitution of 1791, provided that the path strictly

²⁴ Tudorel Toader, Marieta Safta, *Evoluția constituționalismului în România*, in „Revista de Drept Constituțional”, no. 1/2015, p. 158.

²⁵ Cristian Ionescu, *Tratat de drept constituțional contemporan*, 3rd ed., Ed. C.H. Beck, Bucharest, 2019, p. 791.

²⁶ Published in the Official Gazette, Part I, no. 758/29.10.2003.

²⁷ Tudorel Toader, Marieta Safta, *op.cit.*, p. 162-165

²⁸ Decision of the Constitutional Court of Romania, no. 464/2019, published in the Official Gazette, Part I, no. 646/05.08.2019.

²⁹ Decision of the Constitutional Court of Romania, no. 222 of April 9, 2019, published in the Official Gazette, Part I, no. 425/30.05.2019.

³⁰ Alexandru Radu, *Continuitate constituțională discontinuă*, in „Sfera Politicii”, no. 149/2010, available online at <https://revistasferapoliticii.ro/sfera/149/art02-radu.html>, consulted on 11.11.2022.

³¹ DW editorial: “Hard to change. A history of failures to change the Constitution”, available online at: <https://p.dw.com/p/3Ox7C>, accessed 11.11.2022

³² Ștefan Deaconu, *Dreptul de a ne revizui Constituția*, in „Revizuirea Constituției economice-perspectiva societății civile”, Publishing House of the Institute for Public Policies, Bucharest, 2011, p. 97.

³³ Cristian Ionescu, *op.cit.*, p. 266.

³⁴ Alexandru Radu, *op.cit.*

constitutional review of some of these areas. In other words, the republican form of government could become reviewable³⁵, but we believe that not the areas that are defining for democratic constitutionalism, such as: separation of powers in the state, fundamental human and citizen rights, political pluralism, national sovereignty, independence of justice and control constitutionality of laws.

Consequently, if we relate the duration of existence of the Romanian Constitution to the criteria of the average life span of a constitution worldwide according to the method of the group of researchers from the University of Illinois, we can say that from the point of view of longevity, it has passed the test of viability, being the second Romanian constitution with the longest existence, being preceded only by the Constitution of 1866.

The application of this model of analysis of the normative and meta-legal results on the Romanian Constitution from 1991 and revised in 2003 led Professor S. E. Tănăsescu to draw the conclusion (in 2010) that our fundamental law would rather be a proven constitutional success by its viability of two decades (at the time)³⁶. Even if we do not fully share the enthusiasm of the current president of the Constitutional Court of Romania, Professor M. Enache, on the 30th anniversary of the adoption of the Romanian Constitution of 1991 regarding the "vision" of the fundamental law³⁷, its viability remains an undeniable indicator of analysis of its effectiveness.

3. The condition of the rule of law – as an indicator for measuring the effectiveness of the constitution

As is known, the Constitution of Romania in force provides since its adoption by the Constituent Assembly on November 21, 1991, ratified by national referendum on December 8, 1991, that "Romania is a state of law, democratic and social".

At the time of the adoption of the Constitution, this defining feature of the contemporary Romanian state could only have a vocative character, expressing more "the firm decision of the public authorities provided by the Constitution to establish and consolidate the rule of law"³⁸, than an immediate reality. Although he himself drew attention to the fact that the formulation of vocative constitutional texts is rarer and more difficult to accept in a constitution³⁹, one of the most important "founding fathers" of the Romanian Constitution of 1991, Professor I. Deleanu, considered that it "is realistic, created under the imperatives of effectiveness and the opening of emerging economic and social possibilities, which results from the combination of imperative and vocative norms."⁴⁰ The solution of the Constituent Assembly in 1991 was not entirely exaggerated, if we consider the original aspirational dimension of any constitution, since it is nothing more than "the projection of an imagined future onto reality."⁴¹

Without an exhaustive list of the guarantees or features of the rule of law in the Romanian conception, our constitutional doctrine records the following: a) the constitutional regime, that is, the establishment in the Constitution of the fundamental principles of organization and exercise of the three powers; b) the popular legitimacy (direct or indirect) of public authorities with governing powers; c) equality of all persons before the law and justice; d) ensuring the supremacy of the Constitution through a political or jurisdictional control, as well as ensuring the supremacy of the law over other normative acts; e) non-retroactivity of the law; f) the law must truly express the sovereign will of the people and be adopted through the procedure established by the Constitution and the Regulations of the Chambers of Parliament; g) the institutionalization and functionality of

³⁵ Cristian Ionescu, *op.cit.*, p. 269.

³⁶ Elena-Simina Tănăsescu, *Despre evaluarea constituțiilor*, in „Revista „Curierul Judiciar”, no. 6/2010, p. 304.

³⁷ Marian Enache, *Procesul adoptării Constituției din 1991 – o veritabilă școală a constituționalismului românesc*, available online at <https://www.juridice.ro/essentials/5084/procesul-adoptarii-constitutiei-din-1991-o-veritabila-scoala-a-constitucionalismului-romanesc>, consulted on 11.11.2022.

³⁸ Cristian Ionescu, *op.cit.*, p. 812.

³⁹ Ion Deleanu, *Instituții și proceduri constituționale – în dreptul român și în dreptul comparat*, Ed. Servo-Sat, Arad, 2003, p. 431.

⁴⁰ *Ibid.*, p. 418,

⁴¹ Beau Breslin, *From word to worlds: exploring constitutional functionality*, The John Hopkins University Press, Baltimore, 2009, p. 46.

administrative litigation; h) the right to defense based on the legal presumption of innocence, correlated with the independence and impartiality of justice; i) the guarantee of citizen rights and freedoms enshrined in the Constitution, i.e. their exercise can only be temporarily restricted, only in expressly determined situations, in proportion to the circumstance that justifies the restriction and without suppressing the fundamental right or freedom itself; j) free elections organized at predictable intervals; the real realization of an authentic, pluralistic democracy.⁴²

These minimum standards, outside of which we cannot speak of the rule of law, belong to the universal constitutional heritage, being derived from the specialized doctrine⁴³ and democratic practice of the states⁴⁴ and represent fairly recent acquisitions of Romanian constitutionalism, the opinion being justified that they are due to "largely an import (...) in corpore of constitutional forms, without a solid anchoring in society and without being the result of real national debates."⁴⁵

However, the essence of this principle is, beyond the consecration at the level of the constitutional norm, its practical and continuous dimension, its perpetual reaffirmation, which implies a complex evolutionary process⁴⁶, of the *ongoing consent* type of J. Rawls, in which they are called to participate with good - believe all social structures and subjects of constitutional law within the limits of the powers granted to them by the constitution and the legislative system, but also the ideological and ethical construction of one of the fundamental features of the contemporary Romanian state in order to create a collective ethos of the rule of law.

From the perspective of measuring the effectiveness of our constitution, the question arises of the enforceability or satisfaction of the conditions and guarantees of the rule of law, as well as of proving its effective and practical existence. The firm sanctioning of any arbitrary measure by the authorities, the resolution of conflicts of a legal nature between them in the spirit of the balance of powers in the state also represent, in our opinion, evidence of the existence of the rule of law⁴⁷, as well as the jurisprudential construction of this concept which cannot exist without its concrete dimension, of a practical order. In this sense, the jurisprudence of the Constitutional Court of Romania expresses the main requirements of the rule of law in relation to the goals of state activity, which achieves a particularly eloquent synthesis of the doctrine⁴⁸, which conceptualizes this fundamental standard of contemporary constitutionalism, in which exemplifying Decisions no. 17/2015⁴⁹ and no. 570/2012⁵⁰.

If the Constituent Assembly opted in 1991 for a declarative formula that should have expressed more than an immediate reality, but above all the commitment of the Romanian state to act permanently in order to respect and promote the mechanisms of the rule of law, our task would be to evaluate the stage reached by the understanding and effectiveness of this constitutional principle in Romania 30 years after the adoption of the Constitution in force.

In this field, according to the 2021 Report of the European Commission to the European Parliament and the Council on the progress made by Romania within the Cooperation and Verification Mechanism (MCV), it was established in 2007, at the time of Romania's accession to the EU, as a measure transitional measure intended to facilitate Romania's sustained efforts to reform its judicial system and intensify the fight against corruption. (...) According to the decision establishing the mechanism, and as the Council pointed out and the Court of Justice of the European Union (CJEU) confirmed, "the MCV will end when all applicable benchmarks have been satisfactorily met

⁴² Cristian Ionescu, *op.cit.*, p. 814; in the same sense, Marius Andreescu, Andra Nicoleta Puran, *Drept constituțional. Filosofia dreptului și istorie. Studii și eseuri*, Ed. C.H. Beck, Bucharest, 2022, p. 220.

⁴³ For example, Jacques Chevallier, *Statul de drept*, French translation by Diana Dănișor, Ed. Universul Juridic – Ed. Universitaria, București - Craiova, 2012.

⁴⁴ Cristian Ionescu, *op.cit.*, p. 814.

⁴⁵ Iulia Antoanella Motoc, *Democrație, stat de drept, dezvoltare: cazul României*, p. 11, available online at <https://www.ccr.ro/wp-content/uploads/2021/01/motoc.pdf>, consulted on 11.11.2022.

⁴⁶ Marius Andreescu, Andra Nicoleta Puran, *op.cit.*, p. 220.

⁴⁷ Cristian. Ionescu, *op.cit.*, p. 813.

⁴⁸ Marius Andreescu, Andra Nicoleta Puran, *op.cit.*, p. 224.

⁴⁹ Published in Official Gazette no. 79 of January 30, 2015, Part I.

⁵⁰ Published in Official Gazette no. 404 of June 18, 2012, Part I.

Romania."⁵¹

Consequently, from the point of view of measuring the effectiveness of the Romanian Constitution of 1991, there is a deficit in the self-imposition of this defining feature of the contemporary Romanian state, but also in the practice of the state authorities in terms of respecting the principle of separation and collaboration between the powers of the state, the independence of the judiciary and respecting the human rights. As far as we are concerned, we believe, however, that this deficit must be analyzed in relation to the criterion of the "age of the state", applied by the group of researchers from Chicago and with the premise of the lack of practical experience in the application of the rule of law. More precisely, the age of the contemporary Romanian state cannot be other than the duration of existence until now of the Romanian Constitution in force, namely 30 years, which by reference to the average lifetime of a constitution worldwide, of 16 years, represents a almost double duration, which would require a negative evaluation of this criterion.

If we compare the lifetime of the Romanian Constitution from 1991 to the lifetime of the U.S. Constitution, then the assessment could be favorable and would allow the process of maturing the rule of law to be extended.

This comparison could only have a theoretical value since the MCV has become a component part of the Rule of Law Mechanism, which primarily has a preventive role, with the aim of laying the foundations for a culture of the supremacy of the law throughout the European Union, considering the relationship between EU law and the internal law of the Member States.⁵²

Consequently, considering that through EC Communication no. 343/2019 of July 17, 2019, the European Commission adopted the Action Plan for the consolidation of the Rule of Law within the EU, which is the basis of the Rule of Law Mechanism - 2020, we believe that efficiency in the matter of the rule of law implies permanent concern for satisfying the constitutional requirements of the complex mechanism through which it is verified in order to ensure the constitutional supremacy of the definition of the Romanian state as a rule of law.

4. Legitimacy and constitutional validity - criteria for evaluating the effectiveness of the Romanian Constitution

In the view of the American sociologist S.M. Lockett, efficiency is considered an instrumental concept, and legitimacy is an evaluative criterion⁵³. From this perspective, efficiency can be measured according to the degree to which the government is able to fulfill its fundamental functions and achieve governmental progress, and on the other hand, legitimacy implies the ability of the political system to form and maintain the belief that political institutions existing are the most appropriate for society.⁵⁴ Therefore, legitimacy is an essential quality of authority in the sense that it grounds the right to exercise it and, to the same extent, justifies it; at the same time, legitimacy gives the authority its indisputable character (under the condition of legality and non-justified oppression - *author's note*) and roots the feeling of approval on the part of the governed.⁵⁵ That is precisely why, obviously, this quality, resort or criterion for evaluating constitutional efficiency is not easy to identify because it was not expressly formulated by the fundamental rules that organize the state.⁵⁶

Being an instrumental concept, efficiency is measured according to the proposed goals and

⁵¹ The Commission's report to the European Parliament and the Council on the progress made by Romania within the Cooperation and Verification Mechanism (MCV), dated 06/08/2021, available online at https://ec.europa.eu/info/sites/default/files/com2021370_ro.pdf, accessed: 11.11.2022.

⁵² Marin Voicu, *Raportul dintre dreptul UE și dreptul intern al Statelor naționale membre. Unele observații privind Mecanismul Statului de Drept 2020 al UE vs. Mecanismul de Cooperare și Verificare – MCV, România și Bulgaria – 2007-2020. Statul de drept și funcționalitatea instituțiilor UE*, in: M. Voicu, A.C. Stoica (coord.), *Mecanismul Statului de Drept-2020, al UE. Raportul dintre dreptul UE și dreptul național al statelor membre, cu referire specială la România. Supremație vs. suveranitate*, Ed. Universul Juridic, Bucharest, 2022, p. 46.

⁵³ Havadi, Nagy Istvan, *Introducere în teoria legitimității*, Cluj University Press, Cluj Napoca, 2005, p. 56.

⁵⁴ Ibid, p. 56.

⁵⁵ Vlad Constantinesco, Stephane Pierre-Caps, *Drept constituțional*, Translation by D. Dănișor, Ed. Universul Juridic, Bucharest, 2022, p. 319.

⁵⁶ Ibid, p. 319.

actual results, the goals deriving from interests and values, which makes the interests in turn democratically harmonized in what, at a given historical moment, configures the content of the general interest or of the common good, obtained through compromise, open, democratic dialogue, through the articulation of the plurality of group interests in a society.⁵⁷

The welfare state is the one that assumes responsibilities for ensuring the basic well-being of its citizens, and the state's social assistance policy is carried out through a set of measures and institutions, introduced either as responses to economic crises, or with a preventive, legitimizing purpose.

Also, the welfare state legitimizes itself through the set of services it offers to the citizen and through which it manages to reduce to a minimum its basic existential insecurity, under the conditions of a high level of economic development which is achieved through the compulsory and general insurance system, through the redistribution of incomes, through the fiscal system and the state budget, through the introduction of the right of citizens to benefit from social assistance and social aid, through the payment of medical assistance and schooling, through subsidies to equalize opportunities in the form of scholarships, price support and credits, and other similar measures. Thus, the welfare state legitimizes itself through its efforts to ensure social security, equity and social justice, social integration and individual freedom, and its tasks are aimed at reducing fiscal burdens in the case of large families, materially and financially supporting those who reach the minimum standard of living, the assurance for each member of society of the possibility to achieve an accumulation of goods, the legal regulation of human working conditions, the implementation of such a labor force policy through which unemployment can be reduced to a minimum.⁵⁸

In the process of legitimization in the Eastern European states that achieved regime changes in the last decade of the last century, the model of the social state as an objective to be achieved cannot be avoided because this is a lesson of the evolution of modern history, in the sense that political democracy only together with the social dimension of the state can ensure the legitimacy of power and the stability of the political system.⁵⁹

But if we are talking here about a pragmatic dimension of the legitimacy of the state as an indicator for measuring its social efficiency, from a sociological perspective, legitimacy is based on the citizens' conviction that their constitutional order is legitimate and on their will to obey and respect it. So, in this matter we operate with public feelings regarding the state of legitimacy of the state and its constitution, as well as with the subjective motivations that induce obedience to the constitutional order.⁶⁰

So, we are talking here, along with an obvious normative function and an important integrative function, which serves to create a state of solidarity between individuals who give themselves the respective fundamental law⁶¹ or a state of collective consciousness.⁶² Under this aspect, the questions of "to know to what extent, today, the individuals gathered under the banner of the Romanian Constitution feel bound by it in terms of norms and solidarity; does it correspond to the values of contemporary Romanian society?"⁶³ are in a position to generate answers regarding the integrative legitimacy of our constitution.

In this sense, Professor M. Guțan made a radical statement: "In contemporary Romania, the Constitution does not fulfill its integrative function because we do not have a real constitutional identity; we do not have a real constitutional identity because we lack a constitutional culture of our

⁵⁷ Havadi, Nagy Istvan, *op.cit.*, p. 58.

⁵⁸ Ibid, p. 58.

⁵⁹ Ibid, p. 58.

⁶⁰ Alon Harel, Adam Shinar, *Two concepts of legitimacy* in „Global constitutionalism”, (2022), 1-26, doi:10.1017/S2045381722000156, p. 2, available online at <https://www.cambridge.org/core/journals/global-constitutionalism/article/two-concepts-of-constitutional-legitimacy/B9741E1925110DEC24F22A1872473937>, consulted on 11.11.2022.

⁶¹ Elena-Simina Tănăsescu, *Despre funcțiile constituției și necesitatea revizuirii*, in „Revista de drept public”, no. 1/2013, p. 41 et seq.

⁶² Dan Claudiu Dănișor, *Drept constituțional și instituții politice. Teoria generală*, Ed. C.H. Beck, Bucharest, 2007, p. 136-137.

⁶³ Ibid, p. 137.

own."⁶⁴

If we look at the Romanian society as a whole, the integrative effects of the constitution are not easily observable with tendencies towards a total absence. For professor D. David, solidarity and social cooperation represent only a projective desire⁶⁵, despite the collectivist mentality that characterizes us.

As far as we are concerned, we believe that certain social frustrations in this direction also derive from the chronic arrears that the Romanian state has in fulfilling its obligations under the constitutional attribute of a welfare state.

V. Pareto considered that ophelimity is a convenient way to express the satisfaction derived from the use of goods (where the constitution and social cooperation must be taken as public goods - author's note), without the need to measure it, his vision of human society being that of a "huge clusters of molecules that produce, exchange, consume and save. A part of these operations takes place in a climate of free competition, another part under monopoly conditions."⁶⁶ Thus, each individual and social group is stimulated by the search for maximum efficiency and this effect leads society towards balance.⁶⁷

5. The state of happiness of the citizens and the efficiency of the constitution

The major difficulty of measuring the state of happiness of citizens as the goal of a politically organized society was best formulated by the philosopher Valentin Mureșan: "Today you risk being ridiculed if you dare to support the political ideal of happiness, as Aristotle did."⁶⁸

It was the philosopher of Stagira who replaced the criteria for evaluating the political constitutions of the Greek cities of "conquests and enrichment" with that of happiness, so that the best constitution is that which "enables everyone to be in the best condition and happy" (1324a, 30), therefore, "not only the happiness of individual people, but also the happiness of the city, i.e. the best constitution"⁶⁹. "Such a constitution provides the necessary means to make people happy, from the concept of the size of the city and the optimal period for marriage, to the laws of public education", says V. Mureșan, and the Aristotelian corollary would be community happiness, seen as a general interest is this: "The well-ordered city is the one that possesses the greatest possibilities to achieve happiness" (1331b, 24).⁷⁰

The study of the *Theses of the Constitution* formulated by the Commission appointed for this purpose by the Constituent Assembly in 1991 shows that the issue of the happiness of Romanian citizens and society as a whole was not discussed at all. "The concept of Common Good is intended as a principle for guiding collective activities to satisfy the interests and aspirations of all and sundry"⁷¹, which denotes, rather, a community perspective on the concept of Good at the expense of individual happiness. Moreover, the term "happiness" is completely missing, both from the wording of *Theses no. 5 and 6*, which can be analyzed in relation to the Common Good and the constitutional guarantees of its realization.

More precisely, in the speech of the rapporteur of the Drafting Committee, the professor. I. Deleanu, it is stated that: "the mutual support and collaboration of all social categories, i.e. their solidarity for the realization of the Common Good, is the immanent condition of permanence and prosperity. The concept of Common Good is intended as a principle for guiding collective activities

⁶⁴ Manuel Guțan, *Necesitatea revizuirii Constituției României (concluzii)*, in *Dezbaterea științifică națională: Revizuirea constituției-necesitate, oportunitate, obiective posibile*, March 7, 2013, Romanian Academy, Bucharest, available online at <https://acad.ro/com/2013/doc/d0307-InvitatieICJ.pdf>, consulted on 11.11.2022.

⁶⁵ Daniel David, *op.cit.*, p. 329

⁶⁶ Gheorghe Popescu, *op. cit.*, p. 755

⁶⁷ *Ibid*, p. 755.

⁶⁸ Valentin Mureșan, *Utilizează Aristotel metoda dialectică în „Etica Nicomahică”?*, in, „Revista de Filosofie Analitică”, No. 2, July-December, 2009, p. 29, available online at: <http://www.srfa.ro/rfa-old/pdf/rfa-III-2-valentin-muresan.pdf>, consulted on 11.11.2022

⁶⁹ *Ibid*, p. 55.

⁷⁰ *Ibid*, p. 55.

⁷¹ Dumitru Ionică, Olivia Stângă, Valentin Puiu, *Geneza Constituției României 1991: lucrările Adunării Constituante*, Regia Autonomă „Monitorul Oficial”, Bucharest, 2008, p. 63.

to satisfy the interests and aspirations of all and sundry. The formal elements of the Common Good are order and justice. The material elements are the well-being of the collective, the natural environment in which it lives, peace and social security, the moral ethos and the civilizing ambience. Subsumed under the concept of synthesis of the Common Good, the fundamental directions of action of the state(s) are specified."⁷² Moreover, *Thesis no. 5, para. 2*, imposes a strange obligation on citizens: "no privilege is admitted for the benefit of one of the social categories. The state requests and facilitates the mutual support and collaboration of all bodies and social categories for the achievement of the Common Good."⁷³

Instead, according to *Thesis no. 6*, the State undertakes to ensure: b) respect for the constitutional order, the rights and freedoms of the citizen; d) harnessing the creative and productive potential of all social forces; e) the development of culture and science; protecting the national cultural heritage; g) creating the necessary conditions for increasing the quality of life and for the social protection of citizens; i) participation of all citizens in public life.

Despite our expectations, according to the *World Database of Happiness*, Romania has a score of 5.7 on a scale from 1 to 10 for the global level of happiness (49th place out of 169 countries). Costa Rica has the highest score (8.5), followed by Denmark, Iceland, Switzerland, etc., and Togo (2.6) and Tanzania (2.8) have the lowest. The average score of the EU 27 is 6.32. Bulgaria has a score of 4.4, Moldova 4.9, Ukraine 5, and Hungary 5.5. The US has a score of 7.4.

Happiness is measured here as a subjective state of well-being, thus combining satisfaction in life and positive affect; for the "years lived happily" criterion, Romania has a score of 41 (on a scale from 0 to 100), the highest score being 66.7 (Costa Rica), and the lowest 12.5.⁷⁴

Life satisfaction is better predicted by financial satisfaction in poor countries and by family satisfaction in countries in 2001, Romania presented itself as a country with a lower life satisfaction than western countries (74% of participants were dissatisfied with their own life), but life satisfaction was predicted by variables that predict this indicator in Western countries as well: living standards, health status, economic situation, education, trust in other people, living in the countryside and the decrease in unemployment.⁷⁵

6. Management of legal conflicts between public authorities - criterion for measuring the effectiveness of the constitution

One of the normative goals of the constitution is the optimal and specific resolution of political conflicts by clearly delineating the responsibilities assumed politically and, consequently, part of the success of the fundamental law depends on the ability to balance the balance between them.⁷⁶ From this pragmatic perspective, the functionality of a constitution must also be approached in terms of conflict management, considering that its nature in the political field is rather ambiguous, not always and necessarily negative, so that its solution rarely allows its total resolution.⁷⁷

Therefore, in a slightly paradoxical way, the functionality of a constitution does not depend on its ability to prevent the escalation of political or institutional conflicts, nor to resolve political disputes by itself because sometimes, it will be able to create conflicts where they did not exist or

⁷² Ibid, p. 63.

⁷³ Ibid, p. 81. The only amendment to thesis no. 5, paragraph 2: was proposed by Mr. Hosszu Zoltan: it is a wording, in my opinion, as if equivocal, abstract and which, in this form, cannot have legal value. I know that it is taken this phrase from a modern Western constitution, but my opinion is that it resembles a communist slogan. (...) The state is made for the citizens and not the other way around." Another amendment was proposed by Mr. Grigore Radu in the sense that "public health protection" should also be added to letter g), rejected amendment. Deputy Mihai Carp proposed the deletion of points d), h) and j). The thesis was adopted with 292 votes, (without enunciating the votes against and abstentions). Thesis 5 was adopted with 339 votes in favor, 1 vote against and 19 abstentions. Thesis 6 (there was a proposal for its complete elimination by Mr. Petre Ninosu). The phrase "free development of the human personality" was not discussed during the debate stage of the constitutional theses. Art. 1 of the Constitution was voted with 299 votes for, 45 against and 35 abstentions.

⁷⁴ Daniel David, *Psihologia poporului român. Profilul psihologic al românilor într-o monografie cognitiv-experimentală*, Ed. Polirom, Iași, 2015, p. 227.

⁷⁵ Ibid.

⁷⁶ Beau Breslin, *op.cit.*, p. 90.

⁷⁷ Ibid.

could create tensions where its founders could not anticipate.⁷⁸

On the contrary, in order to make constitutions work in their capacity as supreme laws for state organization, the first condition is that state authorities fulfill their own duties responsibly.⁷⁹ The correct constitutional behavior of the public authorities, "who have the obligation to correctly accept the structures and functions of the order in which they act", also represented in the vision of Professor I. Muraru, former president of the Constitutional Court of Romania, the guarantee of the effectiveness of the fundamental law of the Romanian state.⁸⁰

Probably, constitutional good faith was not exactly the strong point of the political practice of the public authorities in the relations between them and, likewise, some of the mechanisms provided by the Constitution for their regulation were not exactly suitable, but it is certain that the ambiguities of the constitutional text are generating constitutional conflicts.⁸¹ As an example, in B. Dima's opinion, the relations between the President, the Prime Minister, the Parliament and the judicial authority are ambiguously regulated, there is a potential conflict between the state authorities, and in this context, it is possible that certain political actors force the limits of the Constitution even in the ambiguous points to generate such conflicts in order to acquire new powers.⁸² Therefore, the strengthening of the Constitution by the guarantor of its supremacy, the Constitutional Court arose out of a practical necessity through the Law on the revision of the Romanian Constitution, no. 429/2003, although the statement of reasons did not refer to the new prerogatives with which the constitutional court was to be vested in order to achieve this exclusive function.⁸³

Through the jurisprudence that followed, the Constitutional Court ruled that "a legal conflict of a constitutional nature between public authorities" presupposes concrete acts or actions by which one or more authorities arrogate powers, attributions or competences, which, according to the Constitution, belong to other authorities public or the omission of some public authorities, consisting in declining competence or refusing to perform certain acts that fall under their obligations. (...)."⁸⁴ Viewed in the doctrine of the Constitutional Court as "clarifications and self-limitations, in the spirit of the constitutional norms that regulate its status and role"⁸⁵, the solutions of the constitutional court adopted to resolve legal disputes of a constitutional nature were no longer viewed with the same indulgence in the critical literature of constitutional law.

Thus, it is considered that since the law on the organization and operation of the Constitutional Court does not specify anything, but also does not limit the power granted to the Court to resolve this type of conflicts, it can oblige the authorities to take any measures they deem necessary to extinguish the conflict. The Constitutional Court can even annul certain acts, like a court of law, and can order any measure necessary to restore the constitutional order between the subjects of law, in order to achieve the final goal - guaranteeing the supremacy of the Constitution.

In this sense, the Court's solution must be an "effective" solution, which cannot include a simple opinion, appreciation, opinion, recommendation or request, which has the ability to annul any act of any authority provided for in Title III of the Constitution and to create new rules of constitutional law.⁸⁶

The same idea was expressed by professor C. Gilia, who believes that the political interference has also "infected" the normal functioning of the Constitutional Court. She highlights that from recent developments, it seems that the constitutional court is the supreme decision-maker in the Romanian state, and any problem, any conflict, but especially the "political" one, is settled by the Court, forgetting that there are other constitutional levers through which state institutions can be regulated

⁷⁸ Ibid., p. 87.

⁷⁹ Ibid., p. 88.

⁸⁰ Ioan Muraru, *Eficiența și valabilitatea Constituției*, in „Revista de Drept Public”, no.1/1995, p. 25.

⁸¹ Beau Breslin., *op. cit.*, p. 94.

⁸² Bogdan Dima, *Conflictele juridice de natură constituțională dintre legislativ, executiv și puterea judecătorească*, in „Sfera politicii”, nro 141, year XVII, 2009, p. 20.

⁸³ *Expunerea de motive a Legii nr. 429/2003, de revizuire a Constituției României*, available online at <http://www.cdep.ro/proiecte/2003/200/20/7/em227.pdf>, consulted on 11.11.2022.

⁸⁴ Decision of the Constitutional Court of Romania no 53/2005, Published in the Official Gazette, Part I, no. 144 of February 17, 2005.

⁸⁵ Tudorel Toader, Marieta Safta, *op.cit.*, p. 188.

⁸⁶ Bogdan Dima, *op.cit.*, p. 20.

in order to achieve the mission for which they were created.⁸⁷

But our analysis is not oriented towards the "activism" of the Constitutional Court⁸⁸, but towards the power mechanisms provided by the Romanian Constitution to ensure the balance and mutual control between the state powers and, likewise, towards the *self-enforcing constitution* of the constitutional norms in the sense of compliance in good faith by the public authorities of the letter, but above all, of the spirit of the constitutional text. Or, if we observe the permanent trend of the involvement of the Constitutional Court in the resolution of legal conflicts of a constitutional nature between public authorities (45 decisions between the years 2005-2021)⁸⁹, we can draw the conclusion that either the constitutional text is unclear and its interpretation generates conflicts between them, or the political regime emerging from the architecture of constitutional norms is not fully outlined and fixed, so political actors can distort it according to their own political will.

7. Conclusions

The type of interdisciplinary approach to the concept of efficiency and the use of numerous operators belonging to different methods of analysis on which its plurivalent explanation depends entitle us to affirm that we are in an integrative epistemological field, the only one capable of providing the necessary scientific openings towards a definition complex of constitutional efficiency.

This is what we tried by relating and transferring some methods and concepts of the economic theory of law to the normative and non-normative analysis of the Constitution, with the particular application on the Romanian Constitution of 1991, which allowed us to configure the complex concept of efficiency in the constitutional plan and to detect the existence of new states at this level, namely constitutional weakness (with references in applied economics) and types of constitutional action, respectively constitutional good faith (with references in morals), which we propose to conceptualize in the future in a separate study.

The purpose of the study is to answer the question of whether the Romanian Constitution of 1991 is effective after 30 years of application.

A first definite finding is that Romania's fundamental law has passed the test of time, far exceeding the average lifetime of world constitutions and being the second longest Romanian constitution after the one from 1866. But this long duration of life, however, raises the issue of a certain exhaustion of the fundamental law, of the solutions it can offer Romanian society in relation to the challenges of the third millennium.

The recurring theme of the need to revise the Romanian Constitution from 1991 has generated only one revision so far (through Law no. 429/2003), being declaratively motivated by "the fulfillment of the two major aspirations of our country - integration into the European Union and accession to the Northern Alliance - Atlantic, these obligatorily presupposing both the creation of the corresponding constitutional framework and the suitability of some solutions and principles to the Euro-Atlantic regulations"⁹⁰, but it permanently accompanied its application in the space of public debate and generated other review initiatives, which, however, they have not reached maturity from a political and legislative point of view. Not only did the actual revision not produce changes in the political regime⁹¹, so even more so, the public debates and even the unfinished initiatives mentioned above did not produce consequences on the stability of the Romanian Constitution of 1991, but this almost permanent theme of the constitutional revision culminated recently with the theme of adopting

⁸⁷ Claudia Gilia, *Curtea Constituțională sub imperativul reformei*, in „Sfera Politicii”, vol. XX, no. 6 (172), Nov-Dec 2012, available online at: http://www.sferapoliticii.ro/sfera/pdf/Sfera_172-Rev1.pdf, consulted on 11.11.2022.

⁸⁸ Alexandru Radu, *Despre rolul Curții Constituționale*, in „Sfera Politicii”, no. 141, Year XVII, Nov. 2009, p. 28, available online at: https://revistasferapoliticii.ro/sfera/pdf/Sfera_141.pdf, consulted on 11.11.2022.

⁸⁹ See the statistics of the Constitutional Court of Romania, available online at: https://www.ccr.ro/wp-content/uploads/2022/11/Activitate_en_oct.pdf, consulted on 11.11.2022.

⁹⁰ Explanation of reasons for Law no. 429/2003, revising the Constitution of Romania, available online at: <http://www.cdep.ro/proiecte/2003/200/20/7/em227.pdf>, consulted on 11.11.2022.

⁹¹ Alexandru Radu, *Despre rolul...*, *op.cit.*, p. 24.

a new constitution, better adapted to the Romanian society in the third millennium⁹², subject to the composition of a "constitutional moment", on which there are no predictability coordinates.

If the political regime developed under the empire of the Romanian Constitution of 1991 has not changed in essence even after the revision of the Constitution of 2003, in terms of the rule of law built by applying its constitutional requirements, despite the deficit represented by the establishment of the Control and Verification Mechanism in 2007 until 2020 and, in continuation of the Rule of Law Mechanism at a general level for all EU member states, we believe that in 30 years of consistent application, a constant progress has been made in accordance with this age of the contemporary Romanian state.

In this context, the recourse to the democratic traditions of the Romanian people, itself a true national political tradition, which happened quite spontaneously and unexpectedly in the context described above on the occasion of the revision of the Romanian Constitution in 2003, proved the fact that the legal democratic legitimacy of our fundamental law, was insufficient for the creation of its extra-legal, integrative effects⁹³, an aspect also accepted by the Romanian Parliament in 2003, entrusted with its revision, which is why we can speak without fear of being wrong about a certain deficit of its legitimacy. Indeed, Havadi N. I.'s observation seems valid, that democracy is not the universal panacea for obtaining all the effects of legitimacy⁹⁴.

In any case, the sanction of the non-functionality of the constitution as a state of collective consciousness can have "great disadvantages for the future history of a people"⁹⁵ and could prove an inconsistency between the fundamental law and the spirit of the people it governs.

In this register, we can qualify the recourse to the democratic traditions of the Romanian people since 2003 as an expression of a compensation felt at the level of the collective mind by identifying a landmark of legitimacy in the substrate of the contemporary concept of democracy, which articulates in itself freedom, equality and political pluralism⁹⁶, projecting the current democracy back to the idyllic origins of the foundation of the Romanian people in its dimension of political community, from where its democratic traditions would spring.

Under the aspect of the management of legal conflicts of a constitutional nature, we believe that there are certain ambiguities in the constitutional text in terms of ensuring a fair and real balance between the powers of the state, in the sense of the non-existence of guarantees and mechanisms of mutual control that would more effectively prevent any concentration of power in the hands of an authority, persons or political majorities with authoritarian tendencies⁹⁷. Particularly eloquent in these respects is the shift in the profile of the position of president of Romania from that of "president-arbitrator, who does not belong to either the legislative power or the executive power, he being an element of balance in a progressive sense", (according to thesis proposed by the senator from Suceava, Mihai Iacobescu, member of the Constituent Assembly)⁹⁸ to that of "player-president" from 2004-2014.

Consequently, not so much the jurisprudence of the Constitutional Court of Romania would be likely to distort the real balance between the powers of the state, this institution being essential for guaranteeing the supremacy of the constitution (in this sense, however, a reformation of the system of recruitment and appointment of judges is required constitutional authorities in order to ensure a more specific specialization of them and a fairer representation of the powers that designate them⁹⁹), as well as, above all, a certain deficiency of the constitutional architecture of the state powers, which,

⁹² George Arun, *Revizuirea Constituției sau drumul la zid (interviu cu profesorul univ. dr. Ioan Stanomir, expert în constituționalism comparat)*, 21.09.2021, available online at: <https://www.dw.com/ro/revizuirea-constitu%C8%9Biei-sau-drumul-la-zid/a-59262606>, consulted on 11.11.2022.

⁹³ Radu Carp, Ioan Stanomir, *Limitele Constituției. Despre guvernare, politică și cetățenie în România*, Ed. C. H. Beck, Bucharest, 2008, p. 191.

⁹⁴ Havadi Nagy Istvan, *op. cit.*, p. 45.

⁹⁵ Paul Negulescu, George Alexianu, *Tratat de drept public*, Tomul I, Casa Școalelor, Bucharest, 1942, p. 209.

⁹⁶ *Ibid*, p. 209

⁹⁷ Bogdan Dima, Simina-Elena Tănăsescu, *Reforma constituțională: analiză și proiecții*, Ed. Universul Juridic, Bucharest, 2012, p. 27.

⁹⁸ Antonie Iorgovan, *Odișea elaborării Constituției*, Publishing House of the Vatra Romanian Union, Targu Mureș, 1998, p. 74.

⁹⁹ Ștefan Deaconu, *Necesitatea reformării Curții Constituționale a României prin revizuirea Constituției – o viziune izvorâtă din practica Curții Constituționale în cei 20 de ani de existență*, in „Revista de drept public” no. 1/2013, p. 110 et seq.

grafted on the temptation to exceed the limits of the powers and attributions with which they have been vested by them, determines the inability of the constitutional norms to impose themselves and to be respected in their letter and spirit.

Did the Romanian Constitution of 1991 succeed in building a happy society? This is the point on which we have the greatest doubts. The present constitution seems rather to be the fundamental law of a sad society or, at least, of a political community without any particular specifics and without precisely determined goals. That is why the identification of a Romanian feeling of individual and social happiness can be a topic for revision of the current Constitution or the goal of a new Constitution, better adapted to national aspirations in the third millennium.

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