SUPREMACY AND STABILITY OF THE CONSTITUTION. LOYAL CONSTITUTIONAL BEHAVIOR OF PUBLIC AUTHORITIES

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Abstract

The procedure for amending the Constitution is extremely difficult, almost impossible in the current social and political context. The essence of a constitution is its stability over time because only in this way can ensure the stability of the entire normative system of a state, certainty and predictability of the conduct of the legal subjects but also to ensure the legal, political and economic stability of the social system as a whole.

The obligation of the authorities, respectively of the parliament and of the executive to have a loyal constitutional conduct was for the first time stipulated in the jurisprudence of the French Constitutional Council, which is the constitutional court of France.

This obligation is found in the attributions to interpret and apply the constitutional norms that the state authorities have. It is not limited to the simple requirement of legality of the acts and provisions of the rulers, i.e. to the formal observance of the law.

In our opinion, the concern of the political class and state authorities in the current period, in relation to the current content of the Fundamental Law, should be oriented towards its correct interpretation and application and respect for the democratic finality of constitutional institutions.

In order to consolidate the rule of law in Romania, even in the current normative form of the Constitution, it is necessary that political parties, especially those in power, all state authorities act or exercise their powers within the limits of loyal constitutional behavior and the democratic meanings of the Constitution, the Orthodox Christian traditions and values of the Romanian people, the rights and dignity of the person.

In this study we analyze aspects of doctrine and jurisprudence of the concept of loyal constitutional behavior.

Keywords: *The supremacy of the Constitution, constitutional stability, public authorities, constitutional loyalty, guarantees of the obligation of constitutional loyalty*.

1. Introduction

The procedure for amending the Constitution is extremely difficult, almost impossible in the current social and political context, given Romania's integration into the European Union, with the consequence of subordinating the Constitution and the laws of political will of those who lead European Union bodies and legal instruments of this supranational organization but also, in the conditions in which Christianity and especially the right orthodox faith are rejected and even blamed in international legal documents and even in the jurisprudence of some international courts.

This state of affairs determines us to analyze to what extent the current normative content of the Constitution can be interpreted and applied in order to respect human dignity, the requirements of the rule of law, the Orthodox Christian traditions and values of the Romanian people, but also to eliminate excess power of the authorities with the consequence of abusive, unjustified restriction of the exercise of fundamental rights and freedoms, restrictive measures that seriously affect human life and dignity, freedom of communion of Orthodox believers, freedom of the Orthodox Church and other cults.

The governors, respectively the Parliament, the authorities of the executive power but also the courts have the obligation to have a loyal constitutional behavior. Of course, a loyal constitutional behavior must also characterize the activity of other political institutions, such as political parties and organizations, trade unions or employers' associations. In a broader sphere, loyal constitutional behavior must characterize the conduct of any subject of society. In this study we refer exclusively to the activity of state governing institutions.

The significance and content of the concept of loyal constitutional behavior that we formulate for the first time in the Romanian doctrine are analyzed in the context of the principles of the supremacy of the Constitution and the stability of the Fundamental Law.

2. Content

The supremacy of the Constitution expresses the super-ordinated position of the fundamental law. In a narrow sense, the scientific substantiation of the supremacy of the constitution results from its form and content. The formal substantiation is expressed by the superior legal force, by derogative procedures towards the common law on the adoption and modification of the constitutional norms, and the material supremacy

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results from the specificity of regulations, from their content, especially from the fact that the Constitution states premises and rules of organization, functioning and attributions of public authorities.

In connection with this aspect, in the literature it has been stated that the principle of the supremacy of the fundamental law "can be considered a sacred, intangible perception (…) it is at the top of the pyramid of all legal acts. Nor would it be possible otherwise: the Constitution legitimizes power, converting individual or collective wills into state wills; it gives authority to the rulers, justifying their decisions and guaranteeing their implementation; it determines the functions and attributions that belong to the public authorities, consecrating the fundamental rights and duties, directs the relations between the citizens, between them and the public authorities; it indicates the meaning or purpose of state activity, i.e. the political, ideological and moral values under the sign of which the political system is organized and functions; the Constitution represents the fundamental basis and the essential guarantee of the rule of law; it is, in the end, the decisive benchmark for assessing the validity of all legal acts and facts. These are, however, the substantial elements that converge towards one and the same conclusion: *the material supremacy of the Constitution*. But the constitution is supreme and in *the formal sense*. The procedure for adopting the Constitution externalizes a particular force, specific and inaccessible, which is attached to its provisions, so that no law other than a constitutional one can abrogate or modify the provisions of the fundamental establishment, provisions that rely on themselves, postulating their own supremacy"[1].

George Alexianu considered that legality is an attribute of the modern state. The idea of legality, according to the author, is formulated as follows: all state bodies function on the basis of an order of law established by the legislator and which must be respected.

The same author, by referring to the supremacy of the Constitution, stated on full grounds and in relation to current realities: "When the modern state organizes its new apearance, the first idea which preoccupies it is that of ending the administrative abuse, hence the invention of constitutions and, by way of jurisdiction, the establishment of a control of legality. Once this abuse being established, it emerges a new and more serious one, that of the Parliament. The supremacy of the Constitution and various systems for guaranteeing it are then invented. The idea of legality thus acquires a strong strengthening lever"[2].

The basis of the supremacy of the Fundamental Law is national and state sovereignty. This quality of the Constitution to be supreme is absolute as the national sovereignty is absolute and intangible. The cession of some attributes of national sovereignty, even through international treaties signed, ratified or accepted by the rulers on behalf of Romania, raises the issue of legitimacy and constitutionality of these documents because it violates the two fundamental principles, essential for the existence of Romanian society and the Romanian state, namely, the national sovereignty and the principle of the supremacy of the Constitution.

The principle of the priority of European Union law must be understood and applied within the limits of respecting the principle of the supremacy of the Constitution and not superordinated to it, as unfortunately happens now in Romania.

The concept of constitutional supremacy cannot be reduced to a formal and material signification. Prof Ioan Muraru stated that: "The supremacy of the Constitution is a complex notion whose content includes political and legal features and elements (values), which express the superior position of the constitution not only in the legal system, but in the entire socio-political system of a country"[3]. Thus, the supremacy of the Constitution represents a quality or a feature which places the fundamental law on top of the political-legal institutions from a state-organized society and expresses its superior position, both in the legal system and in the entire social-political system.

The legal ground for the supremacy of the Constitution is represented by Art 1 Para 5 of the fundamental law: "In Romania, the observance of the Constitution, its supremacy and the laws shall be mandatory". The supremacy of the Constitution is not just theoretical, in the meaning that it could be considered only as a political, legal or moral concept. Due to its express statement in the fundamental law, this principle has normative value, formally being a constitutional norm. The normative dimension of the supremacy of the Constitution implies important legal obligations whose non-compliance can lead to legal sanctions. In other words, as constitutional principle, normatively enshrined, the supremacy of the fundamental law is also a constitutional obligation with multiple legal, political, but also value meanings, for all components of the social and state system. In this meaning, Cristian Ionescu stated that "Strictly formally, the obligation (to comply with the supremacy of the fundamental law) is addressed to Romanian citizens. In fact, the compliance with the Constitution and its supremacy, as well as that of the laws, was a general obligation, whose recipients were all subjects of law – natural and legal persons (national and international) in legal relations, including diplomatic ones, with the Romanian state"4.

The general signification of this constitutional obligation refers to the compliance of the entire legal system with the constitutional norms. By "law" we

[1] Ion Deleanu, Instituţii şi proceduri constituţionale în dreptul roman şi în dreptul comparat (Bucharest: C.H. Beck, 2006), 221-222.
[2] George Alexianu, Drept constituţional (Bucharest: Casei Şcoalelor, 1930), 71.
[3] Ioan Muraru and Elena Simina Tănăsescu, Constituţia României – Comentariu pe articole (Bucharest: C.H. Beck, 2009), 18.
[4] Cristian Ionescu, Constituţia României. Titlul I. Principii generale art. 1-14. Comentarii şi explicaţii (Bucharest: C.H. Beck, 2015), 48.

mean not only the component of the normative system, but also the complex, institutional activity of interpretation and application of legal norms, starting with those of the fundamental law. "It was the intention of the Constituent Parliament derived from 2003 to mark the decisive importance of the principle of the supremacy of Constitution compared to any other normative act. There was a signal, in particular, from a public institution with a governing role to strictly respect the Constitution. The compliance with the Constitution is included in the general concept of legality and the notion of compliance with the Constitution imposes a pyramidal hierarchy of the normative acts at the top of which is the Fundamental Law"[5].

The observance of this constitutional obligation and its realization not only in the strict sphere of the normative system, but in the whole dialectic of the movement and evolution of the social and legal order, is the basis for what can be called the constitutionalization of law, but also of the whole social system organized as a state. In order to support this statement, we consider that, constantly, in the literature the principle of the supremacy of Constitution is not reduced only to its normative signification, and the Fundamental Law is also considered from a value perspective, with major implications for the entire social system. In this meaning, the Constitution is defined in the doctrine as being "a fundamental political and social establishment of the state and society"[6].

There is a system of guarantees for the compliance with the supremacy of the Constitution which, in our opinion, has two components. A specific and most important guarantee is the constitutionality control performed by the Constitutional Court. In this meaning, Art 142 Para 1 state that "The Constitutional Court is the guarantor of the Constitution". The Romanian Constitutional Court, since its establishment in 1992 until today has had an important contribution in censoring the excess of power of the Parliament and Government, but also of the political organisms which at a historical moment hold power in the state. Even if certain decisions issued by the Constitutional Court are debatable, it must me mentioned the important contribution brought by this judicial authority in maintaining the state of law, in the correct application and compliance with the constitutional provisions, in the protection and guarantee of the human rights and fundamental freedoms.

The other component of the system of guarantees is represented by the general control of the application of the Constitution conducted by state authorities on the basis and within the limits of the material competences stated by the law. the judicial control represents an important guarantee of the supremacy of the fundamental law, because by the nature of their attributions the courts interpret and apply the law, which implies the obligation to analyze the conformity of the judicial acts subjected to a judicial control with the constitutional norms.

One of the most controversial and important legal issues is represented by the relation between stability and innovation in law. The stability of legal norms is indisputably a necessity for the predictability of the conduct of legal subjects, for the security and proper functioning of economic and legal relations as well as to give substance to the principles of the rule of law and the Constitution.

On the other hand, it is necessary to adjust the legal norm and the law, in general, to the social and economic phenomena that follow one another so quickly. It is necessary for the legislator to be constantly concerned with eliminating everything that is "obsolete in law", of what does not correspond to realities. The relationship between stability and innovation in law is a complex and difficult issue that needs to be addressed carefully taking into account a wide range of factors, which can lead to a favorable or unfavorable position for legislative change[7].

One of the criteria that helps to solve this problem is the principle of proportionality. Between the legal norm the work of interpretation and its application, and on the other hand the social reality in all its phenomenal complexity must be made an adequate relationship, in other words the right to be a factor of stability and dynamism of the state and society, to correspond to the purpose of satisfying as best as possible the requirements of the public interest but also to allow and guarantee for the person the possibility of a free and predictable behavior, to realize himself in a social context. Therefore, the right, including in its normative dimension, to be viable and to represent a factor of stability but also of progress must be adequate to the social realities but also to the purposes for which the legal norm is adopted, or as the case may be interpreted and applied. This is not a new finding. Many centuries ago, when Solon was called upon to draw up a constitution, he asked the leaders of the city the question, "Tell me for what time and for what people", because later the same great sage would say that he did not give the city a perfect constitution, but only one appropriate to time and place.

The relation between stability and innovation has a special importance when it is raised the issue of maintaining or modifying of a Constitution because it represents the political and judicial settlement of a state[8] based on which it is structured the entire scaffolding of the state and society is structured.

The essence of a constitution is its stability over time because only in this way can ensure to a large extent the stability of the entire normative system of a

[5] Ionescu, Constituţia României. Titlul I. Principii generale art. 1-14. Comentarii şi explicaţii, 48.
[6] Ioan Muraru and Elena Simina Tănăsescu, Drept constituţional şi instituţii politice (Bucharest: C.H. Beck, 2013), 85-88.
[7] Victor Duculescu and Georgeta Duculescu, Revizuirea Constituţiei (Bucharest: Lumina Lex, 2002), 12.
[8] Ion Deleanu, *Drept constituţional şi instituţii politice,* 1st Volume (Bucharest: Europa Nova, 1996), 260.

state, certainty and predictability of the conduct of legal subjects but also to ensure the legal, political and economic stability of the social system, as a whole[9]. Stability is a requirement to guarantee the principle of the supremacy of the Constitution and its implications. In this meaning, Prof. Ioan Muraru stated that the supremacy of the Constitution does not represent strictly a legal category, but also a politico-juridical one underlining that the fundamental law is the result of the economic, political, social and judicial realities. "It marks (defines, outlines) a historical stage in the life of a state, it enshrines victories and gives expression and political and legal stability to the realities and perspectives of the historical stage in which it was adopted"[10].

In order to ensure stability for the Constitution were used various technical means for guaranteeing a certain degree of rigidity for the fundamental law, of which we mention: a) the establishment of special conditions for the performance of the initiative to revise the Constitution, such as the limitation of subjects who may initiate such initiative, constitutional control over the initiative to revise the Constitution; b) the interdiction to revise the Constitution by the normal legislative assembly or, in other words, the recognition of the competence to revise the Constitution only in the favor of a constituent assembly; c) the establishment of a special procedure for debate and adoption of the initiative for constitutional revision; d) the necessity to solve the constitutional revision by referendum; e) the establishment of material limitations for the revision, especially by establishing constitutional regulations which cannot be subjected to revision[11].

On the other hand, a Constitution is not and cannot be eternal or immutable. From the emergence of the constitutional phenomenon, the fundamental laws have been seen as subjected to changes irrevocably imposed by time and dynamics of statal, political, economic and social realities. This idea was stated by the French Constitution of 1791 according to which "A people shall always have the right to revise, reform or modify its constitution" and in modern times both the "International Covenant on Economic, Social and Cultural Rights", as well as the one regarding the civil and political rights adopted by the UN in 1996 state in Art 1: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development".

Esteemed Prof. Constantin G. Rarincescu stated in this meaning: "Although a constitution is meant to regulate in the future for a more or less long time, the political life of a nation it is not destined to be immovable, or forever perpetual, because, on the one hand, a constitution over time show its imperfections, and no human work is perfect, imperfections that need to be changed, on the other hand a constitution must be up to date with social needs and new political conceptions, which can change more frequently within a state or a society"[12]. Underlining the same idea, Prof Tudor Drăganu stated: "The Constitution cannot be conceived with a perennial monument destined to withstand the vicissitudes of centuries and not even decades. Like all other legal regulations, the constitution reflects the economic, social and police conditions existing in a society at some point in history and aims to create the most appropriate organizational structures and forms for its further development. Human society is constantly changing. Which is valid today, tomorrow may become obsolete. On the other hand, one of the features of the judicial regulations consists in the fact that they foreshadow certain paths meant to channel the development of society in one direction or another. Both these directions and ways of achieving the goals pursued may, however, prove to be confronted with inappropriate realities. Precisely for this reason, constitutions, like other legal regulations, cannot remain unchanged, but must adapt to social dynamics"[13].

In the light of these considerations, we appreciate that the relation between stability and constitutional revision must be interpreted and solved according to the principle of proportionality[14]. The fundamental law is viable as long as it is appropriate to the realities of the state and a certain society at a certain historical moment. Moreover – according to Prof Ioan Muraru – "a Constitution is viable and efficient if it acquires the balance between citizens (society) and public authorities (state) on the one hand, and on the other hand, between the public authorities and even between citizens. It is also important that constitutional regulations ensure that public authorities are at the service of citizens, ensuring the protection of the individual against arbitrary attacks by the state against his freedoms"[15]. In situations where such a relationship of proportionality no longer exists either due to imperfections in the Constitution or due to the inadequacy of constitutional regulations to the new

[9] Elena Simina Tănăsescu in *Constituţia României, Comentarii pe articole*, ed. Ioan Muraru and Elena Simina Tănăsescu (Bucharest: All Beck, 2008), 1467-1469.

[10] Ioan Muraru and Elena Simina Tănăsescu, *Drept constituţional şi instituţii politice*, 11th Edition (Bucharest: All Beck, 2003), 80.

[11] Muraru and Tănăsescu, *Drept constituţional şi instituţii politice*, 52-55; Tudor Drăganu, *Drept constituţional şi instituţii politice. Tratat elementar*, 1st Volume (Bucharest: Lumina Lex, 1998), 45-47; Marius Andreescu and Florina Mitrofan, *Drept constituţional. Teoria general* (Piteşti: Piteşti University Press, 2006), 43-44; Duculescu and Duculescu, *Revizuirea Constituţiei*, 28-47; Deleanu, *Instituţii şi proceduri constituţionale în dreptul roman şi în dreptul comparat*, 275-278.

[12] Constantin G. Rarincescu, *Curs de drept constituţional* (Bucharest, 1940), 203.

[13] Drăganu, *Drept constituţional şi instituţii politice. Tratat elementar*, 45-47.

[14] Marius Andreescu, *Principiul proporţionalităţii în dreptul constituţional* (Bucharest: C.H. Beck, 2007).

[15] Ioan Muraru, Protecţia constituţională a libertăţilor de opinie (Bucharest: Lumina Lex, 1999), 17.

state and social realities, there is a legal and political need for constitutional revision.

However, in the relation between stability and constitutional revision, unlike the general relation between stability and innovation, in law these two terms do not have the same logical and judicial value. It is a report of vexation (and not of contradiction) in which the stability of the constitution is the dominant term. This is justified by the fact that the stability is an essential requirement for the guarantee of the principle of the supremacy of the Constitution, with all its consequences. Only through the primacy of stability over revision initiatives, a constitution can exercise its functions and role in ensuring the stability, balance and dynamics of the components of the social system, the increasing assertion of the principles of the rule of law.

The supremacy of the Constitution conferred also by its stability represents a guarantee against the arbitrariness and discretionary power of the state authorities, through the pre-established and predictable constitutional rules, which regulate the organization, functioning and attributions of the state bodies. Therefore, before raising the issue of revising the Constitution, it is important that the state authorities make the correct interpretation and application of the constitutional normative provisions in their letter and spirit. The work of interpreting constitutional texts carried out by constitutional courts but also by other state authorities in compliance with the powers conferred by law is likely to reveal the meanings and significations of the principles and regulations of the Constitution and thus contribute to the process of adapting these rules to social, political and state rules whose dynamics must not be neglected. The justification of the interpretation is found in the need to apply a general constitutional text to a concrete factual situation[16].

Guaranteeing the supremacy of the Constitution and stability of the fundamental law are the premises for what we call "a loyal constitutional behavior".

According to our opinion, the preoccupation of the political class and of the state authorities nowadays, in relation to the actual content of the Constitution, should be oriented towards the correct interpretation and application of it and towards the compliance with the democratic finality of the constitutional institutions.

In order to consolidate the rule of law in Romania, even in the current normative form of the Constitution, it is necessary that political parties, especially those in power, all state authorities act or exercise their powers within the limits of loyal constitutional behavior involving respect for meaning and the democratic significations of the Constitution, the Orthodox Christian traditions and values of the Romanian people, the rights and dignity of the person.

The obligation of authorities, namely of the Parliament and the executive to have a loyal constitutional behavior was for the first time stated in the jurisprudence of the French Constitutional Council, which is the constitutional court of France.

This obligation is found in the attributions that state authorities have to interpret and apply the constitutional norms. It is not limited to the simple requirement of legality of the acts and provisions of the rulers, i.e. to the formal observance of the law.

The normative activity of drafting the law must be continued with the activity of applying the norms. In order to apply, the first logical operation to be performed is their interpretation.

Both the Constitution and the law are presented as a set of legal norms, but these norms are expressed in the form of a normative text. What is represented as an object of interpretation are not the legal norms, but the text of the law or of the Constitution. A text of law may contain several legal norms. From a constitutional text may be deduced a constitutional norm through interpretation. The constitutional text is drafted in general terms which influence the degree of determination of the constitutional norms. Through interpretation the constitutional norms are identified and determined.

It should also be emphasized that a Constitution may contain certain principles which are not clearly expressed *expressis verbis* but may be inferred from the systematic interpretation of other rules.

In the sense of those shown above, in the literature it was specified that "The degree of determination of the constitutional norms through the text of the fundamental law can justify the need for interpretation. The norms of the Constitution are best suitable to an evolution of their course, because the text is by excellence imprecise, formulated in general terms. The formal superiority of the Constitution, its rigidity, prevents its revision at very short intervals and then the interpretation remains the only way to adopt the normative content, usually older, to the social reality that is constantly changing. The meaning of the constitutional norms being by their very nature, that of maximum generality, its exact determination depends on the will of the interpreter"[17].

The scientific justification of the interpretation results from the need to ensure effectiveness to the norms stated both in the Constitution and in the laws, through institutions that carry out mainly the activity of interpreting the rules enacted by the author. These institutions are mainly the judicial and constitutional courts.

Verification of the conformity of a normative act with the constitutional norms, an institution that represents the constitutionality control of the laws, does not mean a formal comparison or a mechanical

[16] Ioan Muraru, Mihai Constantinescu, Elena Simina Tănăsescu, Marian Enache, Gheorghe Iancu, Interpretarea Constituției (Bucharest: Lumina Lex, 2002), 14.

[17] Ioan Muraru, Mihai Constantinescu, Elena Simina Tănăsescu, Marian Enache, Gheorghe Iancu, Interpretarea Constituției. Doctrină și practică (Bucharest: Lumina Lex, 2002), 67.

juxtaposition of the two categories of norms, but a complex work based on the techniques and procedures of interpreting both the law, as well as the Constitution.

Therefore, the necessity for the interpretation of the Constitution is a condition for its application and of the insurance of its supremacy. The constitutional control of the law is essentially an activity of interpretation both of the Constitution and of the laws.

Constitutional jurisprudence through the work of interpretation and application of the norms of the Constitution can contribute to revealing the meanings and meanings of the content of the norms of the Constitution, some of these being explicitly included in the content of the interpreted norm and others only implicitly. The contribution of the constitutional jurisprudence in the construction of the norms of the fundamental law, we consider it to be a work of legal construction of the content of the interpreted norm consisting in the new revealed valences of the explicit and especially implicit form of the norms. Of course, the work of constructing the content of the constitutional norms does not represent an addition to the legal norm of some elements that exceed the intention of the constituent legislator or are contrary to his will. The Constitutional Court, considering the features of our legal system, cannot create legal norms, cannot substitute the legislator. Our constitutional court is, as it is constantly stated by the legislature, a "negative legislator" because it does not have the competence to create legal norms, but only to ascertain the unconstitutionality of the analyzed legal norm. The Constitutional Court, as any other court, does not create the law, it simply "tells the law", expresses through its decisions the explicit or implicit content of the interpreted and applied constitutional norm.

In our opinion, the Constitutional Court cannot be characterized only by the phrase "negative legislator", but has an important positive role through the jurisprudential work in the construction of the normative content of the Constitution and especially the construction of the content of certain general principles of law explicitly or implicitly formulated by the norms of the fundamental law.

The relations between the state authorities have a complex feature, but which must also ensure their proper functioning in compliance with the principle of legality and the supremacy of the Constitution. In order to achieve this desideratum, it is very important to maintain the state balance in all its forms and variants, including as a social balance.

The separation and balance of power no longer refers only to classical powers (legislative, executive and judicial). To these powers are added others which give new dimensions to this classical principle. The relations between the participants to state and social life may generate conflicts that must be solved to maintain the balance of powers. Some constitutions refer to litigations of public law (German Constitution – Art 93), to conflicts of competence between the state and autonomous communities or conflicts of attributions between state powers, between state and regions or between regions (Italian Constitution – Art 134). The Romanian Constitution speaks about legal conflict of constitutional nature between public authorities [Art 146 Let c)] and promotes the mediation conducted by the President between state powers.

The Constitutional Court is an important guarantor of the separation and balance of state powers, because it solves legal conflicts of a constitutional nature between public authorities and through its powers in constitutional review prior to laws and verifying the constitutionality of chamber regulations interferes in insuring the balance between the parliamentary minority and majority, effectively ensuring the right of the opposition to speak.

The Constitutional Court is a guarantor of respect for fundamental rights and freedoms. This fundamental role of the constitutional court in a state of law is performed through the jurisprudential interpretation of the Constitution and the laws. In principle, there are three essential constitutional guarantees regarding the civil rights and freedoms established by the Constitution: a) the supremacy of the Constitution; b) the rigid character of the Constitution; c) the access of the citizens to the control of the constitutionality of the law and to the control of the legality of the acts subordinated to the law.

In Romania, the procedure of the exception for unconstitutionality insures the indirect access for citizens to constitutional justice.

The constitutional obligation that the rulers have to have a constitutional behavior loyal to the normative content but also the purpose of the Constitution is also an expression of the requirement of legitimacy that the normative acts must fulfill, as well as the governmental measures and dispositions adopted. In order to be an expression of a loyal constitutional behavior, legal and political acts issued by the Parliament and the executive, must be not only legal, i.e. be formally in line with the Constitution, but also legitimate. The legitimacy of a legal act, individual or normative reveals the requirement according to which the act must correspond not only to the letter of the law (the Constitution), but also to its spirit.

The legality of the legal acts of the public authorities implies the following requirements: the legal act to be issued in compliance with the competence provided by law; the legal act to be issued in accordance with the procedure provided by law; the legal act to respect the superior legal norms as a legal force.

The legitimacy is a complex category with multiple significations representing the object of research for the general theory of the law, the philosophy of the law, sociology and other disciplines. The significations of this concept are multiple. We mention a few: the legitimacy of power; the legitimacy of the political regime; the legitimacy of a governance; the legitimacy of the political system etc. The concept of legitimacy may be applied also for the legal acts

issued by public authorities being related to the "margin of appreciation" recognized for them in the performance of their attributions.

The application and compliance with the principle of legality in the activity of state authorities is a complex matter, because the performance of the state functions refers also to the discretionary power invested in the state organs or in other words, the authorities' right to assess the timing of the adoption and the content of the measures ordered. What is important to underline is the fact that the discretionary power cannot oppose the principle of legality, as dimension of the state of law.

In our opinion, legality is a particular aspect of the legitimacy of legal acts of public authorities. Thus, a legitimate legal act is a legal act, issued within the margin of appreciation recognized for public authorities, which does not generate discriminations, privileges or unjustified limitations of the subjective rights and it is appropriate to the factual situation which determines it and the purpose of the law. Legitimacy differentiates between the discretionary power recognized to state authorities and the excess of power.

Not all legal acts fulfilling the conditions for legality are also legitimate. A legal act fulfilling the formal conditions for legality, but which generates discrimination or privileges or unjustifiably restricts the exercise of subjective rights or is not appropriate to the factual situation or the purpose pursued by law, is an illegitimate legal act. Legitimacy, as feature of the legal acts issued by public administration authorities must be understood and applied in relation to the principle of the supremacy of the Constitution.

At the current stage of the Romanian legal system, the requirement of legitimacy of laws cannot be verified by the constitutionality control of the Constitutional Court. It is sad to note that at present, in the exercise of governing powers, the state power is often concerned not so much with the requirements of legality, the formal correspondence of a legal act adopted with constitutional rules and very little or no fulfillment of the requirement of legitimacy. The consequence of such behavior in the performance of the governing attributions, which violate the obligation of loyalty for the Constitution, but first of all towards the Romanian people is the excess and abuse of power with serious consequences on respecting, defending and promoting the Orthodox traditions and values of faith of the Romanian people, asserting the public interest and not personal, exercising important fundamental rights and freedoms.

The obligation for a correct interpretation and application of the Constitution and of the law belongs also to rulers, namely to the President, Parliament and Government, in relation to the attributions they have. The interpretation of the constitutional norms and generally of the legal norms performed by the rulers must correspond to some minimum formal imperatives:

- the obligation to respect the supremacy of the Constitution;
- the obligation to respect the principles of stability and security of the legal relations in the activity of governing;
- clarity and predictability of the adopted normative acts;
- limiting the practice of legislative delegation in governing activity, especially in the form of emergency ordinances;
- restricting the exercise of certain rights and freedoms shall have an exceptional feature, without affecting the substance of the law and with a rigorous compliance with the principle of proportionality;
- the prohibition not to add by interpretation the interpreted normative text;
- the obligation to comply with the meaning and finality of the constitutional norm;
- the obligation to give efficiency to the interpreted legal norm;
- the obligation to strictly comply with the competence and constitutional procedures and those established by the law in the performance of the attributions;
- avoiding as far as possible conflicts of a constitutional and political nature between state authorities.

These are, in our opinion, formal requirements that are part of the notion of loyal constitutional behavior.

The loyal constitutional behavior of the public authorities is mainly a requirement of the state of law which the Constitutional Court has expressed in its jurisprudence. Even if the Constitutional Court does not explicitly use the notion of "loyal constitutional behavior", some jurisprudential aspects are part of the content of this concept.

We exemplify with some aspects of jurisprudence:

The jurisprudence of the Constitutional Court expresses the main requirements of the state of law. It is significant in this sense Decision No 17 of January 21, 2015[18], by which the Constitutional Court gives a pertinent explanation to the character of the rule of law, stated by Art 1 Para 3, 1st thesis of the Constitution: "The requirements of the rule of law concern the major purposes of its activity, foreshadowed in what is commonly referred to as the rule of law, a phrase involving the subordination of the state to the rule of law, the provision of those means to allow law to censor political choices weigh any abusive, discretionary tendencies of state structures[19]. The rule of law insures the supremacy of the Constitution, the correlation between the laws and all normative acts with it, the existence of a separation between public powers which must act within the law, namely within the limits of a law expressing the general will. The rule of law enshrines a series of guarantees, including

[18] Published in the Official Gazette of Romania, No 79/30 January 2015.
[19] Published in the Official Gazette of Romania, No 334/19 July 2000.

jurisdictional ones, which ensure the observance of citizens' rights and freedoms through the self-limitation of the state, respectively the inclusion of public authorities in the coordinates of law".

The principle of stability and security of legal relations in not expressly stated by the Romanian Constitution, but, like other constitutional principles, it is implied by the constitutional normative provisions, namely by Art 1 Para 3, which states the feature as rule of law. In this way, our constitutional court accepts the deduction, by way of interpretation, of some principles of law implied by the express norms of the Fundamental Law. In this sense, in the Decision No 404 of 10 April, 2008[20], the Constitutional Court has stated that: "The principle of stability and security of legal relations, though it is not expressly stated by the Romanian Constitution, this principle is implied both from the provisions of Art 1 Para 3, according to which Romania is a state of law, democratic and social, as well as from the Preamble of the European Convention on Human Rights and Fundamental Freedoms, as it has been interpreted by the European Court of Human Rights in its jurisprudence[21]. Moreover, our constitutional court has considered that the principle of security of civil legal relations represents a fundamental dimension of every rule of law[22].

The Constitutional Court constantly rules for the clarity and predictability of the law, these being requirements of the rule of law. Thus, "the existence of certain contradictory legislative solutions and the cancelation of some legal provisions through other provisions stated in the same normative act lead to the violation of the principle of security of legal relations, as effect of the lack of clarity and predictability of the norm, principles representing a fundamental dimension of the rule of law, as it is expressly stated by Art 1 Para 3 of the Fundamental Law[23].

Regarding the rule of law, the Constitutional Court has stated that freedom and social democracy are supreme values. In this context, militarized authorities, such as the Romanian Gendarmery, performs according to the law, specific responsibilities for the protection of public order and peace, the fundamental rights and freedoms of citizens, public and private property, the prevention and detection of crime and other violations of the laws in force, and the protection of fundamental state institutions and the fight against acts of terrorism. Consequently, the constitutional court has ruled that: "Through the possibility of militarized authorities to ascertain the contraventions committed by civilians, Art 1 Para 3 of the Constitution, regarding the Romanian state, as a democratic and social rule of law"[24].

Human dignity, along with the freedoms and rights of citizens, the free development of the human personality, justice and political pluralism, are the supreme values of the rule of law (Art 1 Para 3). In the light of these constitutional regulations it has been stated in the jurisprudence of the Constitutional Court that it is forbidden for the state to adopt legislative solutions which may interpreted as disrespectful of the religious or philosophical beliefs of parents, which is why the organization of school activities must achieve a fair balance between the process of education and teaching of religion, and on the other hand with respect for the rights of parents, to ensure education in accordance with their own religious beliefs. Activities and behaviors specific to a particular attitude of faith or philosophical beliefs, religious or non-religious, must not be subject to sanctions that the state provides for such behavior, regardless of the reasons of faith of the person concerned. "As part of the constitutional system of values, to the freedom of religious conscience is attributed the imperative of tolerance, especially with human dignity, guaranteed by Art 1 Para 3 of the Fundamental Law, which dominates as supreme value the entire system of values"[25].

It is also interesting to underline the fact that our constitutional court considers human dignity as being the supreme value of the entire system of values constitutionally stated, value also found in the content of all human rights and fundamental freedoms. Also, an important aspect imposed to all public authorities is that in their activity to first of all respect the human dignity.

It should be noted that in its jurisprudence, the Constitutional Court also identifies the content components of human dignity, as moral value but in the same time, constitutional and specific to the rule of law: "Human dignity, from a constitutional point of view, presupposes two inherent dimensions, namely the relations between people, which refers to the right and obligation of people to be respected and, correlatively, to respect the rights and fundamental freedoms of their fellows, as well as the human relationship with the environment, including the animal world"[26].

3. Conclusions

Compared to the excessive politics and acts that represent a clear excess of power of the executive contrary to the spirit and even to the letter of the Constitution, with the consequence of violating some

[20] Published in the Official Gazette of Romania, No 347/6 May 2008.
[21] Decision No 685/25 November 2014, published in the Official Gazette of Romania, No 68/27 January 2015.
[22] Decision No 570/29 May 2012, published in the Official Gazette of Romania, No 404/18 June 2012. Decision No 615/12 June 2012, published in the Official Gazette of Romania, No 454/6 July 2012.
[23] Decision No 26/18 January 2012, published in the Official Gazette of Romania, No 116/15 February 2012.
[24] Decision No 1330/4 December 2008, published in the Official Gazette of Romania, No 873/23 December 2008.
[25] Decision No 669/12 November 2014, published in the Official Gazette of Romania, No 59/23 January 2015.
[26] Decision No 1/11 January 2012, published in the Official Gazette of Romania, No 53/23 January 2012; Decision No 80/16 February 2014, published in the Official Gazette of Romania, No 246/7 February 2014.

rights and fundamental freedoms, manifested during the last three decades of original democracy in Romania, we consider that the scientific approach and not only in the area of the constitutional revision must be oriented towards finding solutions to guarantee the values of the rule of law, of the fair Orthodox belief, of limiting the violation of the constitutional provisions, mainly to guarantee the loyal constitutional behavior of the state authorities. We propose some legislative solutions:

1. Art 114 Para 1 of the current text states that: "The Government may assume responsibility before the Chamber of Deputies and the Senate, in joint sitting, upon a program, a general policy statement, or a bill".

The commitment of the Government has a political feature and is a procedural means by which the phenomenon of "dissociation of the majorities"[27] is avoided in the situation when in Parliament the majority necessary to adopt a certain measure initiated by the Government could not be met. In order to determine the legislative forum to adopt the measure, the Government, through the procedure of assuming responsibility, conditions the continuation of its activity requesting a vote of confidence. This constitutional procedure guarantees that the majority required for the dismissal of the government, in case of filing a motion of censure to coincide with that for the rejection of the bill, program or political declaration to which the Government links its existence.

The adjustment of the laws as effect of assuming the political responsibility of the Government has as important consequence the absence of any parliamentary debates or discussions on that bill. If the Government is supported by a comfortable parliamentary majority, through this procedure it may obtain the adoption of the laws "bypassing the Parliament", which may generate negative consequences for the compliance with the principle of separation of state powers, but also for the role of the Parliament, as it is defined by Art 61 of the Constitution.

Therefore, the use of this constitutional procedure by the Government in the adoption of a bill must be exceptional, justified by a political situation and a social imperative very well defined.

This particularly important aspect for the observance of the democratic principles of the rule of law by the Government was well highlighted by the Romanian Constitutional Court: "This simplified way of legislating must be reached *in extremis*, when the adoption of the bill in the ordinary or emergency procedure is no longer possible or when the political structure of the Parliament does not allow the adoption of the bill in the current or emergency procedure"[28].

The political practice of the Government for the past years has been contrary to all these rules and principles. The executive has frequently resorted to liability not only for a single law, but also for packages of laws without a justification in the sense of those shown by the Constitutional Court.

The politicism of the Government clearly expressed by the high frequency of recourse to this constitutional procedure seriously affects the principle of political pluralism which is an important value of the legal system enshrined in the provisions of Art 1, Para 3 of the Constitution but also the principle of parliamentary law which shows that "The opposition is expressing itself and the majority is deciding"[29]; "Denying the right of the opposition to express itself is synonym with the denial of the political pluralism which, according to Art 1 Para 3 of the Constitution represents a supreme value and it is guaranteed…the principle majority decides, opposition expresses itself assumes that in all the organization and functioning of the Chambers of Parliament it is ensured, on the one hand, that the majority is not obstructed especially in the conduct of the parliamentary procedure, and, on the other hand that the majority decides only after the opposition has expressed itself"[30].

The censorship of the Constitutional Court has proven insufficient and inefficient in determining the Government to comply with these values of the rule of law.

In the context of these arguments, we propose that in the organic law on the organization and functioning of the Government, but also in the Regulations of the Parliament, the right of the Government to resort to incurring its responsibility for a single bill in a parliamentary session be limited. At the same time, it is useful to expressly provide in the same normative acts that this procedure does not apply to organic laws.

In our opinion, these provisions can be included in normative acts subsequent to the Constitution, without the need for a revision of the Fundamental Law, because the regulations in question do not contradict the provisions of Art 114 of the Constitution, but they are a concretization and explication of them.

2. All post-December governments have massively resorted to the practice of government ordinances, widely criticized in the literature. The conditions and interdictions inserted by the Law for the constitutional revision in 2003 on the constitutional regime of the emergency ordinances, proved insufficient for the limitation of this practice of the executive, also the control of the Constitutional Court proved insufficient and inefficient. The consequence of such practice is the violation of the role of Parliament as "sole legislative authority of the country" (Art 61 of the Constitution) and the creation of an imbalance between executive and legislative by emphasizing the discretionary power of the Government, which has often turned into an excess of power.

[27] Gheorghe Iancu, *Drept constituţional şi instituţii publice* (Bucharest: All Beck, 2010), 482.
[28] Decision No 1557/18 November 2009, published in the Official Gazette of Romania, No 40/19 January 2010.
[29] Ioan Muraru and Mihai Constantinescu, *Drept parlamentar românesc* (Bucharest: All Beck, 2005), 55-69.
[30] Muraru and Constantinescu, *Drept parlamentar românesc*, 55-69.

It is gratifying that our constitutional court, recently changing the judicial practice in this matter, has ruled that emergency ordinances cannot affect the legal regime of rights and fundamental freedoms, more precisely, the exercise of these rights cannot be restricted.

In order to limit the excess of power of the Government through emergency ordinances, we propose, without being necessary the revision of the Constitution, that by organic law to define the emergency situations and to enumerate strictly and limitingly these cases.

3. In the current conditions characterized by the tendency of the executive to take advantage of obvious politics and to force impermissibly and dangerously the limits of the Constitution and democratic constitutionalism, it is necessary to create mechanisms to control the activity of the executive able to really guarantee the supremacy of the Constitution and principles of the rule of law.

It is necessary that the role of the Constitutional Court as guarantor of the fundamental law be amplified by new attributions with the purpose of limiting the excess of power of state authorities. We do not agree with those stated in the literature that a possible improvement of constitutional justice could be achieved by reducing the powers of the constitutional court[31].

Without being necessary the revision of the Constitution, among the attributions of the Constitutional Court may be included that of ruling upon the constitutionality of the administrative acts excepted from the control of legality performed by the courts of administrative contentious. This category of administrative acts, to which Art 126 Para 6 of the Constitution and the Law No 544/2004 on the administrative contentious refers to are extremely important for the entire social and state system. Therefore, a constitutionality control is necessary because in its absence the discretion of the issuing administrative authority is unlimited with the consequence of the possibility of excessive restriction of the exercise of fundamental rights and freedoms or violation of important constitutional values. For the same reasons, our constitutional court should be able to review constitutionality and Presidential decrees on exceptional circumstances.

At the same time, the Organic Law on the Organization and Functioning of the Constitutional Court proposes to stipulate the competence and obligation of the constitutional court to rule ex officio on the constitutionality of Government ordinances, but also of all normative acts on the establishment and regime of exceptional states to enter into force.

Some brief explanations are needed: The Constitutional Court, like any court, operates according to the principle according to which it cannot notify itself for the fulfillment of its attributions, but a notification is required from one of the subjects of law to which the provisions of Art 146 of the Constitution strictly refers to. Nevertheless, as an exception, the Constitutional Court has the competence to verify *ex officio* the constitutionality of the drafts regarding the revision of the Constitution. By virtue of this precedent, we consider that it is possible to extend this competence of our Constitutional Court also for Government's ordinances, for the normative legal acts issued in consideration of an exceptional state or for those exempted from judicial control.

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[31] Genoveva Vrabie, "Natura juridică a curţilor constituţionale şi locul lor în sistemul autorităţilor publice", *Revista de Drept Public*, 1, 2010, 33.

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