# STABILITY AND CONSTITUTIONAL REFORM NORMATIVE CONTENTS OF CONSTITUTION

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**Abstract**

*The modification of the fundamental law of a state represents a very special political and juridical act with major significances and implications in the political social system as in the state's one, but also at each individual level. That's why such an approach needs to be well justified, to answer to some juridical and political social needs well defined, but mainly to correspond to the principles and rules specific to a constitutional and state's democratic system providing to the state the stability and functionality it needs.*

*In this study we analyze the necessity of such a constitutional reform in Romania, and also some provisions from the report of the Presidential Commission for the analysis of the political and constitutional regime in our country. We formulate our opinions in relation to the justifying some constitutional regulations. In this context, we consider that there are arguments for the maintaining of the bicameral parliamentary system and an eventual revising of the fundamental law needs to consider the measures needed to guarantee the political and constitutional institutions specific to the lawful state.*

**Keywords:** *Revising of the Constitution, limits of the constitutional revising, bicameral system, power excess, guaranteeing of the fundamental liberties, constitutional norms.*

## I. Introduction

One of the most controversial and important juridical problems is represented by the relationship between the stability and innovation in law. The stability of the juridical norms is undoubtedly a necessity for the predictability of the conduct of the law topics, for the security and good functioning of the economical and juridical relationships and also to give substance to the principles of supremacy of law and constitution.

On the other hand it is necessary to adapt the juridical norm and in general the law to the social and economical phenomenon that succeed with such rapidity. Also the internal juridical norm must answer to the standards imposed by the international juridical norms in a world in which the 'globalization" and "integration" become more conspicuous and with consequences far more important in the juridical plan also. It is necessary that permanently the law maker be concerned to eliminate in everything that it is "obsolete in law", all that do not correspond to the realities.

The report between stability and innovation in law constitutes a complex and difficult problem that needs to be approached with full attention having into consideration a wide range of factors that can determine a position favorable or unfavourable to legislative modification[1].

One of the criterions that help in solving this problem is the principle of proportionality. Between the juridical norm, the work of interpretation and its applying, and on the other hand the social reality in all its phenomenal complexity must be realized with an adequate report, in other words the law must be a factor of stability and dynamism of the state and society, to correspond to the scope to satisfy in the best way the requirements of the public interest but also to allow and guarantee to the individual the possibility of a free and predictable character, to accomplish oneself within the social context. Therefore, the law included in its normative dimension in order to be sustainable and to represent a factor of stability, but also of progress, must be adequate to the social realities and also to the scopes for which a juridical norm is adapted, or according to the case to be interpreted and applied. This is not a new observation. Many centuries ago Solon being asked to elaborate a constitution he asked the leaders of his city the question:" Tell me for how long and for which people" then later, the same wise philosopher asserted that he didn't give to the city a constitution perfect but rather one that was adequate to the time and place.

## II. Paper content

On the other hand a constitution is not and cannot be eternal or immutable. Yet from the very appearance of the constitutional phenomenon, the fundamental laws were conceived as subjected to the changes imposed inevitably with the passing of time and dynamics of state, economical, political and social realities. This idea was consecrated by the French Constitution on 1971 according to which "A people has always the right to review, to reform and modify its Constitution, and in the contemporary period included the "International Pact with regard

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[1] Victor Duculescu and Georgeta Duculescu, Revizuirea constituţiei (Bucharest: Lumina Lex, 2002), 12.

to the economical, social and cultural rights" as well as the one regarding the civil and political rights adopted by U.N.O. in 1966 - item 1 - is stipulating:"All nations have the right to dispose of themselves. By virtue of that right they freely determine their legal status.

The renowned professor Constantin G. Rarincescu stated on this meaning:" A constitution yet is meant to regulate in future for a longer or a shorter time period, the political life of a nation, is not destined to be immobile, or perpetuum eternal, but on the other hand a constitution in the passing of time can show its imperfections, and no human work is being perfect, imperfections to whose some modifications are being imposed, on the other side a constitution needs to be in trend with the social necessities and with the new political concepts, that can change more frequently within a state or a society". [2] Underlying the same idea the professor Tudor Drăganu stated: "The constitution cannot be conceived as a perennial monument destined to outstand to the viccisitudes of the centuries, not even to the ones of the decades. Like all other juridical regulations, the constitution reflects the economical, social and political conditions existing in a society at a certain time of history and aims for creating the organizational structures and forms the most adequate to its later development. The human society is in a continuous changing. What it is valid today tomorrow can become superannuated. On the other side, one of the characteristics of the juridical regulations consists in the fact that they prefigure certain routes meant for chanelling the society's development in one or another direction. These directions as well as the modalities to accomplish the targeted scopes may prove to be, in their confronting with the realities, inadequate. Exactly for this very reason, the constitutions as all other regulations, cannot remain immutable but must adapt to the social dynamics"[3].

In the light of those considerents we appreciate that relationship between the stability and the constitutional revising needs to be interpreted and solved by the requirements of principle of proportionality[4]. The fundamental law is viable as long as it is adequated to the realities of the state and to a certain society at a determined historical time. Much more – states professor Ioan Muraru – "a constitution is viable and efficient if it achieves the balance between the citizens (society) and the public authorities (state) on one side, then between the public authorities and certainly between the citizens. Important is also that the constitutional regulations realize that the public authorities are in the service of citizens, ensuring the individual's protection against the state's arbitrary attacks contrary to one's liberties"[5].In situations in which such a report of proportionality no longer exists, due to the imperfections of the constitution or due to the inadequacy of the constitutional regulations to the new state and social realities, it appears the juridical and political necessity for constitutional revising.

Nevertheless in the relationships between the stability and constitutional revising, unlike the general relationship stability – innovation in law the two terms have the same logical and juridical value. It is about a contrariety relationship (and not a contradiction one) in which the constitution's stability is the dominant term. This situation is justified by the fact that the stability is a requirement essential for the guaranteeing of the principle of constitution supremacy with all its consequences. Only through the primacy of the stability against the constitution's revising initiative one can exercise its role to provide the stability, equilibrium and dynamics of the social system's components, of the stronger and stronger assertion of the principles of the lawful state. The supremacy of the constitution bestowed by its stability represents a guarantee against the arbitrary and discretionary power of the state's authorities, by the pre-established and predictable constitutional rules that regulate the organization, functioning and tasks of the state authorities. That's why before putting the problem of constitution's revising, important is that the state's authorities achieve the interpretation and correct applying of the constitutional normative dispositions in their letter and spirit. The work of interpretation of the constitutional texts done by the constitutional courts of law but also by the other authorities of the state with the respecting of the competences granted by the law, is likely to reveal the meanings and significances of the principles for regulating the Constitution and thus to contribute to the process for the suitability of these norms to the social, political and state reality whose dynamics need not be neglected. The justification of the interpretation is to be found in the necessity to apply a general constitutional text to a situation in fact which in factum is a concrete one"[6].

The decision to trigger the procedure for revising a country's Constitution is undoubtedly a political one, but at the same time it needs to be juridically fundamented and to correspond to a historical need, of the social system stately organized from the perspective of its later evolution. Therefore, the act for revising the fundamental law needs not be subordinated to the political interests of the moment,

[2] Constantin G. Rarincescu, *Curs de drept constituţional* (Bucharest, 1940), 203.
[3] Tudor Drăganu, quotted works pp. 45-47.
[4] For development see Marius Andreescu, *Principiul proporţionalităţii în dreptul constituţional* (Bucharest: CH Beck, 2007).
[5] Ioan Muraru, *Protecţia constituţională a libertăţii de opinie* (Bucharest: Lumina Lex, 1999), 17.
[6] Ioan Muraru, and al., *Interpretarea Constituţiei* (Bucharest: Lumina Lex, 2002), 14.

no matter how nice they will be presented, but in the social general interest, well defined and possible to be juridically expressed. Professor Antonie Iorgovan specifies on full grounds:" in the matter of Constitution's revising, we dare say that where there is a normal political life, proof is given of restraining prudence, the imperfections of the texts when confronting with life, with later realities, are corrected by the interpretations of the Constitutional Courts, respectively throughout the parliamentary usance and customs, for which reason in the Western literature one does not speak only about the Constitution, but about the block of constitutionality" [7].

The answer to the question if in this historical moment is justified the triggering of the political and juridical procedures for the modifying of the fundamental law of Romania can be stressed out in respect with the reasons and purpose targeted. The revising of Constitution cannot have as finality the satisfying of the political interests of the persons holding the power for a moment, in the direction of reinforcing of the discretionary power of the Executive, with the inacceptable consequence of harming certain democratical constitutional values and principles, mainly of the political and institutional pluralism, of the principle of separation of powers in the state, of the principle of legislative supremacy of the Parliament.

On the other hand, such as the two decades lasting history of democratical life in Romania has shown, by the decisions taken for many times, were distorted the constitutional principles and rules by the interpretations contrary to the democratical spirit of the fundamental law, or worse, they didn't observe the constitutional dispositions because of the political purposes and their support in some conjunctural interests. The consequences were and are obvious: the restraining or violation of some fundamental rights and liberties, generating some political tensions, the nonobservance of the constitutional role of the state's institution, in a single word, due to political actions, some dressed in juridical clothes, contrary to the constitutionalism that needs to characterize the lawfull state in Romania. In such conditions, an eventual approach of the revising of the fundamental law should be centered on the need to strengthen and enhance the constitutional guarantees for respecting the requirements and values of the lawfull state, in order to avoid the power excess specific to the politician subordinated exclusively to a group interests, many time conjunctural and contrary to the Romanian people, which in accordance to Constituion item 2 paragraph (1) of the one who is the holder of the national sovereignity.

In our opinion, the preoccupation of the political class and state's authorities in the current period, in relation to the actual contents of the fundamental law, should be oriented not so for the modification of the Constitution, but especially into the direction of interpreting and correct applying and towards the respecting of the democratical finality of the constitutional institutions. In order to strengthen the lawfull state in Romania, it is necessary that the political formations, mostly those that hold the power, all authorities of the state to act or to exercise its duties within the limits of a *loyal constitutional behavior* that involve the respecting of the meaning and demoratical significances of the Constitution.

Currently, the political and juridical reality in Romania is confronting with an extensive political approach for the revising of the fundamental Law, substantied throughout the results of the referendum organized on 2009 having as objective the reducing of the number of parliamentarians and with the passing to a unicameral parliamentary system, in the "Report of the Presidential Commission for the Analysis of the Political and Constitutional regime in Romania" [8] that was published on April 28th 2010, the initiative of the President of Romania for revising the fundamental law at the Government proposal and the decision no. 799/17.06.2011 of the Constitutional Court targeting the law draft for Romania's Constitution revising[9].

This is up to now the only political initiative that has been materialized in a legislative draft for revising the fundamental law that was submitted to the Parliament. In the present social and political context other proposals, ideas for the modifying of the Constitution are being expoxed by the governing ones yet without being materialized in a new legislative initiative.

Our scientific approach has into consideration, from a critical perspective, mostly the political initiative for the Constitution revising that has already the form of a legislative project, though it is not on the Parliament 's roll for debating. We wish at the same time to underline few important themes which in our opinion need a more serious consideration, included in regard to the normative contents of the Constitution. In this epoch of political class' intense preoccupations for the modifying of the fundamental law it is important to reflect in the light of the political exigencies of the constitutional law, upon the normative content of the Constitution. The establishing based on some scientific criterions to what exactly needs to contain the fundamental law of a state, is essential to avoid that throughout political enthusiasm be ignored the basic aspects regarding the specific of the normative contents of

[7] Antonie Iorgovan, "Revizuirea Constituţiei şi bicameralismul", *Public Law Journal* 1(2001): 23.
[8] Published by C.H. Beck Publishing House, Bucharest, 2009.
[9] M.Of. no. 440/23.06.2011.

the Constitution that explains thus last one's supremacy.

The proposals for the Constitution's revising have as an obvious finality the passing of Romania's constitution system from bicameral to unicameral and the strengthening of the executive power, mostly of the presidential institution.

The doctrine in specialty underlines the fact that in the unitary states, such as Romania, both the unicameral system, as the bicameral system have advantages and disadvantages [10]. There is no ideal constitutional solution on this meaning. Important is the fact that the Parliament's structure which the Constitution consecrates be adequate to the social, political and economical realities of a country, be functional and to integrate harmoniously within the system of authorities of the state with the observance of the principle of constitutional democracy principles and of the lawfull state. Nevertheless, prestigious authors such as professor Herbert Schambeck remark the importance of the parliamentary system: "From the second chamber of this type, it is expected to emanate *auctoritas*, which in a specific way grants personal fame, in plus to *potestas* or the political power. The second Chamber or the superior chamber has always existed in the area of tensions between the tradition inherited and the present political reality. It represents a part of the basic constitutional organization and a political reality of the state"[11].

Coming back to the essence of the problem, besides other authors[12], we appreciate that in Romania, the bicameralism is adequate to the state and social system at this historical moment, corresponding better to the necessity to achieve not only the efficiency of the parliamentary legislative procedures but also the "norming ponderation" and quality of the legislative act. The bicameralism is a necessity for Romania because the Parliament represents a valid counterpondering against the Executive, in the context of the exigencies and balance of the powers in a democratic state. With good reason the regretted professor Antonie Iorgovan underlined: " It would have been a very high political risk, in that post revolutionary tension, that in Romania to have designed a unicameral Parliament and such a risk exists still at present, considering that one cannot speak about a political life settled on natural pathes of the democratical doctrines accepted in Occident (the social-democratic doctrine, the democratic-Christian doctrine, liberal doctrines and ecologist doctrines)"[13]. The unicameralism in a semi-presidential constitutional system such as the one of Romania, in which the powers of the head of the state and in general those of the Executive are significant, having into consideration the excesive politicianism of the moment, would have as a consequence the severe deterioration of the institutional balance between the Legislative and Executive, with consequence the increase of the discretionary power of the Executive and the minimizing of the role of Parliament as a supreme representative organism of the Romanian people, as a unique law maker authority of the country, such as the provisions of item 61 paragraph (1) of the Constitution foresee.

The transition to a unicameral Parliament needs not be treated simplistic such as unfortunately comes out from the contents of the Law draft regarding the revising of Constitution elaborated by the Government, it rather needs a general modification of the Romanian constitutional system, a reconfiguring of the role and duties of the state authorities so that the balance between the Legislative and Executive be maintained and not create the possibility of an evolution towards an exaggerated preponderance of the institution of the head of the state in respect to the Parliament.

We underline the fact that all states with a unitary structure of Europe that have a unicameral Parliament have at the same time a constitutional system of parliamentary type in which the duties of the head of the state regarding the governing are being reduced. We do not wish to do a thorough analysis of this constitutional problem, we stress only the conclusion that the unicameralism may have be political and constitutionally justified in Romania and adequate to the democracy values in a lawfull state only if the legitimacy and the role of Romania's President as a constitutional institution, will be fundamentally be changed. The election of the President needs to be by the Parliament. At the same time in case of a unicameral structure of the Parliament it is necessary to reduce significantly the responsibilities of the President in respect to the Executive and the governing ones. In such a reconfiguring of the institutions of the state needs to be increased the role and duties of the Constitutional Court and those of the Justice, these ones being guarantees of the supremacy of the law and Constitution and for avoiding the power excess coming from the other authorities of the state. In one word, in our opinion the unicameralism cannot be associated in Romania other than with the existence of a constitutional system of parliamentary type.

[10] For development see Ioan Muraru and Mihai Constantinescu, *Drept parlamentar românesc* (Bucharest: All Beck, 2005), 72-79.

[11] Herbert Schambeck, „Reflections on the Importance of the Bicameral Parliamentary System", *Public Law Review* 1(2010):3.

[12] Ioan Muraru, Mihai Constantinescu, quotted works., pp. 2-37; Antonie Iorgovan, quotted works., pp. 3-7; Florian Vasilescu, „Questions about Bicameralism", Romanian Public Law Review 3(2010): 28-51; Ioan Alexandru, "Reflections regarding the bicameralism and asymmetry of the distribution of competences" *Public Law Review* 3(2010): 51-60.

[13] Antonie Iorgovan, quotted works., pp. 18-19.

The legislative proposal for the Constitution revising is of a nature to create a disproportion between the Parliament and Executive by the fact that the unicameral structure of the Parliament does not represent a guarantee sufficient to make an efficient counterponderance in respect to the Executive, mainly as the responsabilities of the President are obviously enhanced. The dispute between unicameralism and bicameralism with applying to the conditions of Romania is well characterized by the regretted professor Antonie Iorgovan: „...any bicameral or unicameral parliamentary system can lead into severe disfunctionalities such as professor Tudor Drăganu states, no matter how successful may be the constitutional solutions, if in the parliamentary practice evidence is given of politicianism, demagogy and lack of responsibility"[14].

Does the present Parliamentary system of Romania correspond to the exigencies of the democratic traditions of bicameralism and is it really adequate to the fulfilling of the role and functions of the Parliament? Professor Tudor Drăganu, in a flawless argumenting logic, in an extensive study answered to this question:"The revised Constitution establishes a system that claims to be bicameral but it functions currently like a unicameral system, condemned being to violate by certain of its aspect the most elementary principles of the parliamentary regime and which contains in itself the danger of producing in future of severe disfunctionalities in accomplishing the legislative activity"[15].The illustrious professor had into consideration that the law for the Constitution's revising does not contain references with regard to the number of deputies and senators it sets the matter of legitimacy of substance of the two chambers, because their members are appointed by the same election body and by the same type of system and election ballot; the responsibilities of the chambers in legislative matter are not sufficiently well differentiated; the exercising of the right to the legislative initiative of the senators and deputies, such as regulated, generates constitutional contradictions.

Together with other authors[16], we state that in the perspective of a future constitutional revising, to regulate the differentiation between the two chambers also by special types of representation. The law compared offers sufficient examples of this kind (Spain, Italy, France) and even the election law of Romania on March 27th 1926 offers a landmark on this meaning. The Senate may represent the interests of the local collectivities. Thus, the senators may be elected from an electoral college made of the local councils' chosen members. Interesting to underline is the fact that in the Constitution draft on 1991 the Senate was designed as a representant of the local collectivities, grouped on the country's counties and Bucharest municipality.

It is reasonable the critic of Professor Tudor Drăganu according to which the current constitutional regulation does not achieve a functional differentiation between the two chambers. This aspect was also noticed by the Constitutional Court that, referring to the parliamentary legislative procedure introduced in the draft for the Constitution revising, stressed: "The examining in cascade of the law drafts, in a chamber in the first lecture, and in the other one in the second lecture transforms the bicameral Parliament in a unicameral one"[17]. Therefore a new initiative for the modification of the fundamental law should have into consideration this aspect also and should achieve a real functional differentiation of the two chambers.

The Constitution is a law, but in the same time through it juridical force and its contents it distinguishes itself from any other laws. At the same time, the supremacy of the fundamental law grants to this one the quality of a main formal spring for all other law branches. Consequently, there are specific features of the normative contents of the Constitution in respect to the other normative acts, included compared to the existing codes. The normative specific of the Constitution makes an important criterion for explaining scientifically this one's supremacy and the structurant role of the fundamental law, not only by the system of law but also for the entire social, political and economical system of a state. Thus such as it is mentioned in the literature in specialty, the supremacy of the Constitution is a quality of the last one expressed throughout the supreme juridical force but also through its normative contents. As a first observation we specify that the norms forming the content of a constitution have the features of the constitutional law which I analyzed above. This observation is not enough to determine the normative content of the fundamental law because the sphere of the constitutional law norms is wider, including other formal sources specific to this branch of law.

The constitutional contemporary reality that is stressing also the diversity of the normative content removes the idea of general uniform standards valid for the contemporary constitutions. In this regard it is enough to remember that there are some states and constitutions whose provisions are inspired by the religious precepts. The diversity in the normative content is a consequence of the fact that the

[14] Antonie Iorgovan, quotted works., p. 16.

[15] Tudor Drăganu, "Few critical remarks about the bicameral system established by the Law for Constitution's revising adopted by the Deputies Chamber and in the Senate", *Public Law Review* 4(2003): 55-66.

[16] Dan Claudiu. Dănișor, quotted works, p. 23-24.

[17] Decision no. 148/16.04.2003 (M.Of. no. 317/12.05.2003).

fundamental law of a state is determined in view of the aspect of the content of the social, political and economical realities, by the characters and attributes of the respective state historically expressed and in the same time by the will of the constituent law maker, in essence the political will, at a certain historical moment.

Besides other authors, we consider that the scientifical definition of the constitution is the main criterion for the identifying of the normative content. Such a criterion provides the generality necessary to give a scientific character to the scientific elaborations in the matter and at the same time it explains the existence of the differences between the fundamental laws of the contemporary states. The space allocated to this study, does not allow an extensive analysis of the definitions proposed in the literature in speciality. For the purpose of this scientific approach we bear in mind the essence of any attempt to define the fundamental law, namely "The constitution is the political and juridical fundamental foundation of any state"[18].

In juridical acceptation, the fundamental law is the act through which it is determined the statute of the power and at the same time all the juridical rules, having as regulating objective the establishment of exercising and maintaining of the power, as well as the regulation of the basis of the power, of the bases for power organizing. The juridical concept on the constitution can be expressed in two different meanings, respectively in the material meaning and in the formal one.

In the "material" acceptation, the constitution contains all the law rules, no matter of their nature and form, having as regulating objective the organizing and functioning of state power, the relations between the state's organs and society. Therefore they are part of the constitution body not only the so called constitutional regulations but also the norms contained in the ordinary laws and normative acts of the executive powers if through these are being regulated the social relations specific to state power. In such a conception has preeminence the regulating objective of the constitutional norm and not its form of expression. The theory above stated was accepted by the Constitutional Council of France which elaborated the concept of "the constitutionality block".

In the formal acceptation, the constitution is all the law rules, no matter of their regulating objective, elaborated in a form different from other normative acts, by a state authority namely established (the constituent assembly) following a specific procedure, derogatory from the usual legislative procedure. This way of defining the constitution starts from the correct idea that a certain "procedure" defines a juridical form or a normative category. Consequemtly the categories of normative acts can be differentiated by the adopting procedures.

Analyzed separately, the formal acceptation and respectively the material one cannot be a criterion enough to identify the normative content of the fundamental law. The accepting of the formal criterion has as a consequence the fact that the law fundamental may regulate any kind of social relations, no matter of their importance or regulating objective. [19] The material criterion is also unilateral because it excludes the procedural elements, necessary for a scientific characterization of the fundamental law.

The scientific approach regarding the identifying of the normative content of the constitution needs to have into consideration cumulated both the formal acceptation as the material one to which adds the political dimension to which we referred to above. Therefore, we consider that three critera can be identified in view to establish the normative contents of a constitution:

The establishing of the normative content of the constitution is fulfilled depending on the specific, importance and value of the regulated social relations. We concur to the opinion stated by the literature in speciality according to which, unlike other normative act categories, the norms contained in the constitution must regulate the fundamental social relations that are essential for the establishment, maintaining and exercising of the power, but also those referring to the bases of the power, respectively the power organizing bases. There are three such categories of social relations, that can form the regulating objective of the norms contained in the constitution that allow their identification such as follows:

The constitutional norms, some having values of principle, having a determining role in the establishing and functioning of the governing organs and in the establishing of the form of the state, respectively of its characters and attributes;

the norms for the consecration and guaranteeing of the fundamental righs and liberties and those that regulate the citizens' fundamental duties;

constitutional dispositions that have no direct connection with the governing process and regulate the bases for power organizing (sovereignity, territory, population) and the bases of the power (economy, social and cultural aspects etc).

The form for adopting the constitution or of the constitutional laws have a solemn character and are achieved according to a procedure derogatory from the usual legislative procedure and by a state authority specially established or by the Parliament, that acts as a constituent power and not as a usual legislative power;

[18] Ion Deleanu, quotted works p.88.

[19] For example the Switzerland Constitution by item. 25 bis establishes rules for cattle cutting.

### III. Conclusions

It is important to underline the constitutional dynamism. The fundamental law is a dynamic and opened act, in a continuous crystallization process. The constitutionality status is achieved in a continuous and complex process for interpreting and applying by state's authorities of the texts contained in the body of the constitution. A special role in this wide process of interpretation and concrete fulfilling of the constitutional provisions is in the charge of the constitutional authorities. The activity for interpreting the fundamental law texts is justified because in the normative content of the constitution there are categories and concepts whose sphere cannot be defined by the constituent law maker. Thus, the constitutional norms cannot and must not offer definitions. For example in Romania's constitution there are such concepts that are defining by interpretation way and have formed the objective of analysis of the Constitutional Court: " spirit of tolerance and mutual respect" (item 29, paragraph 3); "identity" (item 30, paragraph 3); "private life" (item 30, paragraph 6), " the principles of the lawfull state" (item 48 paragraph 2); "public utility" (item 44, paragraph 3); "public and moral proportionality" (item 116, paragraph 4).

The normative contents of the constitution must be understood and determined with having into consideration the teleological criterion emphasized in the above stated definition. Namely the fundamental law's structuring role for the entire social, political and state system, guarantor of the fundamental rights and liberties.Noticing a political and juridical reality yet present, G. Bourdeau stated:" The written constitution is the work of the theoreticiens preoccupied more by the elegance and juridical balance of the mechanism they construct, than by its political efficiency [20]" Such a finding, we consider valid also for the Constitution, respectively the contemporary Romanian constitutionalism.

The fair determination of the normative contents of a constitution is expressed by its political and juridical efficiency. The fundamental law must achieve the social dynamic balance but also the stability and institutional harmony, the efficient guaranteeing of the fundamental rights, in essence the requirements of a real constitutional democracy based on the values of the state, of the institutional and social balance and of the proportionality[21]. Ion Deleanu noticed very well that: "the success of the constitution and constitutionalism is always a political one as far as it is the result of a transaction, of a relationship between what the constitution offers in a formalizing and objectiving term of the political matters and what the political actors ask or search for at a certain time in order to fulfill their own objectives. [22]

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[20] George Bordeau, *Traite de science politique* (Paris: LGDJ, 1969), 59.

[21] For developments regarding the applying of the constitutional principle of proportionality at the state power organizing see Marius Andreescu, *Principiul proporţionalităţii în dreptul constituţional* (Bucharest: CH Beck, 2007), 267-298.

[22] Ion Delenu, quotted works p.89.