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Rainer Arnold
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DEVELOPMENT OF CONSTITUTIONAL LAW THROUGH CONSTITUTIONAL JUSTICE: LANDMARK DECISIONS AND THEIR IMPACT ON CONSTITUTIONAL CULTURE

XXth International Congress On European and Comparative Constitutional Law
Gdańsk, 20–23 September 2018

WYDAWNICTWO UNIWERSYTETU GDAŃSKIEGO

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We want to devote this volume to the memory of Paweł Adamowicz, the tragically deceased President of the City of Gdańsk, formerly a graduate and researcher at the Faculty of Law and Administration of the University of Gdańsk, Vice-rector of the University, persistent advocate of constitutional values, humanist and European devoted to the issue of tolerance. We want to commemorate his contribution to the celebration of the XXXth anniversary of the Constitutional Tribunal in Poland and the XXth International Congress of the European and Comparative Constitutional Law in Gdańsk.

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LE DÉVELOPPEMENT DU DROIT CONSTITUTIONNEL PAR LA JUSTICE CONSTITUTIONNELLE : LES GRANDES DÉCISIONS ET LEUR IMPACT SUR LA CULTURE CONSTITUTIONNELLE

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Preface

In September 2018 the International Congress on European and Comparative Constitutional Law celebrated its 20th anniversary in Gdansk, a city of high importance for the new free Europe, where communism began to collapse.

University and Faculty of Law have essentially contributed to the realization of the Jubilee Congress, as co-organizers and by their financial support. We owe great gratitude to them, in particular to the long years former Dean Prof. Dr. hab. Dr. h.c. Andrzej Szmyt, the then acting Dean Prof. Dr. hab. Dr. h.c. Jakub Stelina and Dr. hab. Anna Rytel-Warzocha.

Constitutional justice has a decisive role in interpreting and developing constitutional law. The constitution as the basic legal order of the State is a living instrument destined to be the legal fundament for an indefinite time. It establishes institutions and determines values. Its core intention is anthropocentric, that means its ultimate finality is to protect and promote the individual. The text of the constitution is never complete; it is the product of the historical moment when it is created but has to deploy its normative functions for a long time period. Adaptations and even changes in the meaning of constitutional provisions are indispensable for updating the written text in order to comply with the actual intention of the constitution which has to be understood from the perspective of the moment of its application. Constitutional reforms alone are not sufficient for this process of adaptation. The lengthy processes often were retarded or totally obstructed by political difficulties. Constitutional justice has the competence and even the obligation to complement the written text, in particular in the field of values, in order to protect the individual against all threats of their freedom emerging in the course of time. It corresponds to the dynamic character of the constitution that constitutional justice makes the ongoing evolutions of constitutional law manifest in their judgments. The constitutional order of a State is therefore essentially specified by the judges. This modern dynamic approach for constitutional interpretation finds its limit in the principle of separation of powers. Constitutional judges cannot assume the role of the constituent power, they are not authorized to create new nor to reform existing constitutional norms. However, legitimate constitutional interpretation is not static, it takes account, in its dynamism, of the evolutionary character of the constitution.

It was therefore the purpose of the Congress to focus on the landmark decisions of the constitutional jurisdiction and its role as a promoter of constitutional law in the various countries.

The XXth International Congress on European and Comparative Constitutional Law has, once again, proved to be an international forum for exchange of ideas and debate on basic topics of current interest. Justices of constitutional courts and academics from many countries came together for a debate on the significance of constitutional justice for their own countries and the emergence of a transnational constitutional culture.

Common reflection and personal encounters of the members of this continuously growing "constitutional law family" was highly favored by the charm of this historically and politically important city.

Rainer Arnold

Rainer Arnold[1]

The evolution of the German Grundgesetz through constitutional jurisprudence – some aspects

"The Constitution is what the judges say it is." Is this famous saying of Charles Evans Hughes, the late Chief Justice of the United States, which dates back to 1907,[2] true also for the German Constitution? Has the Federal Constitutional Court (FCC) during 67 years of existence essentially shaped the Constitution, the Basic Law, through its 8000 (approx.) substantive decisions?

Of course, the fundament of judicial action is the text of the Constitution, which has been reformed in Germany more than 60 times in more than 100 provisions, with the extraordinary complex federal system as its main object. The text of the Constitution is decisive for the constitutional order but it needs judicial implementation in many ways: the text is necessarily incomplete; it reflects the historical moment when it was created. As the Constitution is the supreme legal leader for State and society for an indefinite time (our basic law is nearly 70 years old!) it must keep its function in its current status, actualized and able to cope with the challenges, difficulties and dangers in every moment of its existence.

This actualization of the Constitution takes place either through constitutional reform or (one could even say "and") through constitutional interpretation. The text of the Constitution must be completed, adapted to new understandings of concepts (in particular the field of values) and enabled to face new dangers and challenges. It is the task and the obligation of the judges to reveal and to clarify the unwritten parts of the Constitution, notably the unwritten fundamental rights. As in 1949 the authors of the German basic law did understandably

[1] Professor, University of Regensburg.

[2] See R.D. Friedman, "Charles Evans Hughes," in: *Yale Biographical Dictionary of American Law*, ed. R.K. Newman, New Haven, Conn.: Yale Univ. Press, 2009, p. 278.

not write down data protection in the Constitution, it has been up to the FCC to state the existence of such a guarantee in the German constitution, albeit in unwritten form. Nevertheless, the judges could rely on article 2.1 BL (right to deployment of one's personality) as well as on article 1.1 (human dignity).[3]

2. Dignity and freedom are the essence of our Constitution: dignity as the supreme value and freedom as its twin principle. The principle of freedom can be found in article 2.1 BL, which is inherent in every democratic liberal constitution, must be efficiently fulfilled; the principle of freedom does not admit any gaps in the protection of the individual. The fundamental rights specify this principle which demands substantive and functional efficiency.[4] The judges have to realize this efficiency by making the protection complete. They have to formulate the unwritten rights or at least the unwritten aspects of the rights which are written in the text. Furthermore, they have to interpret the rights, written or not, in a functionally efficient way which has been named "effet utile"-oriented.[5] As freedom, different from dignity which is absolute, has to be shared with all the other holders of freedom, it underlies restrictions; however, this is untouchable: freedom is the principle and restriction is the exception which must be legitimized. This legitimation is only given if the principle of proportionality, the magic instrument to equilibrate freedom and restriction, as well as the guarantee of the very essence of the fundamental right are duly observed.

It can be said that constitutional jurisprudence in Germany has developed this basic concept of freedom as the fundament of the constitutional order. While the text of the Constitution has delivered the normative framework (human dignity in article 1, deployment of personality in article 2.1, the guarantee of the very essence of fundamental rights in article 19.2), jurisprudence has transformed it into a coherent dogmatic system. The principle of proportionality has been evolved in early decisions and made a consolidated and indispensable element, we can say "the most important element" of the constitutional freedom system.[6]

The functional efficiency of fundamental rights has been an early starting point of the value jurisprudence of the FCC. An early landmark decision has to be mentioned, the *Lüth* case[7]: fundamental rights have been regarded in the classical

[3] FCC, vol. 65, p. 1.

[4] R. Arnold, "Substanzielle und funktionelle Effizienz des Grundrechtsschutzes im europäischen Konstitutionalismus," in: M.-E. Geis, M. Winkler, Ch. Bickenbach, *Von der Kultur der Verfassung, Festschrift für Friedhelm Hufen zum 70. Geburtstag*, München: C.H. Beck, 2015, pp. 3–10.

[5] See M. Potacs, *Effet utile als Auslegungsgrundsatz*, Europarecht (EuR), 2009, pp. 465–487.

[6] See as an example the recent decision of December 18, 2018, http://www.bverfg.de/e/rs20181218_1bvr014215.html (6.08.2019).

[7] FCC, vol. 7, p. 198.

understanding as subjective rights of defense against public power; this decision has enlarged this perspective and added an objective dimension: the fundamental rights system as a *coherent objective order of values* which are constituent elements of the whole legal order, which impact civil law as well as all other branches of law, the starting point for the constitutionalization of the legal order as such.

The objective dimension of fundamental rights also generates a further important dimension: the concept of the active obligation of the State, mainly of the legislator to protect the values comprised of the rights: life, health, property, etc. This *Schutzpflicht* theory has its basis in the *Lüth* case and is specified mainly in the two *abortion cases* (1975, 1993)[8] and in various environmental protection cases (*Kalkar* I, 1978[9]; *Mühlheim-Kärlich*, 1979[10]). This theory has become an essential and often used argument in constitutional jurisprudence.

Beyond the functional enlargement of the fundamental rights protection its emerging internationalization has to be mentioned: the FCC made clear in the *Görgülü* decision (2004)[11] that German fundamental rights have to be interpreted as far as possible in light of the European Convention of Human Rights and of the jurisprudence of the European Court of Human Rights. This convention which has the rank of an ordinary federal legislation in the internal German legal order has been constitutionalized by this approach of the FCC. Before this decision, the FCC has nearly never made reference to the ECHR (except in cases where the presumption of innocence has been derived article 6.2 ECHR and implanted into the general concept of rule of law (article 20, 28 BL)).[12] The FCC has pointed out that the non-observance of the ECHR by a German institution would affect German fundamental rights and open the way for an individual constitutional complaint. Rule of law is seen in a double perspective, with a national and an international aspect. However, the interpretation in accordance with the ECHR ends if the relevant normative text is precise and not open to such interpretation. As fundamental rights are formulated in a general way the adaptation of the internal text to the international convention is generally possible.

3. Jurisprudence has essentially contributed to the fine-tuning, the evolvement of the *institutional values*, the fundamental orientations of the State as expressed by article 20 BL. *Rule of law* as the main pillar of German constitutionalism has been enlarged to its modern dimension, to a concept which is based

8 FCC, vol. 39, p. 1 and vol. 88, p. 203.
9 FCC, vol. 49, p. 89.
10 FCC, vol. 53, p. 30.
11 FCC, vol. 111, p. 307.
12 FCC, vol. 74, p. 358.

on constitutionality and not purely on legality and which is value-oriented, which comprises necessarily the fundamental rights; a great spectrum of aspects has been detailed by jurisprudence, security of law, confidence in law, proportionality and many others.[13] Rule of law emerged in Germany in the 19th century in its original form of legality, the first and important victory over the monarch-related executive which is now submitted to legislation, dependent on Parliament. Of course, the electoral system of that time had not yet realized equality (women's right to vote was introduced only in 1918!) and for this reason democracy was not yet the expression of people's sovereignty. Rule of law was therefore functionally limited. It obtains full function only by full democracy, if democracy merits its name. Democracy is indispensable but not sufficient for a real rule of law: today's concept is essentially based on the constitutionality of the legislation. While this was expressed by the Basic Law in its article 20.3 the FCC has built up the whole constitutional construction on this idea. The rich jurisprudence on the relationship between the Constitution and legislation is inspired by this basic approach.

Democracy is not separable from the rule of law. The Constitution is the fundamental democratic act which gives binding orientation for politics. Politics realizes democracy within the framework of the Constitution by transforming the will of the majority into legislation. The Constitution and politics are complementary phenomena. Both have their own areas which they should not trespass. In the case of the trespass of politics, or the legislator, into the area of the Constitution, the legislation is unconstitutional. The right relationship between these two areas is in disorder. The contemporary instrument in most countries, and in Germany, is constitutional justice which re-establishes, by declaring the unconstitutional piece of legislation void, the right relationship. Constitutional justice is not negative legislation, it is correction, a reaction on the unconstitutionality of politics; it is not against the separation of powers, it supports its functioning. While in the 19th century rule of law considered the access to the courts for challenging illegal executive action as a requirement of rule of law, constitutional review of legislation is today the "perfection of rule of law" which transforms it into the "rule of the Constitution." Democracy, politics creating legislation and rule of constitutional law have an inseparable connection. To express this with the words of the French *Conseil constitutionnel*: legislation expresses the will of the people only if it conforms to the Constitution ("la loi n'exprime la volonté générale que dans le respect de la Contitution").[14] The FCC has confirmed to the primacy of the Constitution which is clearly

[13] See E. Schmidt-Aßmann, "Der Rechtsstaat," in: *Handbuch des Staatsrechts der Bundesrepublik Deutschland*, hrsg. J. Isensee, P. Kirchhof, vol. 2, 3rd ed., 2004, paragraph 26.

[14] Décision no. 85-197 DC du 23 aout 1985; https://www.conseil-constitutionnel.fr/decision/1985/85197DC.htm (6.08.2019).

expressed in the Constitutional text (articles 1.3 and 20.3 BL) and has drawn from it detailed consequences.

It has developed procedural instruments which allow it to respect the discretionary power of Parliament and, at the same time, to give preference to the Constitution: to interpret a piece of legislation in conformity with the Constitution or, if adaptation by interpretation is not achievable because of the clear will of the legislator, to declare legislation as unconstitutional and to invite the legislator to amend it within a certain time limit. Quite generally it can be said that constitutional justice in Germany has essentially contributed to the "constitutionalization of constitutional law," that means to a filigree and sophisticated texture of the constitutional order, detailed and interwoven with all branches of law.

Democracy has been determined by the FCC by important elements: the status of the political parties, in particular their financing,[15] the electoral system,[16] the parliamentary functions and the confirmation of the representative system at the federal level. The *Social State principle* which is a certain substitute for the absence of social rights in the Constitution has been conceived as an important interpretation maxim often used in constitutional jurisprudence.[17] Jurisprudence has elaborated the concept of the *Open State* which has been declared an important State orientation, based on written provisions relating to International and, in particular, supranational law.[18] Finally, the basic structure of Germany as a *Federation* has been rounded over by jurisprudence while the complex federal system is essentially determined by constitutional provisions which have in part undergone incisive constitutional reforms. However, it can be said that jurisprudence has drawn from these provisions the dogmatic concepts such as the State quality of the members of the Federation and the two-tier structure of the Federal State.[19] Jurisprudence has established principles of collaboration such as the important unwritten principle of federal loyalty[20] and that of financial solidarity,[21] the starting point for decisions on financial compensation between rich and less rich member states.[22] However, reforms of the written text were considered adequate and necessary for the core elements of the federal system, especially of the heart of the discussion, to reach a just and satisfying financial

15 FCC, vol. 20, p. 56 and vol. 85, p. 264.
16 FCC, vol. 60, p. 162; vol. 95, p. 335; vol. 121, p. 266.
17 FCC, vol. 29, p. 231; vol. 82, p. 68; vol. 103, p. 271.
18 See also R. Grawert *et al.* hrsg., *Offene Staatlichkeit. Festschrift für Ernst-Wolfgang Böckenförde zum 65. Geburtstag*, 1995.
19 FCC, vol. 13, p. 54; vol. 36, p. 342.
20 FCC, vol. 6, p. 309.
21 FCC, vol. 86, p. 148.
22 FCC, vol. 101, p. 158.

distribution and compensation system within the Federation, a task which could not have been realized by jurisprudence. Judges could claim the overriding principles, but could not establish the institutionalized system as such.

4. Constitutional law concerning the State institutions, their functions and cooperation is much less influenced by jurisprudence; the main instrument to adapt the institutions to ongoing changes is constitutional reform. However, also in this field, constitutional jurisprudence has played an important role. Decisions of the FCC have confirmed how important the observance of the constitutional requisites and procedures is (warning for example against feigning political instability for giving the Federal President the pretext to dissolve parliament[23]) and have clarified open questions related to institutions. The principle of institutional loyalty has been put forward in various decisions.[24]

5. Germany is, as are all the EU member states, an integrated State which accepts supranational power and its primacy over national law. Constitutional jurisprudence has effectuated the process of integration by the acceptance of the basic functional structures of the supranational organizations. However, jurisprudence has preserved the essential concepts regarded as indispensable for the German constitutional culture: the fundamental rights protection (by the famous decisions Solange I, 1973,[25] and Solange II, 1986[26]), the prohibition of ultra vires actions from the side of the supranational institutions (Maastricht, 1993[27]) and to core elements of the Constitution forming the German *constitutional identity* (Lisbon Treaty, 2009[28]). This last decision has opened the way to establish limits to the primacy of supranational law over national constitutional law. This limit is orientated towards the German intangibility clause article 79.3 BL to which the integration norm of the constitution, article 23 BL, refers. The written provision in the Constitution has led to the jurisprudential elaboration of the fundamental concept of constitutional identity. Art. 23 BL has been a normative impulse to jurisprudence, while jurisprudence has also given impulses to the legislator for a constitutional reform: the Solange decisions of the FCC essentially contributed to the shape of the new integration norm (Art. 23.1 BL) which is a reaction on the foregoing jurisprudence. The FCC has turned out to be a bastion of the national constitutional culture by stating it has the final

[23] FCC, vol. 62, p. 1; vol. 114, p. 121.
[24] FCC, vol. 134, p. 141.
[25] FCC, vol. 37, p. 271.
[26] FCC, vol. 73, p. 339.
[27] FCC, vol. 89, p. 155; see also FCC, vol. 126, p. 286.
[28] FCC, vol. 123, p. 286.

competence in defining and safeguarding constitutional identity. It revendicated the power to declare supranational acts inapplicable in Germany if they are, in the view of the FCC, incompatible with German constitutional identity. This contrasts manifestly with the position of the European Court of Justice which claims exclusive competence to decide on validity and the application of European Union secondary law. Besides that, the relationship between the national perspective of constitutional identity and the supranational perspective of the national identity of the member states, which includes the constitutional identity of them, is expressed in article 4 of the Treaty on the EU, is not yet resolved. Until now a conflict between the two jurisdictions has not occurred but is not excluded. Nevertheless it seems that the FCC has in mind conciliative, pragmatic solutions. Generally it can be said that the idea of "open statehood" is deeply rooted in Germany and is also reflected, in general, by the FCC.

6. Conclusion. The FCC has confirmed the leading principles of the Constitution: the value orientation, stability of the political system, federalism and, with some reservations, the openness to the European and international community. It has especially emphasized the dignity-oriented anthropocentrism with a vivid attention to an effective fundamental rights protection conceived as specifications of the central principle of freedom and moderated by the omnipresent instrument of proportionality. Rule of law has been associated with this value perspective and melted together into a *functional unit*. The value part of the Constitution has been jurisprudentially evolved and even internationalized. The legislator has been driven forward, recently in particular in the implementation of equality in accordance with the court's current vision. The court respects the legislator's discretionary power and does not trespass into the area of politics but it obliges the legislator to take the observance of the Constitution seriously by imposing time limits for legislative action in compliance with the Constitution. The court's role in the safeguard of the institutional system is much more text-oriented and less innovative than it is in the field of values. Reform of the text has preference. While constitutional interpretation of values is dynamic and evolutionary, interpretation in the field of institutions is much more conservative, more oriented to what is written in the text of the Constitution. Jurisprudence tries to find out the underlying principles, to specify the mode how to carry out the cooperation (such as the principle of loyal collaboration between the institutions) and to preserve the correct and not abusive exercise of their functions (what has been the main topic in the dissolution of parliament cases).

The interpretation of the institutional provisions of the Constitution follows the idea of *efficiency* (that means the function of the institution must be guaranteed and must not be undermined e.g. by ordinarily legislation), of *correctness* (that

means that the competencies attributed to the institution by the constitution must not be exceeded), and of *separation of power* and *institutional equilibrium.* The underlying values must be reflected by interpretation (e.g. for understanding the institution of Parliament it is necessary to refer to democracy as a system of political self-determination of the individual, in its conception linked with human dignity, as stated by the FCC.[29]

In specific cases the written text is complemented by judicial interpretation, as it occurred with the armed forces linked to the consent of Parliament for military actions outside the NATO Territory.[30]

The decisions of the FCC, regularly well-founded and largely elaborated, are widely accepted by society and are able to create societal peace, even in vehemently disputed matters such as abortion, crucifixes in classrooms[31] and a basic treaty with the former RDA.[32] The present day situation seems to be not the reproach of the *government of judges* but, in contrary, politics try to address the Constitutional Court for helping to resolve a blockade situation by deciding, with authority, the constitutional question inherent in every major political problem.

Advancement in constitutional law in Germany is unthinkable without the rich constitutional jurisprudence of the FCC. It might also be remarked that the constitutional jurisdictions of the member states of the German Federation (all of the members have own constitutional courts which of course are limited to judge exclusively on the member State's matters) are based on their own constitutional areas but widely influenced by the FCC jurisprudence.

Let us go back to the initial question: the constitutional order is essentially judge-made but framed by the written text.

[29] FCC, vol. 123, p. 267, http://www.bverfg.de/e/es20090630_2bve000208.html/para. 211 (6.08.2019).
[30] FCC, vol. 90, p. 286.
[31] FCC, vol. 93, p. 1.
[32] FCC, vol. 36, p. 1.

Băieșu Aurel[1]

Evolutions récentes de la jurisprudence constitutionnelle en République de Moldavie

L'arrêt de la Cour constitutionnelle constitue une constatation juridique généralement obligatoire fondée sur l'éclaircissement de l'essence du problème constitutionnel à la suite de l'interprétation officielle des normes pertinentes de la Constitution et de l'explication de leur contenu par rapport aux règles contestées. Cet effet des décisions de la Cour constitutionnelle, ainsi que son action cohérente en vue de donner effet à la justice constitutionnelle, justifient le fait qu'en révélant le contenu des normes constitutionnelles et en développant des règles déduites de leur interprétation, les actes de la Cour constitutionnelle guident l'évolution de l'ensemble du système juridique, ainsi que du droit constitutionnel en particulier. Seule une telle position assure réellement la réalisation du principe de la suprématie de la Constitution comme fondement du constitutionnalisme.

Ces dernières années, la Cour constitutionnelle de la République de Moldavie a rendu une série d'arrêts qui ont eu un impact majeur sur le développement du droit constitutionnel et du constitutionnalisme en général dans notre pays. Ainsi, par sa jurisprudence récente, la Cour constitutionnelle a apporté, *inter alia*, une contribution substantielle au développement du concept *d'identité constitutionnelle nationale*. Ce concept a une double dimension: a) **une dimension nationale** et b) **une dimension supranationale**

A. En ce qui concerne **la dimension nationale** du concept d'identité constitutionnelle, une décision marquante est l'Arrêt no. 36 du 5 décembre 2013 sur l'interprétation de l'article 13 (1) de la Constitution en lien avec le Préambule de la Constitution et la Déclaration d'indépendance de la République de Moldavie[2]. Dans cet arrêt la Cour a consacré pour la première fois dans la jurisprudence nationale la notion «d'identité nationale», qu'elle a expressément qualifiée

[1] Professor, Republic of Moldova.

[2] Monitorul Oficial al R. Moldova, n° 304–310, art. 51, 27.12.2013.

d'intangible. Les éléments considérés comme essentiels pour définir l'identité constitutionnelle du nouvel État et de sa population sont les suivants: « aspirations à la liberté, à l'indépendance et à l'unité nationale, identité linguistique, démocratisation, État de droit, économie de marché, histoire, normes morales et juridiques, orientation géopolitique européenne, garanties des droits sociaux, économiques, culturels et politiques de tous les citoyens de la République de Moldavie, y compris des personnes appartenant à des groupes nationaux, ethniques, linguistiques et religieux » (paragraph 86).

Une des décisions ayant eu un impact particulièrement important sur la compréhension du sens authentique des dispositions sur les valeurs constitutionnelles intangibles, ainsi que des mécanismes de fonctionnement des institutions consacrés par la Loi fondamentale, est l'Arrêt no 7 du 4 mars, 2016 sur l'examen de la constitutionnalité de certaines dispositions de la Loi no XIV-115 du 5 juillet 2000 relative à la modification de la Constitution de la République de Moldavie (l'élection du Président)[3]. Dans cet Arrêt la Cour a décidé que les dispositions de la Constitution forment un système harmonieux, de sorte qu'aucune disposition de la Constitution ne peut être contraire aux autres dispositions. L'impératif selon lequelaucun changement dans la Constitution ne porte atteinte à l'harmonie des dispositions de la Constitution ou des valeurs qui y sont inscrites, ne permet pas l'adoption d'amendements contraires à au moins une des valeurs constitutionnelles qui sont à la base de l'État en tant que bien commun de la société entière – « l'indépendance de l'État la démocratie, la république et la nature intrinsèque des droits de l'homme et des libertés fondamentales », sauf dans les cas où l'article 1 de la Constitution aurait été modifié de la manière prévue à l'article 142 (1) de la Constitution (paragraph 75).

Le contexte historique de cette affaire réside dans le fait que, le 5 juillet 2000, le Parlement a adopté une autre loi visant à modifier la Constitution, que celles autorisées par la Cour constitutionnelle, violant ainsi l'art. 141 par. (2) de la Constitution qui prévoit que le projet d'amendement de la Constitution doit être soumis au Parlement accompagné de l'avis favorable de la Cour constitutionnelle. Les amendements ainsi adoptés, entre autres, ont changé le mécanisme d'élection du Président (avec 3/5 du nombre des députés), ce qui a généré des crises politiques et institutionnelles à plusieurs reprises.

En 2016, un groupe de députés de l'opposition a saisi la Cour constitutionnelle, demandant l'examen de la constitutionnalité de la loi en question. En examinant la saisine, la Cour a observé que, en l'espèce, les dispositions contestées se sont révélées être en pratique une source d'instabilité et de blocage institutionnel. Dans cette affaire, la Cour constitutionnelle a souligné que la compétence

[3] Monitorul Oficial al R. Moldova, n° 59–67, art. 10, 18.03.2016.

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