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## **The Constitution of the Pridnestrovian Moldavian Republic**

**Keywords:** basic law, the binding constitution of the Pridnestrovian Moldavian Republic, government and politics, the form of government, fundamental principles of the constitution, basic rights and freedoms, the system of state authorities

**Słowa kluczowe:** ustawa zasadnicza, obowiązująca Konstytucja Naddniestrzańskiej Republiki Mołdawskiej, ustrój polityczny, forma rządu, naczelne zasady konstytucyjne, podstawowe prawa i wolności, system organów państwowych

### **Summary**

The legal status of the independent Pridnestrovian Moldavian Republic, which in 1990 seceded from Moldavia being then a part of the USSR, still remains unclear. Although over a quarter of the century has passed since its creation, it is still a *de facto* state, for it has not been recognized by the international community. In the lights of the international law Transnistria is treated as a Moldavian autonomous region of a special status. The hereby paper is the next publication out of the series, undertaken within the wider research over Transnistria's legal status. It comprises the fragmentary results of the further research phase, which aims at analysing its binding basic law and the assumptions of its constitutional system. The subject of the work is the shape and content of the independent Transnistria's constitution of 1995, which has been revised several times and is still in force. The results of this research contributes to more precise determination of the region's legal status.

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**Streszczenie****Konstytucja Naddniestrzańskiej Republiki Mołdawskiej**

Status prawny niepodległej Naddniestrzańskiej Republiki Mołdawskiej, która w 1990 roku dokonała secesji od Mołdawii, będącej wówczas jeszcze w składzie ZSRR, wciąż pozostaje niejasny. Mimo że od chwili jej powstania minęło już ponad ćwierć wieku, jest państwem faktycznym, gdyż dotąd nie zostało uznane przez społeczność międzynarodową. W świetle prawa międzynarodowego Naddniestrze jest traktowane jako jednostka autonomiczna Mołdawii o statusie specjalnym. Niniejsze opracowanie stanowi kolejną publikację z serii szerzej zakrojonych badań nad statusem prawnym Naddniestrza. Zawiera cząstkowe wyniki ich następnego etapu, mającego na celu analizę obecnie obowiązującej naddniestrzańskiej ustawy zasadniczej i założeń systemu konstytucyjnego. Przedmiotem opracowania jest kształt i treść konstytucji niepodległego Naddniestrza z 1995 roku, która była wielokrotnie nowelizowana i obowiązuje do dziś. Wyniki tych badań stanowią przyczynek umożliwiający bardziej precyzyjne określenie statusu prawnego regionu.

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**I.**

The Pridnestrovian Moldavian Republic (also called Transnistria, Transdniester, Trans-Dniestr or Transdniestria) is an unrecognized state created in 1990 as a result of the secession from the Moldavian Soviet Socialist Republic, being then a part of the Soviet Union. This region had never had any tradition of statehood and for centuries has been a source of conflicts between the neighbouring countries. Since Transnistria declared its independence on 2 September 1990 and effectively seceded almost a year later, there has been no homogeneous opinion concerning the statehood and legal status of this region in the doctrine<sup>2</sup>. During over a quarter of

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<sup>2</sup> For more detailed digressions see: V. Serzhanova, *The First Constitution of the Pridnestrovian Moldavian Republic of 1991*, "Annales Universitatis Apulensis, Series Jurisprudentia" 2016, No. 19; also in Polish: idem, *Geneza ustrojowa ziem naddniestrzańskich*, "Przeгляд Prawa Konstytucyjnego" 2016, No. 5; idem, *Powstanie Naddniestrzańskiej Republiki Mołdawskiej*

the century Transnistria has remained a *de facto* state or a quasi-state, unrecognized by the international community. In the lights of the international law it is formally an autonomous region of a special status within the borders of the Republic of Moldova, while from the perspective of the theory of state and the constitutional law it undoubtedly possesses all the attributes of statehood<sup>3</sup>.

Not wishing to sink into the doctrinal arguments concerning the legal status of this state creature here, the fact of its existence does not rise any doubts. Independently of lack of its recognition by the international community, the Republic's authorities endeavour to control its territory and organize the state according to all the principles for the purpose of its correct and effective functioning. The process of creating the Pridnestrovian Molda-

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*i jego implikacje*, "Studia Europejskie" 2016, No. 4; idem, *Obowiązująca Konstytucja Naddniestrzańskiej Republiki Mołdawskiej*, "Studia Prawa Publicznego" 2016.

<sup>3</sup> On the problems of Transnistria in different dimensions in the Russian literature see: Н.В. Бабилунга, Б.Г. Бомешко, П.М. Шорников, *Государственность Приднестровья: история и современность*, Тирасполь 2007; Н.В. Бабилунга, С.И. Берил, Б.Г. Бомешко, И.Н. Галинский, Е.М. Губогло, В.Р. Окушко, П.М. Шорников, *Феномен Приднестровья*, Тирасполь 2003; В.А. Балала, *Становление и развитие государственности Приднестровья*, Тирасполь 2001; *Бессарабский вопрос и образование Приднестровской Молдавской Республики*, ed. В.Н. Яковлев, Тирасполь 1993; Г.С. Брусалинская, *Органы законодательной и исполнительной власти Приднестровской Молдавской Республики на современном этапе*, Москва 2007; А.В. Девятков, *Международно-политические последствия «Де-факто государственности» Приднестровья*, "Вестник Тюменского государственного университета" 2014, № 2, pp. 51–56; А.Н. Сквозников, *Феномен непризнанных и частично признанных государств и особенности их правосубъектности*, "Вестник Самарской гуманитарной академии. Серия: Право" 2011, № 2, pp. 3–12. In the Polish doctrine it is also worth reaching for: A. Gil, *Naddniestrzańska Republika Mołdawska jako element przestrzeni politycznej Europy Środkowo-Wschodniej*, Lublin 2005, *passim*; M. Kosienkowski, *Federacja Rosyjska wobec Naddniestrza*, an editorial series: *Analizy Instytutu Europy Środkowo-Wschodniej*, t. 21, eds. J. Kłoczowski, A. Gil, Lublin 2009, *passim*; idem, *Naddniestrzańska Republika Mołdawska: determinanty przetrwania*, Toruń 2010, *passim*; idem, *Ukraina wobec Naddniestrza*, seria wydawnicza: *Analizy Instytutu Europy Środkowo-Wschodniej*, t. 27, eds. J. Kłoczowski, A. Gil, Lublin 2009, *passim*; J. Solak, *Mołdawia – republika na trzy pęknięcia: historyczno-społeczny, militarny i geopolityczny wymiar „zamrożonego konfliktu” o Naddniestrze*, Toruń 2009; idem, *Konsekwencje zamrożonego konfliktu o Naddniestrze dla bezpieczeństwa europejskiego*, an annex to "Zeszyty Naukowe Akademii Obrony Narodowej", Warszawa 2010; R. Czachor, *Niepodległe, nieuznawane. Perspektywy rozwiązania problemu statusu nieuznawanych republik na obszarze postradzieckim*, "Stosunki Międzynarodowe" 2011, No. 69–70.

vian Republic, its constitution and the whole system of government and politics is undoubtedly a very interesting issue in the field of the theory of state and the constitutional law.

The hereby paper is another publication in the series intended within the wider research over Transnistria's legal status. It contains the results of the next research phase and is devoted to the binding basic law of the independent state at the Transnistria lands adopted in 1995. The subject of the research comprises the analysis of the shape and the exegesis of the content of this act, which in its turn allows to determine the primary assumptions of the constitutional and political system of the newly created state under its rule, their further evolution, the system of the presently binding solutions and, moreover, enables to estimate their efficiency and sensitivity for the independent state's functioning. In consequence, the results of this research stage contribute to establishing more reliable conclusions concerning both the present constitutional system and form of government in Transnistria, as well as to more homogeneous and clearer determining of its legal status in the further research phases.

## II.

The binding Constitution of the Pridnestrovian Moldavian Republic was adopted in the referendum on 24 December 1995<sup>4</sup>. It was amended many times, twice extendedly revised and till now has been in force<sup>5</sup>. In its prima-

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<sup>4</sup> It is worth underlining that it was supported by 82 per cent of the population participating in the voting.

<sup>5</sup> The Constitution of the Pridnestrovian Moldavian Republic, signed by the President on 17 January 1996 and since then having been in force, is available in the Russian language – Конституция Приднестровской Молдавской Республики (принята на всенародном референдуме 24 декабря 1995 г., подписана Президентом Приднестровской Молдавской Республики 17 января 1996 г.) – in the electronic collection of Transnistria's legal acts at the address: <http://www.vspmr.org/legislation/constitution/>; in the consolidated version made on 25 June 2016 it is published on: <http://president.gospmr.ru/ru/news/konstituciya-pridnestrovskoy-moldavskoy-respubliki>. The hitherto changes to the basic law took place eight times by means of adopting the following constitutional laws amending or supplying the Constitution: No. 128 of 15 December 1998, No. 310 of 30 June 2000, No. 94 of 4 July 2001, No. 593 of 13 July 2005, No. 1 of 20 February 2006, No. 94 of 4 July 2011, No. 127 of

ry version the basic law of 1995 established the rule of a parliamentary-presidential republic (in other words semi-presidential or mixed) with the distinct pro-presidential inclination<sup>6</sup>.

The President's position was very strong, for he was the main pillar of the executive power. He was a *de facto* head of Government and therefore he was equipped with a wide range of competences in the field of his relations with other authorities within the executive power, which contained, among others: completing the Government on the arrangement with the parliament and after receiving its consent, introducing changes into its composition, dismissing its members from their positions. The head of state was the chief of the system of government administration authorities, managed the state's internal policy, was the Commander-in-Chief of the Military Forces, undertook actions for the benefit of providing public order, civil security and state system. He was elected in the universal suffrage, by the absolute majority of votes, with over 50 per cent attendance of the entitled to vote, for the period of a five-years-term, with the possibility of one re-election.

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19 May 2016 and No. 144 of 2 June 2016. The amendments adopted in 2000 and 2011 were the extended revisions of the essential parts of the Constitution, containing the system of the supreme state authorities, mainly the head of state in it, and widely also the legislative and executive powers. The remaining amendments were mostly of a fragmentary character and were sometimes connected only with the new text edition of some provisions, as well as their supplementation.

<sup>6</sup> Deep and complex analysis of the binding Transnistria's basic law and its evolution till 2007 from the constitutional law perspective is made by G.S. Brusalincka in her doctoral thesis titled *The Authorities of the Legislative and Executive Power of the Pridnestrovian Moldavian Republic on the Present Stage*, prepared under the scientific tutorship of S.A. Avakyan, Moscow 2007. An extended summary dedicated to the dissertation in the Russian language: Г.С. Брусалинская, *Органы законодательной и исполнительной власти Приднестровской Молдавской Республики на современном этапе*, Автореферат диссертации на соискание ученой степени кандидата юридических наук has been published and is available at the address <http://www.law.edu.ru/book/book.asp?bookID=1268862> (30.08.2016), see: p. 14 & further. It is also worth reaching for other works of this author: Конституция ПМР – основа Приднестровской государственности, Доклад на научно-практической конференции, посвященной десятилетию Конституции ПМР, “Общественная мысль Приднестровья” 2006, No. 2; eadem, Приднестровский конституционализм: преемственность и соответствие международным стандартам, Сборник докладов ПГУ им. Т.Г Шевченко Тирасполь 2006, *passim*.

The legislative power was exercised by a bicameral parliament called the Supreme Council, which consisted of 67 deputies and was divided into the Legislative Chamber and the Chamber of Representatives.

The judicial power was dual and was exercised by two types of courts: common and arbitrary. Although the Constitution, aside other forms of property, also introduced private ownership, it provided exclusive possession of land and all the natural resources for the state.

In 2000, on the initiative of the President in office Igor Smirnov, a large-scale revision of the Constitution was started<sup>7</sup>. The authors of the reform intended to proceed in the direction of the presidential form of government and strengthening the President's position even more, among others by formally introducing the presidential system, reducing the number of parliamentary deputies to 43 and liquidating bicameralism. Creation of the institution of Vice-President was also anticipated, as well as founding the Constitutional Court. The reformers wished to liquidate the restrictions in the number of the terms of office possible to be exercised by the head of state, too. The relative amendments were introduced to the basic law on 30 June 2000 by the Constitutional Law No. 310 on Implementing Amendments and Supplements to the Constitution of the Pridnestrovian Moldavian Republic<sup>8</sup>.

As a result of the constitutional reform of 2000 the Government (Russian: Правительство) of the Republic was replaced by the Cabinet of Minis-

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<sup>7</sup> The idea of a wide constitutional revision appeared in the context of the ending in 2001 term of office of the then President. In the Transnistria and Russian doctrines one can find an opinion that it was caused by the wish to change the provisions limiting the number of the President's terms of office possible to exercise and introducing the regulations extending the powers of the head of state Igor Smirnov, which were already wide enough. See: Г.С. Брусалинская, *Органы законодательной...*, pp. 14–15; also С. Маркедонов, *Приднестровье: как выйти из конституционных тупиков?*, "Информационный сайт политических комментариев ПОЛИТКОМ.RU", <http://politcom.ru/9160.html> (30.08.2016).

<sup>8</sup> The text of the Constitutional Law No. 310, which extendedly revised the basic law of Transnistria, in the Russian language – Конституционный закон ПМР от 30 июня 2000 года № 310-КЗИД «О внесении изменений и дополнений в конституцию Приднестровской Молдавской Республики» is available in the electronic collection of Transnistria's legal acts: <http://www.vspmr.org/legislation/laws/konstitutsionnie-zakoni-pridnestrovskoy-moldavskoy-respubliki/konstitutsionniy-zakon-pmr-ot-30-iyunya-2000-goda-310-kzid-o-vnesenii-izmeneniy-i-dopolneniy-v-konstitutsiyu-pmr-gazeta-pridnestrovje-ot-12-iyulya-2000-goda-13-iyulya-2000-goda-132-133.html> (30.08.2016).

ters (Russian: Кабинет Министров), which was supposed to be a President's opinion-making body and which range of independence on the resort level and in decision-making on the matters under their concern was increased, while the decisions taken by the Cabinet of Ministers were submit to the President's consent by way of his decrees (Russian: указ)<sup>9</sup>.

Along with coming into force of the abovementioned Constitutional Law the form of government more resembling a presidential version was introduced, which changed the procedure of appointing the state authorities and the system of relations between them. According to those provisions the President could form executive authorities by himself, without receiving an obligatory approval of the parliament, as it used to be before. On the other hand the Supreme Council got a right to start a procedure and take a decision on the dismissal of the supreme state officials (not only the President, but also the members of Government, the Prosecutor of the PMR, etc.), while the President lost his right to put a matter of the vote of non-confidence for the Supreme Council and its dissolution to referendum, which in that situation seemed to support the power stabilization. Moreover, the Security Council acting at the President was liquidated.

The year 2009 brought a deep constitutional crises in Transnistria. On 15 April the Supreme Council submitted and adopted in the first reading a draft of a law amending the Constitution, which among others provided for the liquidation of the Vice-President's post and a change in the governmental structures (the Government was to be appointed instead of the Cabinet of Ministers). Under the pressure of the campaign started by the President against the actions of the parliament, on 27 May 2009 the draft's authors and initiators withdrew it from the Supreme Council. In response to the deputies' activities, in order to elaborate a new edition of the Constitution, the President appointed a commission which consisted mainly of the representatives of the executive power. Therefore the majority of the deputies' proposals were repealed.

The final version of the President's draft was ready before October. According to its assumptions the Supreme Council was supposed to be replaced

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<sup>9</sup> In G. Brusalińska's estimation the activity of the Government in the period before the reform appeared to be more effective than the one of the later Cabinet of Ministers. See: Г.С. Брусалинская, *Органы законодательной...*, pp. 24–25.

by a bicameral State Assembly; the upper chamber was to be nominated by the President; the executive power was to be exercised by the Government appointed by the President, who could dismiss the lower chamber in case it did not approve the candidate for the President of the Government; the system of self-government authorities was intended to be liquidated and the President was to nominate the heads of the local administration authorities; the judges of the Supreme Arbitration Court and the Constitutional Court were to be appointed by the upper chamber of the parliament on the President's motion; some of the citizens' rights guarantees were to be limited, especially the right to private property; after the draft would come into force all the supreme state authorities, except the President, were to be dismissed. The draft explicitly proved a dangerous direction of dictatorship which was chosen and intended to be realized by the head of state.

However, on 18 November 2009 the Supreme Council unanimously rejected the President's draft and decided to create a commission on the equality basis, consisting of the representatives of the legislative, executive and judicial powers, which would prepare a consensual draft of the constitutional revision. The commission started its activity on 25 February and on 10 March the draft of the law amending the Constitution was published on the parliamentary web-site. On lodging it to the parliamentary debate and subjecting it to the legislative procedure, during which a series of changes were introduced, on 4 July 2011 the Supreme Council adopted the Constitutional Law No. 94 on Implementing Amendments and Supplements to the Constitution of the Pridnestrovian Moldavian Republic<sup>10</sup>. The Law introduced a very extended reform of the state authorities, connected mainly with the executive power. With very slight changes implemented in May and June 2016 the basic law has been in force till today.

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<sup>10</sup> The text of the Constitutional Law No. 94 in the Russian language – Конституционный закон от 4 июля 2011 года № 94-КЗИД-V «О внесении изменений и дополнений в конституцию Приднестровской Молдавской Республики» is available in the electronic collection of Transnistria's legal acts at the address: <http://www.vspmr.org/legislation/laws/konstitutsionnie-zakoni-pridnestrovskoy-moldavskoy-respubliki/konstitutsionniy-zakon-pmr-ot-4-iyulya-2011-goda-94-kzid-v-o-vnesenii-izmeneniy-i-dopolneniy-v-konstitutsiyu-pmr-saz-11-27.html> (30.08.2016).

### III.

In the binding sounding the Constitution of the Pridnestrovian Moldavian Republic of 1995 consists of the preamble and 121 articles systematized in 5 chapters.

The general systematics of this act resembles the structures of the constitutions of contemporary democratic states<sup>11</sup>, because at the very beginning it determines the catalogue of the fundamental constitutional principles, further it contains a vast chapter dedicated to human rights and freedoms, in its later parts it norms the system of the supreme state authorities: the head of state first, then the parliament and the government, next it regulates self-government, judicial power, constitutionality control, state defence and security, legal protection and financial system, at the end it settles the provisions concerning constitutional amendments and the transitional ones. This systematics is also characterized by the fact that the constitutional legislator has chosen liberal doctrines as a base for its construction, which expose the role of an individual in the state and in consequence it has placed an extended catalogue of rights and freedoms at the beginning, just after the fundamental constitutional principles, while the provisions devoted to functioning of the state authorities (government and self-government administration) have been situated in its further chapters, which aims at underlining their easement in relation to the individual.

The detailed systematics presents in the following way: Chapter I: The Fundamentals of the Constitutional System (art. 1–15); Chapter II: Rights, Freedoms and Guarantees of a Man and the Citizen (art. 16–52); Chapter III: The Fundamentals of the State Governing – Part 1 The Development of the Fundamentals of the Constitutional System (art. 53–58), Part 2 The President of the Pridnestrovian Moldavian Republic (art. 59–66), Part 3 The Supreme Council of the Pridnestrovian Moldavian Republic (art. 67–76), Part 3–1 The Gov-

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<sup>11</sup> According to Maria Kruk-Jarosz, the systematics of the constitution is one of the keys to the essence and axiology of government and politics. On a more detailed and very apposite digression over the problem see: M. Kruk-Jarosz, *Nowe idee konstytucyjne*, [In:] *Prawa człowieka – społeczeństwo obywatelskie – państwo demokratyczne. Księga jubileuszowa dedykowana Profesorowi Pawłowi Sarneckiemu*, eds. P. Tuleja, M. Florczak-Wątor, S. Kubas, Warszawa 2010, p. 61. See also: P. Sarnecki, *Systematyka konstytucji*, [In:] *Charakter i struktura norm konstytucji*, ed. J. Trzciński, Warszawa 1997, pp. 20–34.

ernment of the Pridnestrovian Moldavian Republic (art. 76–1–76–8), Part 4 The Local State Administration and the Local Self-Government (art. 77–79), Part 5 The Judicial Power (art. 80–91), Part 6 The Supervision over the Precise and Uniform Application of the Constitutional Laws of the Pridnestrovian Moldavian Republic (art. 92), Part 7 Defence, Security and Legal Protection Activity (art. 93–95), Part 8 Financial and Budgetary System (art. 96–100); Chapter IV Amending the Constitution (art. 101–106); and Chapter V Transitional Norms and Provisions (art. 1–7).

The systematics of the Constitution seems to be rather arranged and clear. One may only have stipulations regarding the formulation of some titles, like e.g. of the chapter II “Rights, Freedoms and Guarantees of a Man and the Citizen” (Russian: *Права, свободы, обязанности и гарантии человека и гражданина*). Its linguistic edition is not very successful, because it assumes a concept of “guarantees of a man and the citizen”, which is not correct and does not exist in the doctrine. Probably, the constitutional legislator meant “the guarantees of the rights and freedoms of a man and the citizen” and wishing to avoid tautology formulated a not very correct linguistically and legal edition of the title. To my mind the title “Rights, Freedoms and Duties of a Man and the Citizen and Their Guarantees” (Russian: *Права, свободы и обязанности человека и гражданина и их гарантии*) would be much better. The title of Chapter III “The Fundamentals of the State Governing” (Russian: *Основы государственного управления*) also seems to be fail. In my opinion the title “The Form of Government” (Russian: *Форма государственного управления*) would be more successful, because: firstly, the fundamentals of the constitutional system are already regulated in chapter I; secondly, this is the main subject of this systematization unit of the act; and lastly, it is correct as to the used nomenclature. On the other hand, this chapter contains a separate unit (part I “The Development of the Fundamentals of the Constitutional System”), in which the constitutional legislator expands the content of the basic principles determined in chapter I. I am convinced that putting these provisions in the appropriate place of chapter I would be more rational, purposeful and justified.

The names and numbers of the main systematization units also seem to be an original feature characterizing this constitution. Usually, the main units are called “parts” and are numerated by the Roman numbers, while subordi-

nate units are “chapters” numerated by the Arabic numerals. In case of this act the choice is contrary: the main unit is “a chapter” (Russian: *раздел*), and the subordinate one is “a part” (Russian: *глава*). Moreover, the solution concerning the numerating of the last chapter V “Transitional Norms and Provisions” also seems rather interesting. It contains seven last articles put not in the continuous numeration regarding the previous provisions (from 107 to 113), but they are numbered from the very beginning (1 to 7).

#### IV.

Presently, after the revision of 2011, the basic law of Transnistria introduces the catalogue of the fundamental principles of the constitutional system, among which the following may be found: the principle of a sovereign, independent and democratic legal state; the principle of the sovereignty of the people exercising power both directly (through participating in elections and referenda) and indirectly (through the public authorities and self-government institutions); the principle of the supreme power, direct application and obligation to observe the constitution; the principle of equality and respect for the rights; the principle of a laic state, as well as the equality and independency of religious associations; the principle of the priority of human rights and freedoms in relation to other values. There has also been introduced the principle of the separation of powers into their three segments: legislative, executive and judicial, functioning independently and possessing their own autonomous competences. Among the principles it is also worth mentioning the one relating to the foreign policy, which ought to be based on respecting state sovereignty and equality, non-application of force, peaceful solving of disputes and non-interference into the internal affairs of other states, as well as recognizing the rules and norms of the international law to be the base of relations with other states. A special attention in the context of the protection of Transnistria’s sovereignty and independency should be paid to the principle of prohibition to seize the power on the territory of the Republic, which is considered to be a felony against the nation. Creating the state Military Forces for the purpose of protecting its sovereignty and independency is an essential element of this principle, enabling to realize it.

Some of the basic rights, such as: the right to Transnistria's citizenship and the right to private property being under special state protection, aside all the natural resources, which – under the next principle – belong exclusively to the state, have been raised to the rank of the fundamental constitutional principles. Moreover, among the provisions being the basics of the constitutional system there is the principle of the equality of three official languages: Moldavian, Russian and Ukrainian. The state symbols have also been established (the flag, coat of arms, anthem and capital), as well as the administration division of the country. Among the principle which can be interpreted from the other provisions of the basic law there is undoubtedly the principle of the presidential republic, which by this means determines the form of government, though only formally.

The Constitution guarantees a vast catalogue of rights and freedoms both for men and the citizens. They are the supreme value for the society and state, which is obliged to protect them. They are inalienable and appurtenant to everybody from birth, which is an important principle connected with the interpretation of the basic rights and freedoms on the grounds of Transnistria's Constitution. Among other essential principles in this area there are: the principle of the equality of rights and freedoms regardless of sex, race, nationality, language, religion, social origin, convictions, individual and social status, as well as the principle of social justice.

The Constitution determines the fundamentals of restricting some of the rights in cases provided by law for the purpose of protecting the state security, public order, morality and people's health, as well as the rights of other individuals. Among the constitutional conditions of such restrictions there are: the state of war and the state of emergency. Implementing restrictions of rights and freedoms may take place only if their limits and time of application are established. The Constitution indirectly also establishes the catalogue of absolute rights, among which there are: the right to the citizenship; the right to life; prohibition to use torture or other cruel, inhuman or insulting treatment and punishment, as well as submitting to medical and other experiments without consent; the right to court; presumption of innocence; the right not to testify against oneself or a close person; the right to access to public information; the right to social security; the right to health protection; the right to live in the safe environment; the right to education; the right

to domicile; the right to preserve one's national belonging, use one's own language and choose the language of communication; the freedom of artistic, scientific and technical activity. A special attention in the context of absolute rights should be paid to a definite contradiction of the constitutional provisions in the scope of the right to life. Despite its absolute character, the constitution provides a possibility of using the capital punishment on the basis of law, at least till it is liquidated. The remaining rights and freedoms are not of the absolute character, therefore they may be restricted. In the catalogue of such rights there are: the right to property; personal freedom and inviolability; the right to privacy; the freedom of movement and choosing a place to reside; the freedom of thought, speech and convictions; the freedom of expression; the right to information; the prohibition of using censorship; the right to participate in social life and take decisions on state affairs; electoral rights; freedom of assembly and association; the right to work, choose profession and other employee's rights; the prohibition of compulsory work.

Moreover the Constitution determines the catalogue of duties, among which there are: the duty to observe the constitution and laws; the duty to respect rights, freedoms, honour and dignity of other people; the duty to protect the state; the duty to take care of the natural environment; the duty to preserve Transnistria's national heritage, both cultural and spiritual; the duty to pay taxes and local dues; the duty of parents to take care of their minor children and of the adult children to take care of their parents unable to employment.

Transnistria's Constitution is also characterized by an interesting feature, which is a vast, detailed and enumerative determining of the catalogue of the state functions<sup>12</sup>. Among the most important of them there are: creation and protection of the environment; health care; providing the system of social care and employment; the development of science, culture and sport; providing the internal policy; creating and guaranteeing the financial system functioning; ensuring economic development; forming a customs system; providing the functioning of internal and foreign trade; creating the conditions for the uniform transport and communication system; guaran-

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<sup>12</sup> About the functions in the Constitution of Transnistria see also: Г.С. Брусалинская, *Органы законодательной...*, pp. 14–15.

teering the activity of the agricultural sector; preserving and rational usage of natural resources; providing the state defence and security; fulfilling the activity on legal protection and ensuring the lawfulness, rights and freedoms, property and public order preservation, fighting delinquency; determining the status and protection of the state borders; providing the activities of justice authorities.

The system of state authorities has been constructed on the basis of the separation of powers principle. It comprises: the President of the Republic as the head of state, functioning within the executive authorities and situated on the first place in the Constitution, who is elected in a universal suffrage for a five-year term of office; a unicameral parliament, called the Supreme Council, being an exclusive legislative authority, which consists of 43 deputies elected for the period of five years; the Government of the Republic, being the basic pillar of the dually constructed executive power, with its own President at the head; the system of local authorities of government administration and self-government; the system of independent authorities of judicial power exercised by the Constitutional Court, criminal, civil, administrative and arbitrary courts, with the Supreme Court and the Arbitrary Court being at the head.

As far as the form of government is concerned, the Constitution distinctly determines it as presidential<sup>13</sup>. However, a deeper analysis of the constitutional provisions, which regulate the competences and relations between the supreme state authorities, shows that, in spite of the aspirations of the President being in office during the constitutional reform, the revision of 2011 returned to the solutions more resembling a semi-presidential system, though with a strong pro-president inclination. This thesis is proved at least by the fact, that the executive power is exercised by the Government with its President as a head, in other words the President of the Republic is not the chief of the Government, for it has its own “prime-minister”. Therefore the executive power is not concentrated in the hands of one authority – the President of the Republic, to whom the Government is subordinated, being his administration, as it usually is in classical presidential systems. The executive power is exercised by a separate collegial authority, which has its own head.

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<sup>13</sup> Ibidem, p. 14.

Formally the President of the Republic does not exercise the executive power, but fulfils the function of the head of state. He is entitled to play a part of an arbiter in the conflicts arisen between other state authorities. Moreover, he is equipped with his own administration, independent from the Government. In practice, the President does function within the executive power indeed, and possesses a rather wide range of competences in his relations with the Government, for he appoints and dismisses it, but he can do it only on the basis of an agreement with the parliament and after receiving its approval. And though in case of taking a vote of non-confidence to the Government by the Supreme Council the President may dismiss it, but does not have to, if the parliament takes the same decision once again within three months, then he is obliged either to dismiss it or to dissolve the Council.

Another feature which proves a strong position of the President is that he may preside over the Government sessions, but this solution does not prejudice on joining of these two elements of the executive power into one. Lack of direct Government's political responsibility before the President is also a feature characteristic for the mixed form, for it is responsible before the parliament, which may initiate its dismissal.

The President possesses a series of other very important competences in his relations with the legislative power (legislative initiative, veto, a right to dissolve the parliament) and judicial authorities (appointing judges), but it proves nothing more than his strong position and a kind of an original version of the semi-presidential system presently developing in Transnistria, not a classical presidential formula<sup>14</sup>.

Although at a first glance it may seem, that the mechanisms provided by Transnistria Constitution are far from being perfect and even to some extent fail, the practice of its functioning on a certain stage of the state's developing political system, especially during the constitutional crisis, showed their correctness. On

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<sup>14</sup> The classical version of the presidential form of government which originated and has developed in the USA is deeply discussed in the monograph by R. Małajny, *Amerykański prezydentyzm*, Warszawa 2012, *passim*. It is also worth reaching for the work of J. Wiatr, *Parlamentaryzm czy prezydentyzm: stary spór i nowe doświadczenia państw posocjalistycznych*, [In:] *Mysł polityczna od historii do współczesności*, eds. B. Stoczewska, M. Jaskólski, Kraków 2000, pp. 521–531. On the presidential form of government see also: W. Żebrowski, *Teoria współczesnych systemów politycznych*, Olsztyn 2015, pp. 125–133, 178–198.

the other hand, one ought not to forget that usually a direction of the evolution of such a semi-presidential system, like of any other one, is largely determined by its practical functioning, as well as the leader's personality and charism. Default the tradition of democratic ruling, Transnistria unfortunately heads for authoritarian governing which also shape a certain culture and political regime.

Transnistria's Constitution of 1995 ought to be regarded as a rigid one<sup>15</sup>, since the procedure of its amending is more complicated and differs from the one used in case of laws. It is obstructed by several instruments, such as: the subjects equipped with the right to initiate constitutional law drafts are different, there oblige time restrictions, as well as changing some provisions is limited, the necessary majority to take decisions is higher, too.

The right to submit a draft of the constitutional amendments belongs to: one third of the constitutional number of deputies, the President of the Republic and at least 15 000 citizens able to vote. It cannot be lodged during the state of war or a state of emergency. The constitution provides two procedures of introducing amendments: adopting by the Supreme Council and through a referendum. The parliamentary procedure consists of three readings; the second reading cannot take place earlier than in two months after the first one, while the third reading can be set in at least one month interval after the second one. This means that the constitution cannot be changed in an extremely accelerated procedure, though the terms do not seem to be long enough. The provisions on the fundamentals of the constitutional system, citizens' rights and duties, as well as on amending the basic law may be changed only in a referendum. Submitting amendments to the referendum needs a support of at least two thirds of the constitutional number of deputies. Its date may be established not earlier than in two months after the relative parliamentary resolution is taken. Voting over the draft law on the constitutional amendments in the Supreme Council needs a support of at least two thirds of the constitutional number of deputies. The President ratifies and publishes the amendments to the basic law not later than within seven days. The law comes into force not earlier than in one month after its adoption.

However, obstructed in such a way procedure of implementing changes to the Constitution has not contributed to its larger stability, nor has it pro-

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<sup>15</sup> See also: Г.С. Брусалинская, *Органы законодательной...*, pp. 18–19.

ected it from numerous amendments during its over twenty-five-year period of being in force. This, in turn, proves the thesis that stability and time durability of the basic law are largely influenced by a high level of political and legal culture of the society.

## V.

The analysis of the binding Constitution of the Pridnestrovian Moldavian Republic of 1995 shows, that despite lack of a statehood tradition the constitutional legislator intended to construct an act thoroughly and based it on the liberal doctrines. Disregarding its disadvantages, its formal construction may be estimated positively. It seems to meet the basic requirements of a democratic legal state and shows such an intention of the constitutional legislator and, at the same time, a chosen direction of the state's evolution. The basic law contains a series of democratic constitutional principles, much attention is paid to the status of an individual and his rights and freedoms. However, the decree of its declaratory character still seems to be rather high, for the guarantees and legal instruments of their protection do not function correctly enough.

The authors of the analyzed constitution attempted to base its text relating to the mechanisms of functioning of the public authorities on the checked formulas and models. Nonetheless, the contradiction between the constitutional legislator's intention to introduce a presidential form of government and actually determined methods of its functioning seems to be its disadvantage. The situation is complicated even more because of the fact that Transnistria's constitutional practice is characterized by lack of the fixed democratic patterns in the society, as well as distinct aspirations of the authorities holding the power to usurp it and act *ultra vires* limited by the binding law, which is a natural feature of the power phenomenon in general. Therefore, this option seems to be better and safer for the state, because introducing the presidential form of government could cause the strengthening of the authoritarian tendencies and even a threat of a dictatorship. As the experience of political systems in other states show, a strong position of the president gives a better chance for the country to function correctly in the period of systematic transformation only in such societies which are used to permanent democratic stand-

ards. Otherwise, it arises dictatorial tendencies. The practice of functioning of Transnistria's basic law and constitutional system, especially a large number of the implemented amendments, show that this act is not based on any stable systematic tradition and is not a durable value joining the society yet.

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