

CONSTITUTIONAL AMENDMENTS: COMPARATIVE (RE)VIEW IN CONTEMPORARY CONSTITUTIONALISM¹

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Abstract. This article subsequently sheds light on existing political, legal, and legislative constitutional amending patterns in selected European countries. It primarily focuses on the (un)successful tools, mechanisms, and procedures for amending the Constitution (initiative, drafting, adoption, and implementation of high-stakes political, legal, and legislative decisions by Parliament and approval by the national referendum on constitutional amendments). We follow a thematic and methodological framework based on theoretical exploration and conceptualization of 'eternal' clauses (unamendable constitutional provisions). The article also provides a thorough analysis of differences in the constitutional amendment procedure in selected countries (Italy, Poland, and Ukraine) during a declared 'state of emergency' or other extraordinary regimes. Furthermore, it examines the outcomes of constitutional referendums aimed at modifying or altering the Constitution.

This research aims to investigate whether the process of constitutional amendment (modification, alteration, abolishment, or supplement) depends on the form of government of a particular country. Or does it depend on the level of entrenchment of its Constitution? Is it simply an actual (successful) mechanism and a faultless primary political tool used by the pro-government ruling majority (or sometimes the parliamentary opposition) to 'win a game' or to be a real game-changer following the demand of citizenry? Properly conducted constitutional amendments can provide room for public and institutional debate, contribute to the Constitution's legitimacy, and develop and consolidate democratic constitutional traditions over time. This can be achieved by ensuring that the instruments, rules, mechanisms, and procedures on constitutional change (alteration, modification, abolishment) are open to interpretation and controversy. On the contrary, if applied in a rush or without proper democracy-based discourse (and civic society support), this may undermine in-country political stability and, eventually, the Constitution's legitimacy.

It is probable that the end of the war in Ukraine, ongoing since 2014, and the full-scale invasion by Russia on February 24, 2022, will lead to a paradigm shift in constitutionalism. New constitutions may be adopted or existing ones revised to reflect the post-war world order, core values, and the level of development of the state and society where the rule of law prevails.

Keywords: constitutional amendment, 'eternity' clauses, unamendable constitutional provisions, constitutional referendum.

INTRODUCTION

After full-scale Russia's aggression against Ukraine on February 24, 2022,

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discussions on the 'eternal' clauses enshrined in the Constitution of Ukraine (1996) severely intensified among academicians and civic society. Specifically, after the declared state of emergency, there was an installed ban on making amendments (alterations) to the existing Constitution of Ukraine (1996).

The Constitution is an essential element of the legal system, political regime, and social life; even though the Constitution combines power with justice, supporting democracy, human rights, and the rule of law, it limits the arbitrariness of power (Grimm, 2011; Lutz, 2006). The present article addresses the issue of constitutional amendments during a declared state of emergency or other extraordinary regime. Specifically, it seeks to find out whether constitutional amendment (modification, alteration, abolishment, or supplement) depends on the form of government of a particular country and the level of entrenchment of its Constitution (Lutz, 1994). If this is the case, what is the essential difference between the amendment procedure in ordinary life and under a state of emergency or other similar dangerous situations? To go beyond this much-debated and still fruitful question, we decided to make a descriptive overview in the geographical, political, and legal breadth by picking up three European countries, namely Italy, Poland, and Ukraine. Despite their differences, they share common institutional characteristics that enable us to make comparisons. All three countries are unitary and thus have more straightforward procedural requirements to amend the Constitution. They gained independence as sovereign democratic republics and drafted their current codified post-war constitutions (Italy 1947, Ukraine 1996, Poland 1997) as amended recently.

The process of amending the constitution should be 'slow and gradual' to allow parliamentary opposition to resist the subsequent constitutional changes initiated by the pro-government parliamentary majority (in the form of modification, alteration, abolishment, or supplement). The constitutional amendment procedure in countries compared is 'rigid' following the number of successive stages of its implementation and legal entities and allowing the parliamentary opposition to control its course (Kovalchuk, Sofinska, 2022). The intention to require a supermajority in Parliament (both chambers) to amend the country's Constitution aims to provide a consensus in mutual ruling majority and opposition relations. Suppose a simple majority is needed to amend the Constitution. This process could be risky since it becomes a perfect primary political tool for the pro-government ruling majority. To finalize the constitutional amending as a politically inspired and legally (legislatively) based toolkit in countries compared, we highlight separately four focal points: diversity of constitutional amendment procedure, 'eternity' clauses enshrined in the Constitution, constitutional amending under a 'state of emergency' or other extraordinary regimes, constitutional referendum if needed (Dudek, 2022).

Political, economic (financial), and social factors are the main drivers for the constitutional amendment process (Roberts, 2009). The possibility to amend the Constitution is essential to guarantee the rule of law and democracy and protect human rights on behalf of the citizenry. This article discusses the partial revision of a constitution through procedures such as changing, modifying, altering, and supplementing, as prescribed in the body of the Constitution. The process of amending the Constitution being examined in this article involves more than just format and availability. It is also about legally based cooperation between the government and citizens via civil society instruments to promote essential changes in the country. This study tries to underpin the amending power and its limits (starting from the initiative, drafting, and finally, adoption) in the countries compared in light of (un)expected political, economic, and social transformations (accession to the EU, ratification of the Rome Statute, composition, and power of the government, nation-state determination, etc.).

Further, we define a good balance between constitutional rigidity and flexibility and between permanence and adaptability to the political and social demands at every constitutional government's heart (Holmes & Sunstein, 1995). It is important to

note that this article does not intend to advocate for the only possible way to amend the Constitution or the Constitution amendment formula that democratic countries should adopt (Ginsburg & Melton, 2014). Moreover, it analyzes successful case studies and failures in constitution-amending.

Finally, this article provides a valuable opportunity to gain insight into the understudied aspects of constitutional amending in European countries through the analysis of relevant recent literature, the behavior of political actors (progressive relations between the President, Parliament, and constitutional review body), and the perspective of experts (academicians and practitioners).

MATERIALS AND METHODS

This article introduces the formal constitutional framework, which provides room for a constitutional amendment toolkit in selected countries following president-government relations, president-parliament relations, and relations between the President, parliament, and judiciary (constitutional review bodies). From a purely methodological perspective, it leverages different scientific methods of analysis (data analysis, legal comparison) and empirical approaches (qualitative case studies). Regardless of the generally applied scientific research methods (analysis, analogy, generalization, synthesis, and prognosis) in this article, we use other specific methods (data analysis, comparative, and statistical) to emphasize the real impact of the constitutional amendment on the development of constitutionalism and its core principles such as the rule of law and democracy (Balaj, 2018). All these methods help us to describe the precondition, mechanism, procedure, and outcomes of constitutional amending thematically, chronologically, and across Europe in countries compared.

In this article, we use philosophical approaches, precisely the axiological method, to highlight the specificity, relevance, and importance of the researched segment of constitutionalism for every democratic state. The system analysis method permitted us to determine the similarities between 'eternity' clauses in the Constitution, traditional constitutional amending, and amending under a state of emergency or other extraordinary regimes. The historical and legal approaches made it possible to study distinguishing features of constitutional amending to promote democracy and the rule of law, to provide a historical, political, and legal background of this process (mechanism). The sociological method helps to demonstrate a clear vision and precise mission of the public authorities (pro-governmental parliamentary majority and opposition) to use constitutional amending as a 'game-changer' in a win-win strategy.

The process of amending the constitution in many countries is challenging; it causes fear and alarm in political hierarchies. Reengineering the Constitution requires a more complex procedure (absolute majority, few readings, a constitutional referendum, resolution of the constitutional review body, etc.) to make a fundamental claim – to adopt it (simple majority voting by default) (Constituent Assemblies, 2018). As mentioned by the Venice Commission (2001),

“a constitutional referendum may be required by the text of the constitution, which provides that specific texts are automatically submitted to referendum after their adoption by Parliament (mandatory referendum) and take place following a popular initiative:

- either a section of the electorate puts forward a text which is then submitted to popular vote,

- or a section of the electorate requests that a text adopted by Parliament be submitted to popular vote;

be called by an authority such as Parliament itself or a specific number of members of Parliament; the Head of State or the government; one or several territorial Entities” (Guidelines, 2001).

The constitutional amendments prove the desire to achieve broad consensus,

respect different social values, and prioritize long-term public interest when adopting the Constitution; thus, it shows a consensus-oriented background in constitution-making (Fruhstorfer & Hein, 2021). When it comes to amending the constitution, the primary determinant should be clear political tendency. This article emphasizes a data-driven approach to show that populism rather than nation-centered ideas prevailed in constitutional amendments. The second specific method used in this article is comparative. Using it, we compare constitutional amendments (i.e., constitutional, legislative requirements, process, and outcomes) in Italy, Poland, and Ukraine. Among the compared countries, Italy is a founding member of the European Union (1951), while Poland participated in the EU enlargement to the East and South in 2004. Ukraine is on the way to joining the EU following the recommendation of the EU Commission to open accession negotiations regarding ongoing reform efforts, declared recently (November 8, 2023).

Thus, we used all the necessary research methods to demonstrate that constitutional amending (precondition, procedure, outcomes) is at the crossroads of constitutionalism, the rule of law, populism, and democracy. The study of constitutional amendments, both formal and informal, and their compliance with explicit or implied constitutional rules in selected countries has generated interest in understanding how constitutional changes, such as alteration, modification, or abolishment, occur. The role of 'eternity' clauses and constitutional referendums as essential measures to secure desired or undesired constitutional amendments has also been examined.

Results and Discussion

1. Constitutional amendment procedure and measures to secure it

In this article, we additionally focus on practices and rules for amending the constitution in countries compared. The mechanisms and procedures for amending the constitution in the countries compared are diverse. Indeed, in all cases, the initiative for amending the constitution stems from the governmental institutions (Parliament, government, President). However, the process of amending varies between them. In Italy, an absolute majority in both chambers is required for amending the constitution; if this is the case, a constitutional referendum should be conducted. However, if the amendment passes in a qualified majority, there is no need for a referendum. In Poland, a qualified majority in Sejm (lower chamber) and an absolute majority in Senate (upper chamber) is necessary for amending the constitution. Also, a confirmatory referendum is required as a genuine reinforced procedure for amending constitutional provisions to enjoy special protection. However, the constitution (parts or articles) cannot be suspended or changed by emergency regulations. Making amendments to the constitution is forbidden in Poland and Ukraine under a declared state of emergency.

	Italy (1947)	Poland (1997)	Ukraine (1996)
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Ordinary constitutional amendment procedure	Art. 138: - adopted by each House after two successive debates at intervals of not less than three months; - approved by an absolute majority of the members of each House in the second voting; - submitted to a popular referendum (request is made by $\frac{1}{5}$ of the members of a House or 500 000 voters or five Regional Councils) - A referendum shall not be held if the law has been approved in the second voting by each of the Houses by a majority of $\frac{2}{3}$ of the members.	Art. 235: - submitted by the following: at least $\frac{1}{5}$ of the statutory number of Deputies; the Senate; or the President of the Republic; - adopted by the Sejm and, thereafter, adopted in the same wording by the Senate. - adopted by the Sejm by a majority of at least $\frac{2}{3}$ of votes in the presence of at least half of the statutory number of Deputies, and by the Senate by an absolute majority of votes in the presence of at least half of the statutory number of Senators. - amending the provisions of Chapters I, II or XII → the holding of a confirmatory referendum.	Art. 154: submitted to the Verkhovna Rada of Ukraine, by the President of Ukraine, or by no less than $\frac{1}{3}$ of the constitutional composition of the Verkhovna Rada of Ukraine. Art. 155: except of Chapters I, III and XIII previously adopted by the majority of the constitutional composition of the Verkhovna Rada of Ukraine + if at the next regular session of the Verkhovna Rada of Ukraine + no less than $\frac{2}{3}$ of the constitutional composition of the Verkhovna Rada of Ukraine have voted in favor. Art. 156: amendments to Chapters I, III and XIII are submitted to the Verkhovna Rada of Ukraine by the President of Ukraine, or by no less than two-thirds of members of Parliament + adopted by no less than $\frac{2}{3}$ of the constitutional composition of the Verkhovna Rada of Ukraine + approved by an All-Ukrainian referendum designated by the President of Ukraine → repeat submission on one and the same issue is possible only to the Verkhovna Rada of Ukraine of the next convocation. Art. 158: considered by the Verkhovna Rada of Ukraine and not adopted, may be submitted to the Verkhovna Rada of Ukraine no sooner than one year after' Art. 159: after an opinion of the Constitutional Court of Ukraine on the conformity with the Constitution.
'Eternity' clauses in the Constitution	Art. 139: 'The form of Republic shall not be a matter for constitutional amendment.'	No provision	Art. 157: 'The Constitution of Ukraine shall not be amended, if the amendments foresee the abolition or restriction of human and citizens' rights and freedoms, or if they are oriented toward the liquidation of the independence or violation of the territorial indivisibility of Ukraine.'

Prohibition of amending the constitution under extraordinary regime	No provision	Art. 228(6): 'During a period of introduction of extraordinary measures, the following shall not be subject to change: the Constitution [...]'	Art. 157(2): 'The Constitution of Ukraine shall not be amended in conditions of martial law or a state of emergency.'
Constitutional referendum	Art. 138: 'A referendum shall not be held if the law has been approved in the second voting by each of the Houses by a majority of $\frac{2}{3}$ of the members'	Art. 235(6): provisions Chapters I, II or XII → a confirmatory referendum + majority of voting in favor.	Art. 156(1): amendments to Chapter I, III, XIII are submitted to the Verkhovna Rada of Ukraine by the President of Ukraine, or by no less than $\frac{2}{3}$ of the constitutional composition of the Verkhovna Rada of Ukraine + adopted by no less than $\frac{2}{3}$ of the constitutional composition of the Verkhovna Rada of Ukraine + approved by an All-Ukrainian referendum designated by the President of Ukraine.

The Italian Constitution, for example, has been amended fifteen times since its adoption in 1947. The relevant changes, in particular, include those related to the powers of the Constitutional Court, the procedure of judges' appointment and their term of office (1953, 1967, and 1989), the procedure of determining the quantitative composition of the chambers of the Parliament (1963), expanding the immunity of members of Parliament (1993), organization of power at the regional level, in particular, direct elections of heads of provincial juntas (1999), formation of a foreign electoral district and parliamentary representation of relevant citizens (2000 and 2001), ensuring equality of men and women in holding elected offices positions (2003) and the principle of balancing state and local budgets (2012).

The Constitution of Italy (1947) underwent its most extensive revision (amendment) in August 2001, when the content of ten articles was corrected and five others were canceled. These constitutional amendments caused the expansion of the powers of the authorities formed in the regions and contributed to the deepening of decentralization. At the same time, the politicians raised the issue of comprehensive constitutional reform. To solve this particular issue, in the '80s and '90s of the last century, a parliamentary commission was formed three times with the exceptional task of revising the Constitution of Italy, but again, concerning the organization of power. In 1993 and 1997, such a commission was formed even following specially adopted constitutional laws. However, the corresponding efforts yielded a partial result due to the lack of consensus among the parliamentary political forces on crucial issues of power formation in the country.

Further amendments to the Constitution of Italy have been debated and adopted by the Parliament (by absolute majority vote). However, 61.32% of voters in the constitutional referendum held on 25-26 June 2006 rejected a significant reform bill approved by both chambers of the Parliament on November 17, 2005. Notwithstanding its provisions being diluted in time, the unsuccessful attempt to revise Part II of the Constitution of Italy appeared to have been abandoned or postponed. Nevertheless, it was not until 2014 that Matteo Renzi's government resumed parts of the Constitution of Italy on bicameralism in a somewhat different draft.

Eventually, the application of a constitutional referendum (in the case of Italy) is prescribed in the Constitution (Art. 138 para. 2). Only four constitutional referendums have ever been held in Italy since the abolishment of the monarchy, and the republic, in contrast, was introduced. In 2001 (64.21%) and 2020 (69.96%), both amendments were adopted by Parliament (absolute majority vote) and subsequently approved by a constitutional referendum. The latter was postponed for six months because of the

COVID-19 pandemic (Di Spataro, 2020). The government of Italy, presided by Giuseppe Conte, adopted (officially declared) a statutory state of emergency on January 31, 2020, for the next six months; based on Art. 24 of the Civil Protection Code, it did not involve the Parliament (Civitarese Matteucci, S. and others, 2021). In contrast, both suggested constitutional amendments were rejected by referendum in 2006 (38.71%) and 2016 (40.88%). The latter prompted the resignation of the acting Prime Minister, Matteo Renzi; subsequently, it was confirmed in the abovementioned postponed constitutional referendum in 2020, initially advocated by the 5 Stars Movement (part of the governing coalition in Italy in those days that came into power after the procedure for the constitutional amendments had already begun).

The democratic post-communist Constitution of the Republic of Poland (1997) was adopted by the National Assembly (the combined chambers of the Sejm and Senate); it was subsequently confirmed by a constitutional referendum on May 25 (53.5%), and the Supreme Court ruled that the Constitution could be introduced on July 15, 1997. Finally, it entered into legal force on October 17, 1997. Despite detailed defined constitutional amending and plenty of attempts to amend the Constitution of Poland (1997), initiated by a pro-governmental majority, opposition in the Parliament, and the head of state, it has remained almost unchanged: it was successfully amended only twice (in 2006 and 2009 respectively) (Brunclík, M. and others, 2023). In September 2006, minor amendments were made to it, which did not relate to the organization of the state mechanism (Elster, 1991).

The President of Poland, Lech Kaczyński (2005-2010), initiated the first completed constitutional amendment after Poland joined the European Union in 2004. The amendment was designed to consider the application of the European Arrest Warrant (ENA) and its implementation into national legislation, i.e., the Code of Criminal Procedure (Szymanek, J., 2015). The Sejm successfully attempted to amend Art. 55 of the Constitution. The demand for change of the Constitution arose after the judgment of the Constitutional Tribunal of Poland on April 27, 2005 (in the case P 1/05, OTK 2005 Nr 4/A). The suggested amendment aimed to prohibit the extradition of Polish citizens, subject to two exceptions (Article 55 para. 1 of the Constitution of Poland). Thus, "a Polish citizen may be extradited under the following circumstances:

- At the request of another state or an international judicial body if it results from an international agreement ratified by the Republic of Poland or an act implementing an act of statutory law by an international organization of which the Republic of Poland is a member, provided that the act covered by the extradition request was committed outside the territory of Poland and that it constituted a crime or would constitute an offense under Polish law, both at the time of its commission and at the time of submitting the extradition request (Article 55 (2) of the Constitution),
- At the request of an international judicial body (the International Criminal Court) established based on an international agreement ratified by the Republic of Poland, in connection with the crime of genocide, a crime against humanity, a war crime, or the crime of aggression falling under its jurisdiction (Article 55 (3) of the Constitution)".

Moreover, the act introduced a particular modification in the wording of Art. 55 sec. 4 of the Constitution of Poland (1997). The existing ban on the extradition of a person (Polish citizen, foreign national, stateless person) suspected of committing a non-violent crime for political reasons has been maintained. Additionally, it has been stipulated that extradition will not be carried out if it violates the freedoms and rights of humans and citizens. The constitutional amendment procedure started on September 8, 2006, when the Sejm passed the act amending Art. 55 of the Constitution. On the same day, it was referred to the Senate due to the necessity to complete the legislative process by November 5 (on that date, under the judgment as mentioned earlier of the Constitutional Tribunal of Poland, the Code of Criminal Procedure provision allowed for the extradition of a Polish citizen would expire). Summing up, the adopted amendment to

the Constitution of Poland, in line with the President's intention, removed the allegation of unconstitutionality, prevented violations of European Union law, and ensured the continuity of the application of the European Arrest Warrant issued by Polish courts. On November 6, 2006, the President of Poland signed an amendment to the Constitution officially published on November 7, 2006 (entered into legal force on the day of its publication) (Tkaczyk, 2016).

Between 1996 and 2023, Ukraine has undergone seven successful constitutional amendments. The crucial point is that the first amendment was challenged before the Constitutional Court of Ukraine in 2010 due to a change in the form of government in the semi-presidential republic. Another outcome of completed constitutional amendments on decentralization disappeared in 2015 and was renewed (only in drafting) in 2021. The parliament adopted the first constitutional amendments in December 2004 (during the 'Orange revolution'), and it entered into legal force on January 1, 2006. However, in 2010, when the political regime reversed (precisely the form of government in the semi-presidential republic changed), these amendments were recognized by the Constitutional Court of Ukraine as unconstitutional following some procedural infringement during consideration and adoption. In 2014, after the 'Revolution of Dignity', the Verkhovna Rada of Ukraine restored it (in the finalized wording of the completed constitutional amendments in 2004) since the opinion of the Constitutional Court of Ukraine is final and cannot be challenged.

The subsequent constitutional amendment in Ukraine was related to the ratification of the Rome Statute of the International Criminal Court (Sofinska, 2023). The Venice Commission (2002) suggested amending the constitution (even though it is often a 'cumbersome, complicated process and may be a politically sensitive issue') to have an essential legal basis to ratify the Rome Statute. Also, many European Union member-states faced similar constitutional problems on necessary constitutional amending following the Rome Statute ratification, and they succeeded (like France (Art. 53-2), Ireland (Article 29.9), Portugal (Art. 7), etc.). Secondly, in 2016, the draft law on amendments to the Constitution of Ukraine (1996) conformed with it. However, the ratification was delayed for three years (till 2019). Ratification of the Rome Statute is still a vital issue for Ukraine, specifically now during full-scale Russian aggression. Additionally, its ratification is prescribed in a few articles of the Association Agreement with the EU (2014) (Association Agreement, 2014). Finally, the draft law № 2689, submitted to Verkhovna Rada in 2019, was adopted on May 20, 2021. Following the legislative procedure, it was sent in time (on June 7, 2021) to the President of Ukraine to obtain a signature. However, till now, it has neither been signed by the President nor vetoed (therefore, it cannot finally enter into force).

Every constitution serves multiple objectives, including setting up, organizing, and directing public power while respecting fundamental principles and standards such as the rule of law, democracy, and human rights. It fulfills many legal and social functions and has an integrative power since it reflects the framers' constitutional understandings, aspirations, legal and historical values, and fundamental political decisions (Orgad, 2011). The 'manifesto' function is designed to express ingrained convictions and obtained experience of understanding of public power and to reflect the identity formation for the citizenry, as well as constitutional values and aspirations of self-understanding what might be found in the Preamble to the Constitution. The current preambles to constitutions have legal and non-legal purposes and express national constitutional identity. They display global diversity in design, substance, and effect: ceremonial and symbolic, therefore not really operative, interpretive, substantive, long, brief, simple, highly technical, amendable, including 'eternity clauses', etc.

The precise wording of the Preamble should determine and reveal without limits the substantive legal and political situation in every democracy, identify the historical background by recalling the responsibilities towards future generations, and frame

the realistic pathway to follow. The Preamble can unite or divide people (it refers to the people as the natural source of authority in the state) since binding legal force is granted. The Constitution's Preamble might serve as an independent source for a retrospective view of inherited political and legal values and future aspirations, i.e., the Preamble to the Constitution of Ukraine (1996), amended in early 2019 as 'confirming the European identity of the Ukrainian people and the irreversibility of the European and Euro-Atlantic course of Ukraine' (Summary..., 2018).

The European and Euro-Atlantic integration has been Ukraine's fundamental motive and primary claim since it gained sovereignty and independence in 1991. European narratives are enshrined in the preambles to constitutions of several countries like Czechia, Germany, Hungary, Latvia, and Montenegro (similar wording regarding the desire for Euro-Atlantic integration). This research sets down the primary structure of the society and its constitutional faith and confirms our pathway in 2022-2023.

First of all, the use of 'eternity' clauses seeks to secure the (un)wanted constitutional amending and is considered a good and ordinary practice of constitutional engineering worldwide (Suteu, 2021). Some researchers indicate that 'eternity' clauses are designed 'to place certain immutable elements of the Constitution beyond the limits of the amending power' (Preuss, 2017).

Above 70 countries globally possess 'eternity' clauses in their Constitutions. Thematically, 'eternity' clauses enshrined in the Constitutions of the Council of Europe member-countries are related to the following essential issues: sovereignty and territorial integrity (Armenia, Portugal, Romania, Turkey, Ukraine), human rights (Cyprus, Greece, Portugal, Ukraine), human dignity (Germany, Greece), change (abolishment) of the form of state (France, Greece, Italy, Portugal, Romania, Turkey), territorial division (Germany, Romania), state regime (Turkey), state (official) religion (United Kingdom), secularity/laïcité (Portugal, Turkey), state (official) language (Cyprus, Romania, Turkey), the rule of law, democracy, separation of powers (Czechia, Portugal), monarch's power (Belgium), etc. (Baranger, 2011).



Figure 1 'Eternity' clauses in the Constitutions of member-states of the Council of Europe

Among the compared countries, the Constitutions of Ukraine (1996) and Italy (1947) determine 'eternity' clauses, which are unamendable (don't allow any profound constitutional changes), while the Constitution of Poland (1997) doesn't (Suteu, 2017).

Thus, these unamendable constitutional provisions should not be a target for the enormous political rivalry between the pro-government ruling majority and the opposition in Parliament (not now, nor in the future). Secondly, for this article, it is sufficient to emphasize that the notion of extraordinary emergencies is present in the constitutions of many democratic countries, regardless of their form of government:

- in a parliamentary republic like Italy (art. 77(2)): the case of necessity and urgency) or
- semi-presidential republics like Poland (art. 228: 'situations of particular danger, if ordinary constitutional measures are inadequate, any of the following appropriate extraordinary measures may be introduced: martial law, a state of emergency, or a state of a natural disaster') and
- Ukraine (art. 92 (19): the legal regime of martial law and a state of emergency, zones of an ecological emergency).

Our final claim is that it is unconstitutional to amend the Constitution during a declared state of emergency or other extraordinary regimes in those countries where it is forbidden on the constitutional level (Poland, art. 228 para. 6; Ukraine, art. 157 para. 2). However, there were no such situations before to claim (even in countries, like Italy, with no constitutional reference at all). Therefore, the Constitution of Italy (1947) neither contemplates a state of emergency nor allows any authority (parliament, President, or government) to declare a state of exception; however, due to Art. 77 the government may adopt under its responsibility a temporary measure in extraordinary cases of necessity and urgency and introduce it to Parliament for subsequent transposition into law.

CONCLUSIONS

The authors adopt a peculiar combination of selected states' domestic (national) legislation (Italy, Poland, and Ukraine) and a comparative perspective that considers international provisions and political and judicial practice beyond. This article brings forward a range of new empirical data and comparative findings on constitutional amending (i.e., during a declared 'state of emergency' or other extraordinary regime) in European countries (Revised Report ..., 2009). To secure 'founding fathers' of Constitutions in selected countries, introduce 'eternal' clauses (unamendable constitutional provisions), prohibit constitutional amending during a declared 'state of emergency' or other extraordinary regimes, and submit to the constitutional referendum.

The brief analysis of the constitutions of the selected European countries confirms the statement of the Venice Commission that a constitutional referendum as a segment of constitutional amending may be required on a mandatory basis for any amendment passed by Parliament as a reinforced procedure for amending particular provisions of the Constitution enjoying special protection or for «total revision» of the Constitution or adoption of a new one. In contrast, it might be called optional: upon demand by Parliament (its chambers), by popular initiative, by local authorities, or upon the President's decision (order). The compared countries use the constitutional referendum as an instrument for different purposes and in diverse ways: to protect constitutional values, the rule of law, democracy, and human rights, win the parliamentary or presidential elections or justify the ruling party's ambitions. Voters are not sufficiently informed; the decisions are based on partial knowledge and party preference (are easily manipulated) and often are guided not by rational arguments relating to the issues involved but by propaganda. The outcomes might demonstrate great support or deep discord inside society and cause a collapse of the pro-governmental parliamentary majority (coalition). The requirement (the Constitution explicitly provides for it) that all constitutional amendments be submitted to referendum makes it unduly rigid, and the expansion of direct democracy at the national level may create additional risks for political stability (disbalance it).

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