MARCOS ANTONIO VELA ÁVALOS

Constitutional amendments in Panama

Reformas constitucionales en Panamá

ABSTRACT

This paper addresses the matter of constitutional amendments in Panama. First, it offers a general summary of the Panamanian constitutional design and explains the constitutional amendments in particular , which includes a brief description of the way the Constitution of Panama of 1972 regulates this type of formal constitutional change. Then, it explains the specific issue of constitutional amendments in greater detail, exposing the formal limits that rules them and the way the Panamanian Constitution deals with substantial limits or unamendable contents. Finally, it addresses the judicial review of the constitutional amendments in that country from a descriptive and critical perspective.

KEYWORDS

Constitutional amendments; constitutional replacement; judicial review of constitutional amendments; Panamanian constitutionalism.

RESUMEN

Este artículo aborda la situación actual sobre las reformas constitucionales en Panamá. Primero, se explica un resumen del diseño constitucional panameño en general y de las reformas constitucionales en particular, lo que incluye una breve exposición de la manera en que la Constitución de Panamá de 1972 regula esta clase de cambio constitucional formal. Luego, se aborda con mayor detalle el asunto específico de las reformas constitucionales, exponiendo los límites formales que las rigen y la forma en que la Constitución panameña regula sus límites sustanciales o contenidos irreformables. Por último, se alude al control judicial de tales reformas en dicho país desde una perspectiva descriptiva y crítica.

* PhD in Rule of Law and Global Governance, University of Salamanca (Spain). Master's degree in Constitutional Law, University of Valencia (Spain). Professor of Legal Theory, Legal Argumentation and Constitutional Law at Gerardo Barrios University (El Salvador). El Salvador. Contact email: marcos_vela28@hotmail.com. ORCID: https://orcid.org/0000-0001-5907-1389.

Received in: April, 25, 2025

Approved in: May, 26, 2025

To quote the article: Vela, M. Constitutional amendments in Panama. In Revista Derecho del Estado. Universidad Externado de Colombia. N. 63 September-December 2025. 189-213.

DOI: https://doi.org/10.18601/01229893.n63.09

PALABRAS CLAVE

Reformas constitucionales; reemplazo constitucional; control judicial de las reformas constitucionales; constitucionalismo panameño.

SUMMARY

I. INTRODUCTION.

Panama became independent from Spain in 1821 and was established as an autonomous State in 1903, after its separation from Colombia on November 3 of that same year.[1] Barely three months after that separation, its Constitution of 1904 was created, which would be the first in its independent constitutional history.[2] It has had four constitutions[3]: the aforementioned of 1904 and in 1941, 1946 and 1972.[4] The latter one has been object of four groups of amendments in 1978[5], 1983[6], 1994[7], and 2004.[8] In addition, there was a failed amendment attempt in 1992 (rejected in the referendum held on November 15 of that year), a Draft of a new Constitution for Panama ("Anteproyecto de una nueva Constitución para Panamá") was created in 1993, studies were conducted to insert new amendments in 2011[9] (which were not approved), and there was a last amendment push in 2019, criticized by academics, which did not come to fruition either.[10]

1 Bernal Gómez, B. *Historia del Derecho*, Mexico, Nostra Ediciones, 2010, 176-177.

2 Giannareas, J. and Rodríguez Robles, S. Orígenes, Evolución y Actualidad del Constitucionalismo Social Panameño, in Fix-Zamudio, H. and Ferrer Mac-Gregor, E. (coords), *México y la Constitución de 1917. Influencia Extranjera y Trascendencia Internacional*, Mexico, Secretaría de Cultura and others, 2017, 778.

3 Negretto, G. L. *Making Constitutions. Presidents, Parties, and Institutional Choice in Latin America*, New York, Cambridge University Press, 2013, 21.

4 Vargas Velarde, O. La Evolución Constitucional en el Panamá Republicano, in Sánchez González, S. (ed), *César A. Quintero Correa (1916-2003). Libro Homenaje*, Panama, CIDEM/IIDC, 2013, 89-144.

5 Ibid, 126.

6 Ibid, 126-27.

7 Ibid, 129-30.

8 Ibid, 134-36.

9 Ibid, 128-44.

10 Hoyos, A. Las Reformas Constitucionales de 2019: Lecciones de un Intento Fallido y Superación de una Década de Desencanto, in *Ratio Legis*, 1 (1), 2021, 41.

The 1978 amendments were aimed at regularizing political parties, officially legalizing them, as well as modifying human rights issues. Meanwhile, the 1983 reforms encompassed presidential elections, checks and balances, political parties, and the inclusion of the possibility of using referendums as a mechanism for future constitutional amendments. Later, the 1994 amendments included changes regarding the rights enshrined in the constitution, expanding them, as well as the abolition of the Armed Forces and the regulation of the Panama Canal. Finally, the 2004 reforms were linked to matters of nationality, individual rights, and state organization. For its part, the failed amendment attempt sought to modify the state power apparatus and, among other things, create a Constitutional Court.

Considering this experience, it can be affirmed that the matter of constitutional reforms is relevant for Panamanian constitutionalism. First, because the attempts (successful or not) to make formal constitutional changes do not seem to be few or far from reality. Secondly, because it is a legal system little known, studied, or examined under a dialogical approach between its internal practice and the current discussions of Constitutional Law and constitutional theory.

Therefore, the purpose of this paper is to explain the most relevant aspects of the constitutional amendments in Panama. Thus, first, there will be a summary of the Panamanian constitutional design in general and of the constitutional amendments in particular. Then, the formal limits that rule the latter will be exposed. Next, the question of whether there are unamendable provisions or substantial limits for the constitutional amendments in Panama will be addressed. Finally, reference will be made to the judicial review of the amendments from a descriptive and critical approach.

All translations of rulings of the Supreme Court of Justice or opinions of academics that originally appear in Spanish are made by the author of this paper.

II. A SUMMARY OF THE PANAMANIAN CONSTITUTIONAL DESIGN IN GENERAL AND OF THE CONSTITUTIONAL AMENDMENTS IN PARTICULAR

1. Basic constitutional design

The Panamanian constitution contains 328 articles. It originated from the initiative of the military regime that rose to power in 1968 after a coup d'état, aiming to legitimize the political situation and establish a legal framework for the regime. Additionally, it contains an extensive catalog of rights that are subject to various controls. Some of these controls, such as the Ombudsperson, can be used as a parameter not only of constitutional norms but also of those derived from international human rights treaties (Article 129 of the Constitution).

Like all Latin American constitutions today, the Constitution of Panama of 1972 establishes three branches of power: Legislative[11], Executive,[12] and the Judiciary[13], which have functions such as those that ordinarily correspond to them in all constitutional systems of Latin America. According to Article 146 of the Constitution, the Legislative Branch is constituted by the National Assembly, "whose members shall be elected on the basis of party nominations or independent nominations through direct popular vote […]". Also, in accordance with Articles 147 and 148 of said constitution, the total number of its members (named "diputados") is seventy-one and are elected for five years.

As regards the Executive Branch, it is formed by the President of the Republic and the Ministers of State[14]. There is also a Cabinet Council, which is the meeting between the President of the Republic, who shall chair it, or the Acting President, the Vice-President of the Republic, and the Ministers of State[15]. According to Article 177 of the Constitution of Panama of 1972, the President "shall be elected in a popular direct election by a majority of votes for a term of five years". Similarly, along with the President, a Vice President must be elected in the same way and for the same five-year period. Moreover, Article 178 of the Constitution establishes that "the citizen who has been elected President or Vice-President of the Republic may not be elected for the same office in the two Presidential terms immediately following". The presidential figure is important in Panama since it has a presidential system that has come to be described as hyper-presidential.[16]

Finally, the Judicial Branch "is composed of the Supreme Court of Justice, tribunals, and such other lower courts as the law may establish"[17]. According to Article 203 of the Constitution, "the Supreme Court of Justice shall be composed of the number of Justices determined by law, to be appointed by decision of the Cabinet Council, subject to the approval of the Legislative Branch, for a ten-year term". In addition, in Panama, the Supreme Court exclusively handles judicial reviews, as no other body has this authority[18]. Thus, Article 206.1 of the Constitution states:

11 Constitution of Panama 1972, Title V.
12 Ibid, Title VI.
13 Ibid, Title VII, 1st Chapter.
14 Ibid, Article 175.
15 Ibid, Article 199.
16 Hoyos, A. (n 10), 42-46.
17 Constitution of Panama 1972, Article 202.
18 Hoyos, A. El Control Judicial y el Bloque de Constitucionalidad en Panamá, in *Boletín Mexicano de Derecho Comparado*, 75, 1992, 785; Mejía Edward, J. Control de Constitucionalidad y de Convencionalidad en Panamá, in *Anuario de Derecho Constitucional Latinoamericano, Año XIX*, Colombia, Konrad Adenauer Stiftung, 2013, 478-479; Rodríguez Robles, S. Los Dilemas de la Justicia Constitucional Panameña y sus Posibles Soluciones, in Sánchez González, S. (ed), *César A. Quintero Correa (1916-2003). Libro Homenaje*, Panama, CIDEM/IIDC, 2013, 313 ("[…]

> Among the constitutional and legal functions of the Supreme Court of Justice shall be the following: […] To guard the integrity of the Constitution. For this purpose, and after hearing the opinion of the Attorney General of the Nation or the Solicitor General of the Administration, the Court in plenary session shall try and rule on cases concerning the unconstitutionality of laws, decrees, decisions, resolutions and other acts that for reasons of substance or form are challenged before it, by any person.

This subsequent control is supplemented by the previous control through the "objection of unenforceability" ("objeción de inexequibilidad").[19] Article 171 of the Panama Constitution of 1972 establishes:

> When the Executive Authority vetoes a bill as unconstitutional and the National Assembly by majority vote insists that it be adopted, the bill shall be sent to the Supreme Court for a decision on its constitutionality. If the Supreme Court's judgment declares the bill constitutional, the Executive Authority is obliged to approve it and have it promulgated.

Likewise, amparo[20] and *habeas corpus*[21] writs are recognized as in many Latin American countries. However, according to some academics, the Panamanian Constitution differs from many others in the region because the process of unconstitutionality can be initiated by any citizen[22] (what is commonly called "popular action"). At least theoretically, this popular action offers a deliberative advantage and influences the democratic process internally, as it allows the expression of people who have not been represented in parliamentary debates.[23] In other words, it offers a space for democratic discussion that operates differently from the legislature: non-majoritarian.

the judicial review in Panama is monopolized by the Supreme Court of Justice"); Brewer-Carías, A. R. *Tratado de Derecho Constitucional, Tomo XII*, Venezuela, Editorial Jurídica Venezolana, 2017, 195 ("in Comparative Law there is no 'basic characteristic' that attributes to the body that exercises the constitutional jurisdiction the monopoly of 'interpreting the Constitution'. Only in Panama could it be thought that this could be the case, since all constitutional justice is concentrated in the Supreme Court of Justice"); Mejía Edward, J. El Control de Constitucionalidad en Panamá, in *Revista de la Sala Constitucional*, 1, 2019, 91 (retrieved in 16 December 2022: https://revistasalacons.poder-judicial.go.cr/images/Catalogo/Articulo/PDF/El%20control%20de%20constitucionalidad%20%20en%20Panama.pdf).

19 González Montenegro, R. La Justicia Constitucional en Panamá, in *Anuario Iberoamericano de Justicia Constitucional*, 1, 1997, 276.

20 Constitution of Panama 1972, Article 54. Also, Sánchez, González, S. El Amparo en Panamá, in *Revista del Instituto de Ciencias Jurídicas de Puebla*, 27, 2011, 216.

21 Ibid, Article 23.

22 Ferrer Mac-Gregor, E. *Panorámica del Derecho Procesal Constitucional y Convencional*, Madrid, Marcial Pons, 2013, 312. To the case of Panama, those of Colombia and El Salvador can be added. For some ampliation on this argument, *see* section V.2 of this paper.

23 Roa Roa, J. E. *La Acción Pública de Constitucionalidad a Debate*, Colombia, Universidad Externado de Colombia, 2015, 42-43

Due to these singularities, it has been said that the Panamanian model is "one of the most concentrated, exclusive and extensive systems of judicial review that exist in Comparative Law, by attributing to the Supreme Court of Justice the exclusive power to hear and decide on the unconstitutionality of all state acts"[24].

2. The formal constitutional change in the Panamanian Constitution of 1972: the regulation of Title XIII.

Title XIII of the Panamanian Constitution of 1972 is entitled "constitutional amendment" and only has two provisions: Articles 313 and 314. Regardless of its name, it regulates two different figures from the perspective of constitutional change.

On the one hand, Article 313 prescribes constitutional amendments in a strict sense. Here, it is assumed that the amendments are modifications in the text of the Constitution[25], that is, in its provisions (statements or words)[26], that provide continuity to the Constitution's core commitments.[27] This means that they are better defined not from a normative concept of the Constitution but on which constitutional settlement exists and how they change it.[28]

Therefore, from a content-based approach, an amendment is characterized by the follwing properties: a) its subject is higher law, b) it is authoritative in both law and politics, c) its scope is a constitutionally continuous change to higher law, which means that it is a change consistent with the existing design, framework, and fundamental presuppositions of the constitutional

24 Fernández Segado, F. El Control de Constitucionalidad en Latinoamérica: Del Control Político a la Aparición de los Primeros Tribunales Constitucionales, in *Derecho PUCP: Revista de la Facultad de Derecho*, 52, 1999, 440.

25 Bernal Pulido, C. Cambio Constitucional Informal: Una Introducción Crítica, in Albert, R. and Bernal Pulido, C. (eds), *Cambio Constitucional Informal*, Colombia, Universidad Externado de Colombia, 2016, 10-11. This criterion is useful for differentiating formal constitutional changes from informal ones, since the former modify the constitutional text, and the latter modify the meaning attributed to it or the practices surrounding it (such as constitutional mutations or desuetude).

26 Guastini, R. *Interpretar y Argumentar*, España, Centro de Estudios Políticos y Constitucionales, 2014, 77. Guastini distinguishes between provisions and norms. He conceives the former as normative texts that are subject to interpretation, and the latter as the result of these interpretations.

27 Enonchong, L. Unconstitutional Constitutional Amendment or Constitutional Dismemberment? A Reappraisal of the Presidential Term Limit Amendment in Cameroon, in *Global Constitutionalism*, 11 (2), 2022, 276.

28 Albert, R. *Constitutional Amendments: Making, Breaking, and Changing Constitutions*, United States, Oxford University Press, 2019, 84.

norm (an unbroken unity with the constitution that is being amended), and d) it has a corrective, elaborative, reformative, or restorative purpose.[29]

An amendment is corrective if it aims to "correct the constitution to align expectations with performance".[30] It is elaborative when it introduces "a larger change than a correction insofar as it does more than simply repair a fault or aligns the constitution to the expectations"[31] (advance its meaning as it is presently understood). They are reformative if they "revise an existing rule in the constitution but without undermining the constitution's core principles".[32] Finally, they are restorative when they "seek to restore the constitution to its earlier meaning, believing that the constitution has been improperly redefined or its perimeter stretched too far".[33] That is the case of amendments that overturn judicial interpretations of constitutional clauses.[34]

Moreover, Article 314 subsection 1 of the Panamanian Constitution indicates the rules for adopting "a new Constitution" through a Parallel Constituent Assembly, although subsection 4 of that same provision states that said Assembly can "reform the current Constitution totally or partially". Conceptually speaking, the function that Article 314 paragraph 1 of the Constitution of Panama of 1972 attributes to the Parallel Constituent Assembly does not imply a power to amend the Constitution, but rather to carry out a constitutional replacement.[35] Here, it is understood that a constitutional replacement is "the abrogation of the existing written constitution, as a consequence of the promulgation of a new one".[36] It is stated that this is what the Parallel Constituent Assembly could do because, based on the text of Article 314 subsection 1 already cited, its role could not imply the modification of a pre-existing Constitution within the continuity of its core commitments, but rather give validity to a new one.

29 Ibid, 79-80. On the basis on this definition, the modifications introduced by constitutional amendments never have intensely reformatory effects on the contents of the pre-existing constitution because they do not aim to interrupt its continuity.

30 Ibid, 80.

31 Ibid.

32 Ibid, 81.

33 Ibid.

34 On the matter: Bellamy, R. *Political Constitutionalism: A Republican Defence of the Constitutionality of Democracy*, United States, Cambridge University Press, 2007, 47.

35 Negretto, G. L. Procesos Constituyentes y Refundación Democrática. El Caso de Chile en Perspectiva Comparada, in *Revista de Ciencia Política*, 35, 2015, 202 (suggests the distinction by stating that "almost all constitutions include a special procedure for their partial revision […]. A few allow to be *amended* in their entirety [...]. But curiously it is very rare to find constitutions that authorize citizens to activate or ratify a constituent process aimed at *replacing* them") —own highlighting—.

36 Bernal Pulido, C. Prescindamos del Poder Constituyente en la Creación Constitucional. Los Límites Conceptuales del Poder para Reemplazar o Reformar una Constitución, in *Anuario Iberoamericano de Justicia Constitucional*, 22, 2018, 68-69.

Thus, Article 314 cited above provides that a new constitution can be created through the Parallel Constituent Assembly. Said Assembly can be convened in three different ways: a) by decision of the Executive Branch, ratified by the Legislative Branch with absolute majority[37]; b) by the Legislative Branch with a favorable vote of two thirds of its members, or c) by popular initiative which must be signed by at least 20% of citizens enrolled in the Electoral Register on the thirty-first of December of the preceding year. Then, the Electoral Tribunal must call for the election of the sixty members of the Assembly[38], who must proportionally represent the electoral population. Independent candidates are permitted.

According to Article 314, the decisions of the Assembly cannot have retroactive effects or alter the terms of office of elected or appointed officials who are exercising their functions at the time the new constitution enters into force. Finally, it must be submitted to a referendum called by the Electoral Tribunal in a period of no less than three months nor more than six, counted from the date of its publication in the Bulletin of the Electoral Tribunal.

On the other hand, as stated, Article 313 of the Panamanian Constitution of 1972 regulates constitutional amendments in a strict sense. This provision sets forth the rules for this kind of formal constitutional change. In general, these rules (or limits) are usually divided between formal and substantial limits.[39] The formal ones can be defined as the rules that establish the procedure, quorum, competent branch, or the reach of competence of said body to amend the Constitution.[40] The substantial limits are the rules that bind the content of future amendments, which usually consist in contents whose modification is prohibited for the reforming power.[41] In what follows, both limits will be explained.

III. THE FORMAL LIMITS TO THE CONSTITUTIONAL AMENDMENT IN THE CONSTITUTION OF PANAMA.

As previously stated, Article 313 of the Panamanian Constitution of 1972 establishes constitutional amendments in a strict sense. This provision does

37 The absolute majority is defined in Article 190 of the "Reglamento Orgánico del Régimen Interno de la Asamblea Nacional" ("Organic Regulation of the Internal Regime of the National Assembly"), which states that "absolute majority is understood as any number of votes greater than half of the total number of members of the National Assembly". In this sense, as the total number of members of the National Assembly is seventy-one (Article 147 of the Constitution), said majority is achieved with the vote of at least thirty-six of them.

38 These elections must be held within a term of not less than three months nor more than six months from the formalization of the call.

39 Ramírez Cleves, G. A. *Límites de la Reforma Constitucional en Colombia*, Colombia, Universidad Externado de Colombia, 2005, 339.

40 Guastini, R. La Constitución como Límite a la Actividad Legislativa, in *Derechos y Libertades: Revista de Filosofía del Derecho y Derechos Humanos*, 8, 2000, 241.

41 Ibid.

not establish express substantial limits, but only formal limits that the reforming power must respect. Schematically, it can be argued that the set of said limits are those mentioned below.

1. Initiative to propose constitutional amendments.

The Constitution of Panama of 1972 has the singularity that the initiative to propose constitutional amendments does not only correspond to the Legislative Branch[42], as occurs in countries like El Salvador (Article 248 of the Salvadorian Constitution).

Thus, the first paragraph of Article 313 indicates that "the initiative to propose constitutional amendments belongs to the National Assembly, the Cabinet Council and the Supreme Court of Justice". Consequently, it is a very particular case in which the three fundamental branches (Legislative, Executive, and Judiciary) have the initiative to propose that the constitutional text be amended.

According to the aforementioned Article, once the proposal is made, it must be approved through one of the two procedures that will be explained below. Both have as a common core the need for the intervention of two conformations of the National Assembly (a first that agrees on the amendment and a second that must ratify or approve it), so there is a temporary gap between these two moments of an institutional act. But the difference is that Article 313.1 of the 1972 Constitution of Panama prevents changes to amendments proposed by the first legislature, while Article 313.2 allows alterations.[43]

2. The procedure of Article 313.1 of the Constitution of Panama of 1972.

It is the first of the procedures mentioned in Article 313. According to said Article, when the initiative is presented to the National Assembly, the amend-

42 Nogueira Alcalá, H. La Reforma Constitucional en el Constitucionalismo Latinoamericano Vigente, in *Boletín Mexicano de Derecho Comparado*, 129, 2010, 1315 ("the initiative for constitutional amendment is held by all the parliaments of Latin America […]. Likewise, eleven constitutions establish the initiative of constitutional amendment to the President of the Republic. Likewise, there are few countries, Colombia, Guatemala, and Panama, that grant initiative for constitutional amendment to other branches of the State").

43 Not all constitutions allow a constitutional amendment agreement that has been approved by a first legislature but is still pending ratification by a second conformation of the Legislative Assembly, to be modified. For example, in El Salvador, constitutional amendments sometimes must be agreed upon a first conformation of the Legislative Assembly. Then they must be ratified by the immediately subsequent one (Constitution of El Salvador 1983, Article 248). However, the Salvadoran Constitutional Chamber has maintained that, in this case, "there is a limitation imposed on the new conformation of the Legislative Assembly. The dialogue and deliberation can only deal with the tenor of the approved decree, so that the parliamentary debate cannot be carried out with the intention of modifying or altering the text of the amendment agreement" (Unconstitutionality 7-2012, 16 December 2013, section IV.2).

ment can be agreed by a Constitutional Act "approved in three readings by an absolute majority of the members of the National Assembly". Said Act must then be published in the Panamanian Official Gazette and sent by the Executive Branch to a second conformation of the National Assembly "within the first five days of ordinary session following the installation of the National Assembly elected in the last general elections". Once it is received by the Assembly, it must be debated "in its first session" and eventually approved "without modification, in a single reading and by an absolute majority of all members of the Assembly".

3. The procedure of Article 313.2 of the Constitution of Panama of 1972.

In the case regulated in this provision, the constitutional amendment can be agreed by a Constitutional Act "approved in three readings by an absolute majority of the members of the National Assembly in one legislature, and approved anew, during the immediately following legislature, in three readings by an absolute majority of the members of the already mentioned Assembly". However, the second legislature can modify the text agreed by the previous legislature. But once the amendment has been approved, it must be published in the Official Gazette and "submitted to the people for direct, popular consultation through a referendum that shall be held on the date designated by the National Assembly, within a period not shorter than three months and not longer than six months from the date of the Constitutional Act's approval by the second Legislature".

In the Latin American constitutions, the terms "popular consultation", "plebiscite", or "referendum" are used indistinctly to refer to one of the most usual direct democratic mechanisms. However, for some academics, there is a difference between the plebiscite and the referendum: the former would be related to a consultation linked to the personal powers of a ruler, and the latter would deal with the approval of normative texts such as constitutions, treaties, or others.[44] If this conceptualization is assumed, then the "referendum" regulated in Article 313.2 of the Constitution of Panama of 1972 corresponds to the characteristics that, at least academics, indicate that they possess.

44 *See* Zovatto Garetto, D. Las Instituciones de la Democracia Directa, in *Revista Derecho Electoral*, 20, 2015, 37.

IV. UNAMENDABLE CONTENTS, OR SUBSTANTIAL LIMITS TO CONSTITUTIONAL CHANGE.

1. Substantial unamendability in the Panamanian Constitution of 1972?

In constitutional matters, there is a certain tension between constitutionalism and (formal) democracy.[45] Constitutionalism restrains (formal) democracy by imposing limits on collective actions and decisions: it fastens handcuffs on its exercise and some of its expressions. Meanwhile, (formal) democracy rejects the tyranny of counter majoritarian minorities mechanisms.[46] In the middle of this tension, as Richard Albert states, "the authority to amend the constitution is the best democratic answer […] because the rules governing constitutional amendment unmistakably resolve this tension in favor of democracy by giving citizens the key to unlock their constitutional handcuffs"[47].

Nevertheless, "some modern constitutions have instead resolved this tension in favor of constitutionalism. Constitutional designers have, in both the civil and common law traditions, expressly designated certain constitutional provisions unamendable".[48] These provisions are "impervious to the constitutional amendment procedures enshrined within a constitutional text and immune to constitutional change even by the most compelling legislative and popular majorities".[49]

The current Constitution of Panama does not contain any provision that establishes that any of its contents is unamendable.[50] The closest thing to it

45 Here it is said that there is a certain tension between constitutionalism and formal democracy because, from a complete concept of democracy, such tension does not seem to exist. In its complete sense, democracy has a formal and a substantial component. Formal democracy determines who should decide and how they should do so, that is, it is an arithmetic concept: normally, the majority decides by voting (directly or through its representatives). This is an important part of democracy. But it is only one part. The other is substantial democracy, which determines what things cannot be decided (for example, prohibitions on torture or genocide) and what cannot be left undecided (for example, giving certain social benefits). These substantial limits are given by the Constitution. Constitutionalism can only be conceived under a tensional logic if only a formal concept of democracy is assumed. However, if a concept of democracy is assumed that includes both its formal and substantial aspects, then such tension does not exist: Constitutionalism, although it limits formal democracy, is an essential component of substantial democracy by imposing limits to the former. *See* FERRAJOLI, L. *Derechos y Garantías. La Ley del Más Débil*, Spain, Trotta, 2004, 23.

46 On this debate, *see* AGUILÓ REGLA, J. Interpretación Constitucional. Algunas Alternativas Teóricas y una Propuesta, in *DOXA, Cuadernos de Filosofía del Derecho*, 35, 2012, 242-243.

47 ALBERT, R. Constitutional Handcuffs, in *Arizona State Law Journal*, 42, 2010, 665. Constitutional interpretation can also fulfill this function, since constitutional courts can adapt the Constitution to social changes through it and without having to alter its text.

48 Ibid.

49 Ibid, 666.

50 On the substantive unamendability in Comparative Law: ALBERT, R. and ODER, B. E. The Forms of Unamendability, in ALBERT, R. and ODER, B. E. (eds), *An Unamendable Constitution? Unamendability in Constitutional Democracies*, Switzerland, Springer, 2018, 6.

is paragraph 4 of Article 314, which states that, in the process of creating a new Constitution that implies a total or partial "reform", "[t]he Parallel Constituent Assembly […] in no case" may adopt decisions that have "retroactive effects" or that they alter "the terms of office of elected or appointed officials who are exercising their functions at the moment when the new Constitution enters into force".

Undoubtedly, this current regulation is surprising, to say the least, considering the general history of stone clauses and that of Panama. Until before World War II, only three constitutions contained explicit rights-related limits on amendments. One of them was the Constitution of Panama of 1841[51] (before its separation from Colombia), which in its Article 163 established that "[t]he power that Congress has to amend this Constitution will never extend to vary the form of government that it establishes, which will always be popular, republican, representative, elective, alternative, and responsible. Nor will it extend to suppress the freedom of speech".

Then, as was said, today no express substantial limitation is foreseen for the reforming power. However, the Panamanian constitutional practice makes it relevant to analyze two scenarios related to the substantial limits of the constitutional amendment: the possibility of migrating the doctrine of constitutional substitution and whether the reform clause of Article 313 is itself unamendable.

2. The possibility of migrating the doctrine of constitutional substitution.

As it is known, there are other constitutions that, like the Panamanian one, do not have stone or eternity clauses. For example, in Colombia, Articles 241.1 and 379, as well as all of Title XIII of the 1991 Constitution, do not provide unamendable contents for the reforming power and only recognize the competence of the Constitutional Court to review constitutional amendments due to procedural defects. Nevertheless, not having them has not been an impediment for the Court to also examine substantial defects in the amendments adopted by Congress, through the doctrine of constitutional substitution as a mechanism to overcome this apparent restriction. According to Carlos Bernal[52], the argumentative structure of the doctrine is this:

51 Roznai, Y. *Unconstitutional Constitutional Amendments*, United States, Oxford University Press, 2017, 21.

52 Bernal Pulido C. Unconstitutional Constitutional Amendments in the Case Study of Colombia: An Analysis of the Justification and Meaning of the Constitutional Replacement Doctrine, in *International Journal of Constitutional Law*, 11 (2), 2013, 340; Bernal Pulido, C. *Derechos, Cambio Constitucional y Teoría Jurídica*, Colombia, Universidad Externado de Colombia, 2018, 271.

> The first premise states that the power to review the compliance with amendment procedures comprises the power to review the competence of the authority issuing the amendment. The second premise asserts that the power to amend the constitution does not imply the power to replace it, but only to modify it. The third statement of this argument, which follows from the first and the second premises, is that the Court has the power to review whether the amending authority is in fact only modifying, rather than replacing the constitution. The fourth element is the premise that only an analysis of content allows the Court to determine whether the constitution has been modified or replaced. The final element is the conclusion that the power to review whether the constitution has been replaced implies the competence to review the content of constitutional amendments.

To better understand the second premise of the argument, it is necessary to define the difference between a constitutional substitution and a constitutional amendment. Constitutional substitution is understood as "the modification of the basic structure of a constitution by means of one of the constitutional amendment procedures"[53] (they do not present themselves as a "new Constitution", but their implications are like those of a new one). Constitutional amendment is a minor formal change that does not alter said basic structure[54], that is, it constitutes an effort to continue with the project of the Constitution started at its founding moment[55] (a continuity of its core commitments).

In some way, it can be said that the amendments do not refuse to "live in the Constitution", that is, to practice the fundamental ideals outlined in a State that "has a Constitution", a written document that gives them legal form.[56] Meanwhile, the constitutional substitution does refuse to do so, since what it intends is to "create a Constitution" even though it "has a Constitution", or what is the same, it intends to "found or re-found the unity of a political community".[57] Therefore, constitutional substitutions are unconstitutional if they undermine the core commitments of the fundamental norm.

The relevance of this distinction rests on the fact that some Panamanian constitutionalists have already mentioned that the 2019 amendment attempt was a constitutional substitution. This supposes that, at least doctrinally, the possibility that the doctrine of constitutional substitution can be migrated to the Constitutional Law of Panama has been accepted. For example, Arturo

53 Bernal Pulido C. (n 36), 62.

54 Ibid 69.

55 Albert, R. Amendment and Revision in the Unmaking of Constitutions, in Landau, D. and Lerner, H. (eds), *Comparative Constitution Making*, United Kingdom, Edward Elgar Publishing, 2019, 117.

56 About the concepts of "having a constitution" and "living in constitution": Aguiló Regla, J. Sobre la Constitución del Estado Constitucional, in *Doxa: Cuadernos de Filosofía del Derecho*, 24, 2001, 445.

57 About the concept of "creating a constitution": Aguiló Regla, J. *La Constitución del Estado Constitucional*, Lima-Bogota, Palestra-Temis, 2004, 47.

Hoyos, who was a Justice and President of the Supreme Court of Justice of that country, went so far as to write that the creation of a Constitutional Court independent of the Supreme Court[58] was illegitimate in substance because "it goes against the unit or basic structure of the Constitution".[59]

He also argued that the constitutional amendments reinforced "presidentialism: a greater number of Justices to be appointed, they dismember the Judiciary because they create a Constitutional Court that also has criminal functions to judge the Justices of the Supreme Court, an illegitimate amendment because it breaks the unity of the Constitution, which goes beyond the power of amendment and only can be done by the original constituent power".[60] Therefore, the Panamanian constitutional system could come to accept the existence of implicit substantial limits to the amendment power, which would be controllable under the use of the doctrine of constitutional substitution.

3. The amendment of the amendment clause.

The amendment clause in the 1972 Constitution has been modified on several occasions. Thus, both the 1978 and the 1983 amendments introduced changes to it or to other provisions related to the amendment procedure.[61] Even though current Constitutions do not adequately protect these types of clauses, various strategies have been recognized to ensure them against reforming power[62], as they can only survive the political game if they are excluded from it.[63] In this sense, there is also the possibility, at least virtually, that the amendment clause could eventually be considered unamendable.

Despite the importance of the constitutional amendment rules, Constitutions, when modified, do not usually require a greater consensus than other constitutional provisions or that they are even unamendable. Panama, for example, excludes the provision. However, this does not imply that there could not be implicit limits to the reform of the amendment clause, as occurs,

58 This was one of the subjects that the amendment intended to incorporate into the Panamanian Constitution.

59 Hoyos A. (n 10), 47. Then, on page 51, he maintains that "it should not be forgotten that constitutional amendments have implicit substantial limits: the basic structure of the Constitution cannot be altered, for example with the creation of a Constitutional Court with the implications that I have noted".

60 Ibid, 44.

61 Spadafora Franco, W. Las Experiencias de Panamá sobre Procedimientos de Reformas Constitucionales, in Gutiérrez de Comenares, C. M. (coord), *Seminario "Las Experiencias de Centro América, Panamá, Belize y República Dominicana sobre Procedimientos de Reforma Constitucional"*, Guatemala, Konrad Adenauer Stiftung, 2009, 115-117.

62 Albert, R. *Formas y Función de la Enmienda Constitucional*, Colombia, Universidad Externado de Colombia, 2017, 281-364.

63 Ibid 362-363.

for instance, when a Constitutional fraud is committed due to antidemocratic purposes.[64]

V. JUDICIAL REVIEW OF CONSTITUTIONAL AMENDMENTS.

One last important question is whether the Supreme Court (or other body) can review the constitutional amendments. The answer to this question is that the Court is competent to do so[65], but with the clarifications that will be made below. These clarifications arise mainly from a critical point of view, especially for those on the rulings of the Court that define the limits of its control over the reforms.

1. The normative basis of the competence of the Supreme Court of Justice to review constitutional amendments

As noted, the Supreme Court of Justice is competent to review the constitutionality of constitutional amendments. In fact, this power is exercised, like the rest , by means of a true monopoly.[66]

This competence comes from the Constitution of 1972 and the Judicial Code of Panama of 2001[67] ("Código Judicial"). Regarding the Constitution, Article 314 final paragraph establishes that the Constitutional Act that is approved in accordance with said provision or with Article 313 (regulating the constitutional amendment) will come into force upon its publication in the Official Gazette, which has to be accomplished by the Executive Branch within ten working days of its ratification by the National Assembly or within thirty days of its approval through referendum, "however, a publication after the expiration of the delays shall not be a cause of unconstitutionality".

The latter phrase should be interpreted as recognition of the competence to review the constitutionality of the amendments, since it is the only way in which it would make practical sense. Thus, it must be remembered that one of the principles of argumentation is that of interpretative charity, which has a methodological nature, which in its weak version invites one to optimize the argumentative contribution of others unless there are empirical or

64 ALBERT, R. (n 62), 286-289.

65 MEJÍA EDWARD, J. (n 18), 480 ("judicial review comprehends the examination of bills, as well as constitutional amendments").

66 HOYOS, A. (n 18), 789-790; MEJÍA EDWARD, J. (n 18), 478-479; RODRÍGUEZ ROBLES, S. (n 18), 313; BREWER-CARÍAS, A. R. (n 18), 195; FERNÁNDEZ SEGADO, F. (n 24), 440.

67 It is cited as the Judicial Code of 2001 for the date of publication in the Official Gazette of its revised version (September 10, 2001). See https://www.gacetaoficial.gob.pa/gacetas/24384_2001.pdf.

conceptual data that indicate otherwise.[68] So, if the Constitution indicates that extemporaneous publication is not a "cause of unconstitutionality", the most rational way to understand those words is that there are other normative actions that are. And if there are possibly unconstitutional actions, the Supreme Court is the body which should review them, as the Constitution has conferred it monopoly of constitutional control.[69]

Along with this constitutional provision, academics usually find a direct foundation for the judicial review of constitutional amendments in Article 2556 of the Panamanian Judicial Code of 2001.[70] This provision establishes that "[t]he Supreme Court of Justice will decide on the constitutionality of a constitutional amendment only when the Executive Branch vetoes to it, after having received it for its promulgation and before it, considering that it is not has adjusted to what is established by the Constitution".

2. Who can request the unconstitutionality of constitutional amendments?

In accordance with Article 2556 of the Judicial Code of Panama of 2001, the initiation of a process for an amendment to be declared unconstitutional corresponds to the Executive Branch.[71] According to its text, this occurs if the Executive Branch "vetoes it, after having received it for its promulgation and before this, considering that it has not been adjusted to what is established by the Constitution". Since Article 183.6 of the Constitution of Panama of 1972 establishes that "the President of the Republic may exercise the following functions by himself/herself: [...] veto bills that he/she considers to be improper or unconstitutional"[72], for a systematic argument it should be

68 Bordes Solanas M. *Las Trampas de Circe: Falacias Lógicas y Argumentación Informal*, Spain, Cátedra, 2011, 318-319.

69 This interpretation is shared by Edgardo Molino Mola, quoted in Llobet, J. *Acceso a la Justicia y Derechos Humanos en Panamá*, Costa Rica, Instituto Interamericano de Derechos Humanos, 2009, 144 ("in effect, Article [314] of the Constitution in its final phrase says: 'a publication after the expiration of the delays shall not be a cause of unconstitutionality'. This last expression is indicating that constitutional amendments can be the object of direct action of unconstitutionality, which indicates that this could also give rise to considering that, constitutionally, the objection of unenforceability of a constitutional amendment could also be admissible, which, as we have said, is contemplated in the Judicial Code and the norm has not yet been challenged as unconstitutional").

70 Ibid; Cigarruista Cortez, A. Los Procesos Constitucionales en Panamá, in Consell Consultiu de la Generalitat de Catalunya and others (eds), *Constitución y Justicia Constitucional. Jornadas de Derecho Constitucional en Centroamérica*, Spain, Consell Consultiu de la Generalitat de Catalunya, 2007, 315.

71 Mejía Edward, J. (n 18, 2013), 480; Mejía Edward, J. (n 18, 2019), 101; Cigarruista Cortez, A. (n 70), 315.

72 In www.constituteproject.org, the word "inexequibles" used in Article 183.6 of the Constitution in its original Spanish text is translated to "unconstitutional". However, as will be

interpreted that when Article 2556 of the Judicial Code confers legitimacy to initiate the process to the "Executive Branch", in reality it refers to the President, since it is he who has the power to veto or object to the amendments.

However, some academics maintain that, as there is a constitutional basis to review the amendments, in Article 314, final paragraph of the Panamanian Constitution, the legitimacy to challenge them corresponds to every citizen, that is, there is a popular action in the terms of Article 206.1.[73] But, even when this is interpreted in this way, the experience of Panama indicates that "the filing of unconstitutionality actions is rarely used, due to the number of actions that are filed, which may be due to the formalist way in which these actions are resolved".[74] However, the majority opinion is that this type of control can only be activated by the Executive Branch in the sense already stated.[75]

This last opinion has been reaffirmed by the Supreme Court of Justice in one of the few cases in which an attempt was made to review constitutional amendments. In a judgment of April 13, 2007, the Court held: "According to what has been stated, the Supreme Court only has jurisdiction to hear the possible unconstitutionality of a bill or of constitutional amendments when the President of the Republic vetoes it".[76] In this case, Constitutional Act n° 1 of July 27, 2004, which amended the 1972 Constitution, was challenged. Later control was sought at the initiative of a popular action, but the claim was rejected.

3. The moment of the review: formalist response and the way to overcome it.

Another peculiarity of the judicial review of the constitutional amendments in Panama is the moment in which it must be carried out. According to Article 2556 of the Judicial Code, the decision of the Court must deal "with the enforceability of a constitutional amendment" only when the Executive "vetoes it, after having received it for its promulgation and before it". Thus, the objection of unenforceability is a way by which "not perfected legal

explained later, the word "unconstitutional" has different connotations to "inexequible" (whose closest translation would be "unenforceable").

73 Llobet J. (n 69), 144 (citing Edgardo Molino Mola). On the popular action of unconstitutionality in Panama: Brewer-Carías, A. R. Acción Popular de Inconstitucionalidad, in Ferrer Mac-Gregor, E., Martínez Ramírez, F., and Figueroa Mejía, G. A. (coords), *Diccionario de Derecho Procesal Constitucional y Convencional. Tomo I*, Mexico, Poder Judicial de la Federación – UNAM, 2014, 34.

74 Llobet, J. (n 69), 146.

75 Mejía Edward, J. (n 18, 2013), 480; Mejía Edward, J. (n 18, 2019), 101; Cigarruista Cortez, A. (n 70), 315.

76 13 April 2007 (ruling) Supreme Court of Justice.

norms are controlled and, therefore, not in force".[77] Consequently, the review can only take place in the context of a presidential veto or objection, prior to the entry into force of the Constitutional Act containing the amendment. So, the possibility of subsequent control has not been recognized. Thus, Sebastián Rodríguez affirms that "the President of the Republic is the only one empowered to object to the constitutional unenforceability of laws, as well as constitutional amendments due to formal defects, *when both are in the elaboration phase*"[78] (own highlighting).

In the judgment of April 13, 2007, cited above, the Supreme Court of Justice affirmed that "the unconstitutionality action only proceeds to attack those acts in force, that is, those provisions or acts that have been born into legal life and that their legal effects are taking place. It is not appropriate then to attack those acts in the process of formation or that have not yet emerged, because for this the legislator has created another type of action to exercise the respective judicial review"[79] (the latter, in reference to the objection of unenforceability). This was an argument to reject a claim filed after the veto or objection phase. However, this interpretative option has formalist connotations that can be overcome if the formal limits to the amendments are conceived as constitutive norms.

The concept of "constitutive norms" is not specific to Law. In general, they create the very possibility of carrying out actions or of facts occurring (here "institutional"[80]); or what is the same, they create the possibility to produce results by indicating how it is possible to produce them or that they occur.[81] In such a way, legally speaking, these norms are those that determine the conditions that must be met to validly produce an institutional result.[82] This class of norms is subdivided into rules that confer power and purely constitutive norms: the former establish that, if certain circumstances occur and someone performs a certain action, a reality or state of affairs that did not

77 González Montenegro, R. (n 19), 282.

78 Rodríguez Robles, S. (n 18), 315. Also, see Medina Rubio, R. La Objeción de Inexequibilidad, in *Anuario Iberoamericano de Justicia Constitucional*, 13, 2009, 388.

79 13 April 2007 (ruling) Supreme Court of Justice.

80 Citing Josep Aguiló: "We say that an action is natural when the change it generates (the result it produces) takes place in the physical world and the possibility of its occurrence is independent from the prior existence of some kind of norm (scratching a foot, making a cake, having sexual intercourse or killing another are examples of natural actions). On the contrary, institutional actions, although they have physical 'support', are changes in an institutional world created by constitutive norms belonging to a certain normative system (promising, christening, legislating, getting married, buying, or contracting are examples of institutional actions)". See Aguiló Regla, J. Acordar, Debatir y Negociar, in *Doxa: Cuadernos de Filosofía del Derecho*, 41, 2018, 230.

81 Pérez Lledó, J. A. Normas Constitutivas: Reglas que Confieren Poderes y Reglas Puramente Constitutivas. Las Definiciones, in González Lagier, D. (coord.), *Conceptos Básicos del Derecho*, Spain, Marcial Pons, 2015, 28.

82 Atienza, M. *El Sentido del Derecho*, 1st ed, 5th reprint, Spain, Ariel, 2009, 82.

exist before is constituted; and the latter produce a normative result without the need for someone to perform an action (exercise a power conferred by a norm).[83]

Thus, when discussing "formal limits" to the amendments, reference is made to the constitutive norms that rule them (specifically, rules that confer power): they are generally defined as the procedures to follow to review the constitutional text[84], that is, they are norms that determine that if certain circumstances occur (the amendment procedure) and someone performs an action (the body with reforming power), then a previously non-existent fact (the produced amendment) is constituted. From this perspective, having failed to comply with these rules, the institutional result dependent on them (valid modification to the Constitution) has not been produced, for there is only an "appearance of amendment" susceptible to invalidation, since in reality it would only be verifying non-compliance with the rules that confer power to amend[85], which would be totally independent from the moment in which this verification is made.

This interpretation would not be based on the Judicial Code, but on Article 314, final paragraph, of the Panamanian Constitution of 1972 and the phrase "a publication after the expiration of the delays shall not be a cause of unconstitutionality". Once again, here is the application of the principle of interpretative charity: if the publication of an amendment is always after the possibility of veto, it would not make sense to mention that its extemporaneity is not a "cause of unconstitutionality" if it were assumed that it is only possible to raise a controversy regarding said unconstitutionality at the time of the veto or objection of unenforceability, since this approach would not be possible at that moment, because it would be impossible to anticipate that the amendment (in the process of formation) would not be published in time. Those words do make sense if it is assumed that it is possible to challenge the amendment even when the time to veto or object to it has passed.

4. Reviewable aspects: a review circumscribed to the formal limits.

The fact that the Constitution does not expressly establish stone clauses or unamendable contents has led to the interpretation that a judicial review can only deal with the formal limits established in Title XIII of the Panama Con-

83 Ibid, 83-84.

84 Ramírez Cleves G. A. (n 39), 339.

85 This would dispel the problems related to the use of the Constitution as a control parameter of other constitutional norms. In this case, the control parameter would be the constitutional norm that provides for the rules that confer reforming power, but the object of control would only be an apparent constitutional norm, since its introduction in the fundamental text would be preceded by a breach of the conditions necessary for it and, therefore, it is an institutional result that never occurred.

stitution of 1972.[86] In this sense, Article 2556 of the Judicial Code provides that the objection of unenforceability may be raised by the President of the Republic when he considers that the amendment "has not been adjusted to what is established by the Constitution". This provision has been interpreted as referring only to what is expressly established, with the exclusion of possible implicit limits.

However, as stated in section IV.2, an alternative proposed by Panamanian academics to overcome the lack of express substantial limits is the migration of the doctrine of constitutional substitution used in countries such as Colombia or India, whose constitutions do not have them either. It would allow the Court to review whether the reforming power has exceeded its competences, which are limited by the barrier that divides it from the constituent power: the impossibility of modifying the basic structure of the Constitution, since this only corresponds to the latter in an act of constitutional creation.[87] This will grant the power to review the reforms not only for its procedure, but also for its content.

VI. CONCLUSIONS

Based on what has been said in this paper, the following conclusions can be reached:

a) Panama has had four constitutions since its independence from Spain in 1821 and separation from Colombia in 1903: in 1904, 1941, 1946 and 1972. The latter, currently in force, has been subject to amendments in 1978, 1983, 1994 and 2004.

b) Like all Latin American constitutions, Panama's is characterized by three branches of power: the Legislative, Executive and Judicial. The first is constituted by the National Assembly, integrated by seventy-one members popularly elected for a period of five years. The second is composed of the President of the Republic (popularly elected for a five-year period) and the Ministers of State, although there is also a Cabinet Council, which consists of the meeting between the President or the Acting President, the Vice President, and the Ministers of State. The third is composed of the Supreme Court of Justice, tribunals, and such other lower courts as the law may establish. The system is presidential and has even been described as hyper-presidential.

c) The Supreme Court of Justice has a true "monopoly" over constitutional review. For this reason, it has been said that Panama's is one of the most concentrated, exclusive, and extensive systems of judicia review that

86 Rodríguez Robles S. (n 18), 315; González Montenegro, R. and Rodríguez Robles, F. La Objeción de Inexequibilidad Constitucional en Panamá, in *Anuario Iberoamericano de Justicia Constitucional*, 5, 2001, 135.

87 Hoyos, A. (n 10), 47.

exist, by attributing to the Court the exclusive power to hear and decide on the unconstitutionality of all State acts.

d) Formal constitutional change is regulated in Title XIII of the Constitution of Panama of 1972, which is titled "constitutional amendment" and consists of two provisions: Articles 313 and 314. Article 313 prescribes constitutional amendments in a strict sense, while Article 314 paragraph 1 seems to indicate how to carry out a constitutional replacement, since it indicates the rules to adopt "a new Constitution" through a Parallel Constituent Assembly.

e) There are formal limits to constitutional amendments. The initiative to propose them corresponds to the National Assembly, the Cabinet Council or the Supreme Court of Justice. Once the initiative is presented, it can be submitted for approval through two different procedures. Both need the intervention of two conformations of the National Assembly (a first that agrees on the amendment and a second that must ratify or approve it). However, the difference is that the one foreseen in the Article 313.1 of the Constitution of Panama of 1972 does not allow the second legislature to modify the project agreed upon by the first, while that of Article 313.2 does confer power to alter it. However, in this latter scenario, once the amendment has been approved, it must be published in the Official Gazette and submitted for "popular consultation through a referendum".

f) The Panamanian Constitution of 1972 does not establish express substantial limits to the amendment. The closest thing to it is paragraph 4 of Article 314, which states that in the process of creating a new Constitution that implies a total or partial "reform", "[t]he Parallel Constituent Assembly […] in no case may adopt decisions with retroactive effects" or that alter "the terms of office of elected or appointed officials who are exercising their functions at the moment when the new Constitution enters into force".

g) Despite the fact that the Constitution does not provide for substantial limits, academics have stated the possibility of migrating the doctrine of constitutional substitution that is used in countries such as Colombia or India to overcome this deficiency and review the amendments that imply a modification to the basic structure of the Constitution.

h) The Supreme Court of Justice is competent to review constitutional amendments, but only for formal defects. This has been interpreted by means of Article 314 final paragraph of the Constitution and Article 2556 of the Panamanian Judicial Code of 2001. The response of the Supreme Court is that the only legitimate subject to request the unconstitutionality of these is the President of the Republic through the objection of unenforceability, that is, a prior review, at the time of receiving them for its promulgation.

i) However, this formalist response could be overcome in a double sense. Regarding the moment of review, if it is assumed that the formal limits to the amendments are constitutive norms and the phrase "a publication after the expiration of the delays shall not be a cause of unconstitutionality" of Article

314 final paragraph of the Constitution is interpreted based on the principle of interpretative charity, it could be accepted at a time after the opportunity to raise the objection of unenforceability. With respect to reviewable defects, the migration of the doctrine of constitutional substitution could be a response that would allow said review to not only be circumscribed to defects of form but also defects of content when the amendment implicates a change to the basic structure of the Constitution.

BIBLIOGRAPHY

Aguiló Regla, J. Acordar, Debatir y Negociar, in *Doxa: Cuadernos de Filosofía del Derecho*, 41, 2018.

_ _ _. Interpretación Constitucional. Algunas Alternativas Teóricas y una Propuesta, in *DOXA, Cuadernos de Filosofía del Derecho*, 35, 2012.

_ _ _. *La Constitución del Estado Constitucional*, Lima-Bogota, Palestra-Temis, 2004.

_ _ _. Sobre la Constitución del Estado Constitucional, in *Doxa: Cuadernos de Filosofía del Derecho*, 24, 2001.

Albert, R. Amendment and Revision in the Unmaking of Constitutions, in Landau, D. and Lerner, H. (eds), *Comparative Constitution Making*, United Kingdom, Edward Elgar Publishing, 2019.

_ _ _. *Constitutional Amendments: Making, Breaking, and Changing Constitutions*, United States, Oxford University Press, 2019.

_ _ _. Constitutional Handcuffs, in *Arizona State Law Journal*, 42, 2010.

_ _ _. *Formas y Función de la Enmienda Constitucional*, Colombia, Universidad Externado de Colombia, 2017.

Albert, R. and Oder, B. E. The Forms of Unamendability, in Albert, R. and Oder, B. E. (eds), *An Unamendable Constitution? Unamendability in Constitutional Democracies*, Switzerland, Springer, 2018.

Atienza, M. *El Sentido del Derecho*, 1st ed, 5th reprint, Spain, Ariel, 2009.

Bellamy, R. *Political Constitutionalism: A Republican Defence of the Constitutionality of Democracy*, United States, Cambridge University Press, 2007.

Bernal Gómez, B. *Historia del Derecho*, Mexico, Nostra Ediciones, 2010.

Bernal Pulido, C. Cambio Constitucional Informal: Una Introducción Crítica, in Albert, R. and Bernal Pulido, C. (eds), *Cambio Constitucional Informal*, Colombia, Universidad Externado de Colombia, 2016.

_ _ _. *Derechos, Cambio Constitucional y Teoría Jurídica*, Colombia, Universidad Externado de Colombia, 2018.

_ _ _ . Prescindamos del Poder Constituyente en la Creación Constitucional. Los Límites Conceptuales del Poder para Reemplazar o Reformar una Constitución, in *Anuario Iberoamericano de Justicia Constitucional*, 22, 2018.

_ _ _ . Unconstitutional Constitutional Amendments in the Case Study of Colombia: An Analysis of the Justification and Meaning of the Constitutional Replacement Doctrine, in *International Journal of Constitutional Law*, 11 (2), 2013.

Bordes Solanas, M. *Las Trampas de Circe: Falacias Lógicas y Argumentación Informal*, Spain, Cátedra, 2011.

Brewer-Carías, A. R. Acción Popular de Inconstitucionalidad, in Ferrer Mac-Gregor, E., Martínez Ramírez, F., and Figueroa Mejía, G. A. (coords), *Diccionario de Derecho Procesal Constitucional y Convencional. Tomo I*, Mexico, Poder Judicial de la Federación – UNAM, 2014.

_ _ _ . *Tratado de Derecho Constitucional, Tomo XII*, Venezuela, Editorial Jurídica Venezolana, 2017.

Cigarruista Cortez, A. Los Procesos Constitucionales en Panamá, in Consell Consultiu de la Generalitat de Catalunya and others (eds), *Constitución y Justicia Constitucional. Jornadas de Derecho Constitucional en Centroamérica*, Spain, Consell Consultiu de la Generalitat de Catalunya, 2007.

Enonchong, L. Unconstitutional Constitutional Amendment or Constitutional Dismemberment? A Reappraisal of the Presidential Term Limit Amendment in Cameroon, in *Global Constitutionalism*, 11 (2), 2022.

Fernández Segado, F. El Control de Constitucionalidad en Latinoamérica: Del Control Político a la Aparición de los Primeros Tribunales Constitucionales, in *Derecho PUCP: Revista de la Facultad de Derecho*, 52, 1999.

Ferrajoli, L. *Derechos y Garantías. La Ley del Más Débil*, Spain, Trotta, 2004.

Ferrer Mac-Gregor, E. *Panorámica del Derecho Procesal Constitucional y Convencional*, Madrid, Marcial Pons, 2013.

Giannareas, J. and Rodríguez Robles, S. Orígenes, Evolución y Actualidad del Constitucionalismo Social Panameño, in Fix-Zamudio, H. and Ferrer Mac-Gregor, E. (coords), *México y la Constitución de 1917. Influencia Extranjera y Trascendencia Internacional*, Mexico, Secretaría de Cultura and others, 2017.

González Montenegro, R. and Rodríguez Robles, F. La Objeción de Inexequibilidad Constitucional en Panamá, in *Anuario Iberoamericano de Justicia Constitucional*, 5, 2001.

_ _ _ . La Justicia Constitucional en Panamá, in *Anuario Iberoamericano de Justicia Constitucional*, 1, 1997.

Guastini, R. *Interpretar y Argumentar*, España, Centro de Estudios Políticos y Constitucionales, 2014.

_ _ _ . La Constitución como Límite a la Actividad Legislativa, in *Derechos y Libertades: Revista de Filosofía del Derecho y Derechos Humanos*, 8, 2000.

Hoyos, A. El Control Judicial y el Bloque de Constitucionalidad en Panamá, in *Boletín Mexicano de Derecho Comparado*, 75, 1992.

_ _ _ . Las Reformas Constitucionales de 2019: Lecciones de un Intento Fallido y Superación de una Década de Desencanto, in *Ratio Legis*, 1 (1), 2021.

Llobet, J. *Acceso a la Justicia y Derechos Humanos en Panamá*, Costa Rica, Instituto Interamericano de Derechos Humanos, 2009.

Medina Rubio, R. La Objeción de Inexequibilidad, in *Anuario Iberoamericano de Justicia Constitucional*, 13, 2009.

Mejía Edward, J. Control de Constitucionalidad y de Convencionalidad en Panamá, in *Anuario de Derecho Constitucional Latinoamericano, Año XIX*, Colombia, Konrad Adenauer Stiftung, 2013.

_ _ _ . El Control de Constitucionalidad en Panamá, in *Revista de la Sala Constitucional*, 1, 2019.

Negretto, G. L. *Making Constitutions. Presidents, Parties, and Institutional Choice in Latin America*, New York, Cambridge University Press, 2013.

_ _ _ . Procesos Constituyentes y Refundación Democrática. El Caso de Chile en Perspectiva Comparada, in *Revista de Ciencia Política*, 35, 2015.

Nogueira Alcalá, H. La Reforma Constitucional en el Constitucionalismo Latinoamericano Vigente, in *Boletín Mexicano de Derecho Comparado*, 129, 2010.

Pérez Lledó, J. A. Normas Constitutivas: Reglas que Confieren Poderes y Reglas Puramente Constitutivas. Las Definiciones, in González Lagier, D. (coord.), *Conceptos Básicos del Derecho*, Spain, Marcial Pons, 2015.

Ramírez Cleves, G. A. *Límites de la Reforma Constitucional en Colombia*, Colombia, Universidad Externado de Colombia, 2005.

Roa Roa, J. E. *La Acción Pública de Constitucionalidad a Debate*, Colombia, Universidad Externado de Colombia, 2015.

Rodríguez Robles, S. Los Dilemas de la Justicia Constitucional Panameña y sus Posibles Soluciones, in Sánchez González, S. (ed), *César A. Quintero Correa (1916-2003). Libro Homenaje*, Panama, CIDEM/IIDC, 2013.

Roznai, Y. *Unconstitutional Constitutional Amendments*, United States, Oxford University Press, 2017.

Sánchez González, S. El Amparo en Panamá, in *Revista del Instituto de Ciencias Jurídicas de Puebla*, 27, 2011.

Spadafora Franco, W. Las Experiencias de Panamá sobre Procedimientos de Reformas Constitucionales, in Gutiérrez de Comenares, C. M. (coord), *Seminario "Las Experiencias de Centro América, Panamá, Belize y República Dominicana sobre Procedimientos de Reforma Constitucional"*, Guatemala, Konrad Adenauer Stiftung, 2009.

VARGAS VELARDE, O. La Evolución Constitucional en el Panamá Republicano, in SÁNCHEZ GONZÁLEZ, S. (ed), *César A. Quintero Correa (1916-2003). Libro Homenaje*, Panama, CIDEM/IIDC, 2013.

ZOVATTO GARETTO, D. Las Instituciones de la Democracia Directa, in *Revista Derecho Electoral*, 20, 2015.