

The Emphasized Legislative in Macedonia Institutions and Enforce Laws, Regulations and Developing Administrative Improvements

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Abstract: The definition of the constitutional law is an important theoretical problem, because in literature, generally, "there is no single definition" of the constitutional law. Seen from the perspective of the broad (wide) comparative juridical-constitutional literature, a conclusion drawn can be, that the constitutional law can be defined in two main meanings: first, in the traditional meaning and, secondly, in the modern one. In the traditional sense, the constitutional law is defined as "a set of juridical norms that refer to the dispersion of state power and the exercise of that power by the state bodies and with which in the same time the reciprocal relationships within state bodies, and the reciprocal relationships between state, citizens and institutions are defined. "In the frame of the traditional sense, the constitutional law can be viewed in two basic meanings (senses) one, in the strict meaning and, two, in the broad one. In its narrowest sense, the constitutional law can be defined as "a set (an entirety) of juridical norms, intended to regulate relationships within the state between the ruler (ruler) and the governed (ruled)".¹

Key words: Constitutional law, juridical norms, reciprocal relations, legislative politics, illegal act

1. Introduction

This study empirically examines the impact of reforms in legislative politics in Republic of Macedonia under progress and developing reforms in low and judiciary system, debt management policies on borrowing costs incurred by state governments when issuing debt in the municipal bond market. To answer the question what is "the constitutional law" means to define the term "the constitutional law." The question is raised: what is the definition? To define means to explain in a concise and scientific manner the (constitutional reference data) meaning of the certain expression.²

Although the definitions of various social phenomena, so even for the constitutional law, are necessary and important "to explain the essence" of them, they, as a rule, do not reveal all sides and features of social phenomena.³ Of course the same happens with the efforts to define the constitutional law as a branch of the law. While, in its broadest sense the constitutional law can be defined as a set of juridical norms which regulate the juridical- constitutional matter (materia constitutionis) within the framework of the juridical system of a certain state. These classical definitions are held in the juridical- constitutional literature, since the nineteenth century.⁴

¹ Dr. John Alder, *Constitutional and Administrative Law*, New York, 2007, pg. 6.

² Albania Vocabulary, *Shtëpia Botuese, Toena, Tiranë*, 2002, pg. 979.

³ Dr. Esat Stavileci, *Nocione dhe parime të administratës publike*, Prishtinë, 2005, pg. 17.

⁴ See: Dr. Aleksandar Gjurgjev, Dr. Marijana Pajvançiq, *Ustavno pravo*, Novi Sad, 1991, pg. 14

Dr. Svetomir Shkariq, *Sporedbeno i makedonsko ustavno pravo*, Shkup, 2004, pg. 5; Dr. Krenar Loloçi, *E drejta kushtetuese*, Tiranë, 1997, pg. 15 - 16.

1.1 The notion of the Constitutional law

In modern terms, the constitutional law is defined as "a set of juridical norms that regulate and guarantee the freedoms and the fundamental rights of man and citizens, at the same time the organization of state power at the service of the juridical protection of freedoms and fundamental rights of citizens is determined through these norms."⁵ This automatically would mean that state power does not exist for itself, but it exists as a subject (factor) and mechanism for the protection of freedoms, of fundamental rights and dignity of man and citizen from any kind of discrimination.

In relation to that, we can say that it's not casual that in almost all modern democratic constitutions, the part of freedoms and fundamental rights of man and citizen comes immediately after the principles or the basic provisions and before the parts that regulate the organization of state respectively state power. The part that includes the freedoms and fundamental rights of man and citizens is the crucial part of the constitution, even they occupy the leading place and the state institutions exist primarily to guarantee them. That, because it is considered that the state as a social institution sui generis was born as an expression of the general will of the people (*volonté general*), respectively, as an expression of the sovereignty of the people .

1.2 The fundamental mission of the constitutional law.

The fundamental mission of the state is the maximum guarantee and protection of the freedoms and fundamental rights of the individual as a citizen of a certain state. The people⁶ in order to protect the freedoms and their personal rights, guided by reason (*ratio*), with their own will constitute the state as a political community, in which the constitution as a social contract (*originere, contractus originarius ose pactum sociale*), regulates the political system of the state, sets and defines the legal boundaries within which the activity of the state can be stretched (extended) and exercised in the society, expresses legally the sovereignty of the people and guarantees the freedoms and rights of man, which are natural rights and not donated by the state.⁷ It is about the theory of "the social contract" (The Social Contract) whose creator and originator is the brilliant French political philosopher Jean-Jacques Rousseau.⁸

Therefore, it is drawn the conclusion that the freedoms and human rights are earlier and older than the state, may be they even precede the state constitution and the organization of the state power, because man enjoys some "freedoms and natural rights since birth, such as the right to life and liberty, the right to equality, the right to security, the right to property, the right to resist to oppressors and the right to seek happiness. They are inherent, inviolable, inalienable and unpredictable "because they are given by the Creator of nature (God),⁹ but with the constitution of the state and the organization of the state power, their implementation and concrete juridical protection is ensured through juridical means and protective mechanisms which individuals can consume (use) when considering that with the illegal act ,any right or legal interest has been violated or harmed by certain state bodies.

2 Literature Review and Hypotheses

Meanwhile, in the contemporary conditions and circumstances as a reflex of strong dynamic and developing

⁵ Dr. Svetomir Shkarić, *cited work.*, pg . 3.14;

⁶ By the expression 'people' the science of the Constitutional Law means the entirety of the citizens within the border of the territory of a certain state – cited by Dr. Xhezair Zaganjori, *Demokracia dhe shteti i së drejtës*, Tiranë, 2002, pg. 32.

⁷ Veljko Mratović, Dr. Nikolla Filipović, Dr. Smiljko Sokol, *Ustavno pravo i političke institucije*, Zagreb, 1986, pg. 26.

⁸ Zhan Zhak Ruso, *Kontrata Sociale*, Tiranë, 2007.

trends of European, North Atlantic and globalization integration processes, increasingly it is required that the rights and fundamental freedoms of man remain "on the basis of the entire juridical system". In accord with that, the state authorities "not only will be necessary to respect the fundamental freedoms and rights of man and citizens, but also should play an active role in their realization." It is known the definition of the constitutional law given by the eminent British professor of the constitutional law Albert Venn Dicey: "The constitutional law includes juridical (legal) norms which have legal effect directly or indirectly on the distribution and the exercise of the sovereign state power in the state".⁹ This definition, as noted, is exclusively oriented to "the state power", as the only regulatory sphere of the juridical norms of the constitutional law.

H 1 The essential deficiency of this definition consists in the fact that it bypasses the non-state sphere of the constitutional law which is fabricated (created) by the freedoms and the fundamental rights of man and citizens and the rights of local self-government units, as a "constituent and very important segment" of the constitutional law on one hand, and, as means and measure of juridical restriction on the state power and for not exercising the state power arbitrarily abusively on the part of those who are in power, on the other hand.

Stavro Vinjau, in his book "the constitutional law"¹⁰, defines the constitutional law as a "set of rules imposed by the state, which contain the fundamental commandments on which the state is based. The same author, elaborating deeper the notion of the constitutional law says: the constitutional law, essentially, contains the regulation of the main state issues as: the form of the state, its organs, competences and mode of action, the boundaries within which the freedoms of the state can be exercised towards citizens, designated as personal freedoms."¹¹ Dhimo Dhima says that "the constitutional law refers to the branch of law that includes a certain category of juridical norms, which ratify the social and state order of a certain state, and the position the individual occupies in that state."¹² Luan Omari considers that "the constitutional law can be defined as the set of juridical norms that define the fundamental principles of the political organization of the society and the state.

H 2 The aforementioned formal sources of the constitutional law function for a more concrete and detailed regulation of those relationships and specific issues which are regulated by the constitutional acts, they function respectively for clarifying, elaborating and realizing the principled solutions of the juridical-constitutional norms in the constitutional acts.

He further adds that: In particular, the juridical-constitutional norms treat the organization, functioning and competences of the highest state bodies, their mutual relations, but also the relationships that they have with other state bodies and with citizens."¹³ A well known Croatian author, who deals with the theory on the state and the law,¹⁴ affirms the idea that "the constitutional law is an entirety of juridical norms with the highest juridical power within the framework of the state – juridical order which establish state organization, establish the basis of the social and political regulation of the state and guarantee the freedoms, rights and fundamental duties of man and citizen" Nurko Pobriç asserts that "the constitutional law includes the entirety of the juridical norms, which regulate the political institutions in which the majority of the sovereign power in

⁹ Dr. John Alder, *Constitutional and Administrative Law*, New York, 2007, pg. 6.

¹⁰ In Albanian language to mark the constitutional law as an applicative juridical discipline, not rarely it is used the optional term, or the alternative expression "the constitutional law". After the declaration of Albania as an independent and sovereign state on November the 28-th 1912, that discipline firstly was known as *The fundamental law*" (Kristo Floqi, *E drejta themelore*, Shkodër, 1920), while in 1920-1924 as *"The constitutional law"* (Stavro Vinjau, *E drejta konstitucionale*, Tiranë, 1923). – cited by Dr. Luan Omari, Dr. Aurela Anastasi, *E drejta kushtetuese*, Tiranë, 2008, pg. 10 – 11.

¹¹ Stavro Vinjau, *E drejta konstitucionale*, Tiranë, 1923, pg. 28. – Dr. Ismet Elezi, *Mendimi juridik shqiptar*, Tiranë, 1999, pg. 37 – 41.

¹² Dr. Dhimo M. Dhima, *E drejta kushtetuese e Republikës Popullore të shqipërisë*, Tiranë, 1963, pg. 6.

¹³ Dr. Luan Omari, *Parime dhe institucione të së drejtës publike*, Tiranë, 2006, pg. 8.

¹⁴ Dr. Nikolla Visković, *Teorija drzhave i prava*, Zagreb, 2001, pg. 272.

every state is concentrated, as well as the personal and collective freedoms and rights with which the political (state) power is limited".¹⁵

3. Methodology and Research Goal

The famous French author of the constitutional law Jacques Cadart, defines the constitutional law as "an entirety of juridical norms through which the state mechanism is built,¹⁶ and through which the structure and the competences of the highest state bodies are determined".¹⁷ From the point of view of the author Owen Hood Phillips, the constitutional law implies an entirety of juridical norms, which are declared in the constitution. Thus, the constitutional law is the branch of law which refers to the constitution as a juridical act."¹⁸ Such definition of the constitutional law is unacceptable and unsustainable from the view of legal science, for two basic reasons.

First, because the other branches of law (not only the constitutional law), are related relatively - in a smaller or larger size, to the constitution as a juridical act.¹⁹ This is justified by the fact that the constitution establishes the contours and the basic juridical principles for all branches of law, where as an integral node, it joins together all branches of the law within the unique legal system;

Second, although the constitution is the main and most important formal source of the constitutional law, within the composition of which there are included and collected the cardinal juridical norms with the highest juridical force, through which the fundamental issues of social and state regulation of a state, it is not a full single unique and formal source of the constitutional law.

3.1 Juridical normative acts and constitutional amendments

This is substantiated by the fact that the social relationships that enter (are included in) the object of the constitutional law are regulated not only by the constitutional acts (the constitution, the constitutional law, the constitutional amendments, the constitutional annexes) as the most important fundamental formal sources of the constitutional law, but also partially they are regulated by other general juridical normative acts, such as: certain juridical acts, regulations for the work of certain state bodies (regulation for the work of parliaments, regulations for the work of governments, regulations for the work of the constitutional courts), the decrees with legal power, the acts of the autonomous political and territorial units and units of local government, the constitutional courts decisions, as formal sources of the constitutional law, with which the juridical - constitutional norms in the constitutional acts are completed and developed.

¹⁵ Dr. Nurko Pobrić, *Ustavno pravo, Mostar, 2000, pg. 21.*

¹⁶ *The state mechanism, in its most general sense can be defined as a system of state bodies through which the state power is realised and the managerial role of the state in the society is ensured. The state mechanism consists of different bodies which differ from each other on " the task they complete and the role they have" in thi mechanism.*

In 'the main parts of the state mechanism' are included: the head of the state; government; administrative body; order force; and armed force. - cited by Dr. Dimitar Bajalxhiev, Voved vo pravoto – prva kniga, Shkup, 1999, pg. 325.

¹⁷ Dr. Nurko Pobrić, work cited, pg. 15.

¹⁸ Dr. Owen Hood-Phillips, *Constitutional and Administrative law, London, 1967, pg. 11.* – Cited by Dr. Krenar Loloçi, *E drejta kushtetuese, Tiranë, 1997, pg. 15.*

¹⁹ *The juridical act is defined as a technical – juridical instrument (means) for 'the creation, expression and implementation of the law. - cited by Dr. Dimitar Bajalxhiev, Voved vo pravoto – kniga vitora, Shkup, 1999, pg. 103.*

Related to the definition of the juridical act as a technical-judicial instrument (means): first for 'the creation and expression' of 'the law', and second for ' the implementation" of the law' it should be pointed out the fact that these two dimensions are not present in all juridical acts. For example, the constitution as the highest juridical act, act with the highest juridical power, it is not an act through which the law is implemented, but it is an act through which the law only is created. That because there does not exist any other juridical act above the constitution that it would have to execute.

One fair, logical and consistent conclusion that can be drawn about that, is that the juridical norms that the formal sources with the lowest juridical power compared to the constitutional acts contain, regulate matter of substantial juridical-constitutional nature (certain legal acts, regulations on the work of certain public bodies, such as regulations on the work of parliamentarians, regulations on the work of governments, regulations on the work of the constitutional courts, decrees with legal power, political acts of autonomous territorial units and units of local government, the constitutional court decisions), they are not authentic and primary in the regulation of the juridical- constitutional matter, but are derivative (the derivative), secondary and complementary in relation to legal norms which are in the constitutional acts, which are issued based on and for the implementation and application in practice of the juridical norms of the constitutional acts. Therefore, all these formal sources of the constitutional law (the constitution, the constitutional law, the constitutional amendments, the constitutional annexes, certain legal acts, regulations on the work of certain public bodies, decrees with legal power , acts of autonomous political-territorial units and local government units, the decisions of the constitutional courts) as a whole or together form the constitutional law as a branch of the positive internal law of a certain set. Therefore, rightly it is said that the notion the constitutional law as a branch of the law is a broader notion than the notion constitution as a juridical act.²⁰

The constitutional law, as the basic branch of the juridical system of any modern state, as professor Alexander Gjurgjev expresses, "includes the juridical norms with the highest legal power, which, as a rule, are systematized and codified in the constitution as a written and codified legal act and which of importance is at the top of the hierarchy of general legal acts."²¹ By Gjurgjev's definition "it can be learned " that the notion of the constitutional law as a branch of the law "unifies or equates with the notion of the constitution (in the formal sense) as a juridical act, respectively the constitutional law as a branch of the law is identified with the legal norms in the constitution as a written and codified juridical act with the highest legal power within the framework of the positive juridical order of a certain state." In this case, it is drawn the attention that the constitutional law as a branch of the law does not fully comply with the juridical norms ratified and expressed in the constitution as a juridical act.

Moreover, to confuse or to take as synonymous the constitutional law as a branch of the law with the constitution as a legal act means to identify the exclusive juridical source in the constitution, so the alpha and omega juridical source of the constitutional law: such a definition is ungrounded and unstable even from the side of the juridical constitutional logic. In the most general sense, as a branch of the positive law of a certain state as professor, Kurtesh Saliu states , "the constitutional law implies the entirety of the juridical norms that have a constitutional value and importance, which regulate the fundamental and most important social and political relationships that deal with the political power and the ratio on the political power and which are formulated and codified in a unique juridical- political document (act) called the Constitution (or by any other name, but which has the character and the power of the highest juridical act in the state)."²²

4. Conclusions

In this case, it should be considered that only those juridical norms which enjoy absolute legal priority in relation to all other legal norms, have constitutional value and importance and as such, and, as such, they determine the form(shape) of the state rule, the form of state regulation, the form of the political regime, the form of the organization of state power and the relationship among the legislative power, the executive-administrative power and the judicial power within it, and the juridical position of man and citizen in the state and society, which is expressed or manifested by guaranteeing and protecting the fundamental freedoms, rights and duties of man and citizen.

²⁰ Dr. Jovan Stefanović, *Ustavno pravo, Zagreb, 1956, pg. 5.*

²¹ Dr. Aleksandar Gjurgjev, Dr. Marijana Pajvančić, *Ustavno pravo, Novi Sad, 1991, pg. 13.*

²² Dr. Kurtesh Saliu, *E drejta kushtetuese, Prishtinë, 2004, pg 27.*

The junction (cross) of different viewpoints is preferred as the best and the most appropriate way to achieve the most rational definition. In accord with that, by crossing various views regarding the definition of the notion of the constitutional law is reached to "the integral definition" or "the comprehensive definition" of the constitutional law as follows:

The constitutional law, as a fundamental and special branch of the law within the framework of the positive juridical system of a certain state, represents the whole of the juridical norms with the highest juridical power, through which the fundamental social and political relations are regulated, the state organization is constituted, the basis of the social and political regulation of the state and the main principles of the constitutional order are set, the organization, the structure, the competences and the reciprocal relationships among the highest state bodies are regulated, including and their relationship with the citizens, there are defined the fundamental freedoms, rights and duties of man and citizen through which are established and determined the juridical boundaries of the state power, and also there are set the guarantees for their realization in practice.

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- ¹ See: Dr. Aleksandar Gjurgjev, Dr. Marijana Pajvançiq, Ustavno pravo, Novi Sad, 1991, pg. 14; Dr. Svetomir Shkariq, Sporedbeno i makedonsko ustavno pravo, Shkup, 2004, pg. 5; Dr. Krenar Loloçi, E drejta kushtetuese, Tiranë, 1997, pg. 15 - 16.
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- ¹ By the expression 'people' the science of the Constitutional Law means the entirety of the citizens of a certain state – cited by Dr. Xhezair Zaganjori, Demokracia dhe shteti i së drejtës, Tiranë, 2002, pg. 32.
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- ¹ Dr. Nurko Pobriç, Ustavno pravo, Mostar, 2000, pg. 21.
- ¹ The state mechanism, in its most general sense can be defined as a system of state bodies through which the state power is realised and the managerial role of the state in the society is ensured. The state mechanism consists of different bodies which differ from each other on "the task they complete and the role they have" in thi mechanism.
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- ¹ Veljko Mratović, Dr. Nikolla Filipović, Dr. Smiljko Sokol, Ustavno pravo i političke institucije, Zagreb, 1986, pg. 26.
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