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Emergence of the Constitution

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Abstract

The emergence of the constitution required a long process of time and due to its importance, it is the fundamental law of the state. We find two types of constitutions namely customary constitutions and written ones. The Customary Constitution consists of legal traditions, unwritten practices which regulate the way of organizing and operation of government bodies and the relations between them. Customary constitutions can be found in England, Israel and New Zealand, but it should be noted that in addition to constitutional customs also exists constitutional laws which apply concurrently. Written Constitution is a legal document, solemn, sometimes rigid, and adopted by certain special procedures that contains clear and precise provisions and is found in most countries. The first written constitutions were: United States Constitution in 1787 which was preceded by the United States Declaration of Independence July 4, 1776, and in Europe The French Constitution of 1791, preceded by the French Declaration of Human Rights and Citizen 27 August 1789.

Keywords: Legal Traditions, Fundamental Rules, The Constitution, The Supreme Law.

Brief Comments Relating To The Appearance of The Constitution

Since ancient times, in each human community there are several rules with the usual, moral or religious character aimed at regulating relations between the communities and preserves an order within the community. These rules were compiled willingly and if need their compliance was provided by applying penalties such as public disapproval or exclusion from the community.

Followed the appearance of the state, development and diversification of social relations determined the occurrence of a system of rules and of some specific structures monitoring compliance with those rules and maintain the order in the state.

Some of these rules (for regulating social relationships that relate to the management company or the organization of state power) have become fundamental rules due to the importance of these relations. These rules were not enshrined in a formal written document, it represented habits, and because of the strength and organization of the state, were called constitutional customs. The emergence Constitution required a lengthy time. In the constitutional doctrine there is no single point of view on the emergence of constitution. Some authors argue that it first appeared in England by adopting the Magna Charta

Libertatum, being a customary constitution; other authors show that the emergence of constitution is when the first constitution written appears.

The word constitution is derived from the Latin word constitutio which means "state of a thing", "settlement founded". In the Roman law the word constitutio designate laws emanated from the emperor, Gaius[1] showing that imperial constitution is what the king decrees, edicts or what sets by letter[2]. The first constitution appeared in England in 1215 with the adoption of the Magna Charta Libertatum but her training process continued after the advent of the written constitution[3].

In the feudal period, the term constitution designates those rules concerning the organization and functioning of the state, guaranteeing certain rights and freedoms, which resulted in a limitation of the powers of the monarch.

"Enlightenment" brings a new movement that is constitutionalism movement that aims to replace traditions with a written constitution.

Constitutionalism, historically, represents the offensive aimed at the establishment of separation of powers - the basic functions of the state. According to the precepts of constitutionalism, the constitution had to be a written document (Deleanu, 1996).

The first written constitution was the U.S. Constitution adopted in Philadelphia in 1787, but preceded by the constitutions of some American states issued under English rule adopted their own written constitution (e.g. Virginia - 1776 or State of New Jersey - 1777) before the adoption of the Federal Constitution.

In Europe, the first written constitution is that of France, adopted in 1791, and later, other states have adopted written constitutions, like Sweden in 1809, Spain in 1812, Norway in 1814, Holland in 1815, Greece in 1822, Belgium in 1831, etc.

In Romania, Alexandru Ioan Cuza, promulgated in 1864, Developing Statues of the Paris Convention, known as the Statute of Cuza, and election law[4], which together formed the first Constitution of Romania.

Then, in 1866, The Romanian Constitution was adopted following the model of Belgium Constitution[5].

Therefore, the constitution, we can say that arose from the need consecration of rules and principles essential for society, for the people, protected and guaranteed by the supreme power of legal rules adopted by a special procedure.

Constitution appearance caused the emergence the State of law, while also forcing the governors to undergo fundamental norms, higher standards of any law in the state.

Hegel said that every people have its own constitution which fits it deserves (Hegel, 1969).

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[1] Roman legal adviser – 2th century.

[2] Institutiones – «Constitutio principi est quod imperator decreto vel edicto vel epistula constituit».

[3] Were subsequently adopted following: in 1628 Petition Rights, Habeas Corpus in 1679, Bill's rights in 1689, the Act establishing the succession to the throne (Act of Settlement) in the 1701 Reform Act in 1832, Parliament Act in 1911 and 1949 and Act in 1958. All these acts are considered essential and are in force today.

[4] Published in the Official journal of the Romanian Principalities United-146 from 3/15 iulie 1864.

[5] Published in the Official Journal of Romania, No. 142 of 1 / June 13, 1866.

Customary Constitution and Written Constitution

In an opinion, the constitution is defined as all rules administering the organization and functioning of the state (Haurion, 1968), and in another concept (Negulescu, Doicescu, 1927), the constitution represents law of laws which includes principles of organization of the state and equilibrium relationships between the various branches of government, i.e. between the legislative, judiciary and executive.

The Constitution can be defined from several perspectives, but what prevails in the multitude of definitions of fundamental law was "the idea of a state supreme principle which determines the order in its entirety and essence of community established by this order" (Kelsen, 1928).

We distinguish two types of constitutions namely customary constitution and written constitutions.

The Customary Constitution consists of legal traditions, unwritten practices. Habits (customs) are legal rules for social conduct which, although not issued by the competent state bodies to legislate, are considered mandatory, since the expression of a human belief that respond unanimous sentiment of justice were established as mandatory by long and constant practice (Draganu, 1998).

In general, legal customs differ from mere custom or habits, in that the latter do not contain legal and binding. For simple usage become legal custom is necessary to apply a long time, constantly, in the sense that this practice is not interrupted and "conscience of a social group to be rooted belief that it is necessary to respect general force binding rule of conduct (Draganu, 1998)"and these three conditions must be met to give rise to a legal habit.

The Customary Constitution means all legal customs, unwritten practices governing the organization and operation of government bodies and the relations between them. Customary Constitution meets in England, Israel and New Zealand. We must mention that in addition to constitutional customs are constitutional laws which apply concurrently.

English constitution[6] consists of a written part which comprises statutory law (statute law) and judicial law (common law) and an unwritten part consists of customary law.

Israeli constitution was adopted after the English model with a series of written constitutional law, and New Zealand has a written constitution which part consists of a collection of fundamental laws and is not a single document.

The customary constitution is characterized generally by being flexible, that does not require a special procedure for the adoption or modification not known precisely content without a written text and can be changed easily.

In the specialized literature is outlined that not every constitutional precedent becomes custom. To achieve such a transformation must meet the following conditions (Deleanu, 1996):

- repetition - i.e. multiplying identical attitudes;
- duration - repeating that fact one period, a relatively long time;
- clarity - that is a series of facts not susceptible to diverse interpretations or any misunderstandings;
- consensus - accreditation of the previous range as the rule of law.

[6] Some authors show that it is considered wrong that English constitutional law is entirely customary as constitutional materially documents are recorded in writing, as for example: Petition of Rights, Act of Settlement (M. Prélot, J. Boulouis, I. Deleanu).

The customary constitution is a constitution flexible, "in continuous movement" but also imprecise and uncomfortable, it is difficult to maintain, for long periods, the original meaning of the custom, and it is equally difficult to determine when a custom has fallen into disuse or when one nine custom has become established (Deleanu, 1996).

Written constitution. The first written constitution was, as we have shown, the U.S. constitution in 1787 which was preceded by the declaration of independence states of North American July 4, 1776, and in Europe the French Constitution of 1791, preceded by the French Declaration of Rights human and civil rights of 27 August 1789.

The two statements are considered by some authors as the true constitution were under future constitution and were resumed in them.

Written constitution is a "written document officially systematically solemn relatively rigid, clear and precise (Deleanu, 1996)" adopted under a special procedure.

Therefore, this is a text written constitution, is adopted or amended or supplemented by a special procedure, solemn, clear and precise that one can know the exact content. The literature indicates that, in turn, written constitutions are divided into rigid constitution and flexible constitution.

Rigid constitutions are those for which review is provided a special procedure a formal one. In some rigid constitution are provided certain periods in which they can be reviewed and in others are provided cumbersome procedures and limitations of their review.

Also, to ensure the rigidity of the Constitution is required approval by referendum review.

Flexible constitution, called supple are those constitution that can be changed easily without a special procedure provided for their amendment, revision procedure is similar to that provided for customary laws.

Flexible constitution is the constitution that can be reviewed by authorities and in accordance with procedures that serve the adoption of ordinary laws (Pactet, 1932).

Conclusions

Constitution represents the fundamental law of the state which includes general rules and principles that are organized by state and state authorities are organized and function and established rights and freedoms and their guarantees.

Due to its quality, the Constitution is at the pinnacle of legal documents, creating an important therefore that all laws must be developed in compliance with the constitutional rules must be complied with.

The Constitution of a State ranks primarily within its organization and is the source of all legal regulations. "It can be regarded as sacred and inviolable precept principle that the constitution is supreme legal system of a state." (Deleanu, 1996)

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