

SUPREMACY OF THE CONSTITUTION

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Abstract

The Constitution is the fundamental law of a Member State governing the organization and functioning of the relations between public authorities and citizens rights and fundamental freedoms, and ways to guarantee them.

The Constitution is the supreme law in the state, it is at the top of the pyramid and it is the source of all legal documents and legal regulations.

Supremacy of the Constitution is ensured through an effective mechanism resulted in a legal institution called constitutionality of laws controls, including all procedures through which achieve verification of low compliance with constitutional provisions.

Keywords: Constitution, the supreme law of the state.

Introduction

The Constitution genesis required a lengthy time¹. “Constitutio” word in Roman law, designate laws emanated from the emperor. Imperial constitution, as Gaius said², is what the king decreed, dictates or what sets by letter³.

The first constitution appeared in England in 1215 with the adoption of the Magna Charta Libertatum but her training process continued after the genesis of the written constitution⁴.

In the feudal period, the term constitution designate those rules on the organization and functioning of the state, guaranteed 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 speaking, is offensive aimed at establishing the separation of powers - the basic functions of the state. According to the precepts of constitutionalism, the constitution had to be a written paper⁵.

The first written constitution of the United States Constitution was adopted in Philadelphia in 1787, but preceded by the constitutions of American States issued under

¹ In the constitutional doctrine there is no single point of view on the genesis of the constitution. Some authors argue that it first appeared in England by adopting Libertatum Magna Charta, being a customary constitution, other authors show that the genesis of the constitution is when the first written constitution appeared.

² Roman legal advisers – II-nd century.

³ Institutiones – «Constitutio principis est quod imperator decreto vel edicto vel epistula constituit».

⁴ They were subsequently adopted Petition of Rights (Petitions of Rights) in 1628, Habeas Corpus in 1679, the Bill of Rights (Bill of Rights) in 1689, the Act establishing the succession to the throne (Act of Settlement) in 1701, the Reform Act 1832 Parliament Act in 1911 and 1949, the Act of 1958. All these acts are considered essential and are ongoing today.

⁵ I. Deleanu, Constitutional Law and Political Institutions – Treatise – vol.I, Europa Nova Publishing House, Bucharest, 1996, p. 258.

English rule adopted their own written constitution (e.g. Virginia - 1776 or the State of New Jersey - 1777) before the adoption of the Federal Constitution.

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

After that, “states have adopted constitutions and constitution became not only the fundamental law of a state, but also political and legal document which mark important moments in the development of socio-economic and politico-legal states”⁶.

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

Due to its quality, the Constitution is at the pinnacle of legal documents, thus it is here an important consequence that all laws must be developed in compliance with constitutional norms, must be complied with that. “It can be regarded as sacred and inviolable precept principle that the constitution is supreme legal system of a State”⁷.

Supremacy of the Constitution, as stated in the literature, appears as something natural, as such term is used in most cases, but over time have been used other names such as the highest legal value, super legality (M. Prelot), the supreme law (G. Burdeau) or the law of laws.

Constitution of a State ranks primarily within its organization and is the source of all legal regulations.

Some authors show that the supremacy of the Constitution is based on the content and form, in this regard talking of a material and a formal supremacy.

Thus, the force of constitutional provisions must be considered from a double point of view. It always comes from their content - material supremacy - and sometimes in the form in which they are enacted - formal supremacy⁸.

“Substantiating material supremacy is that the law as a whole is based on the constitution; it is the fundamental rule of any legal activities taking place in the state. Material superiority of the constitution by the fact that it holds powers in reality, creating skills, it is necessarily superior authorities are invested with these skills”⁹.

The same author considers formal supremacy as a guarantee of the rule of material conditions shape the development and modification of constitutional texts exhibited great strength of constitution. These form conditions determine the division of the supreme law in rigid and flexible, only rigid constitutions enshrine formal supremacy of the constitution.

The literature of our country from the same perspective shows that the fundamental law is superior to other laws and regulations because “expresses more directly the will of the people”¹⁰.

Binding nature of the supremacy of the Constitution implies that no constitutional revision cannot remove nor to the material side, either the formal side¹¹. From the material supremacy of the Constitution (as the same author highlights) two consequences arising:

- a) any legislative enactment of law cannot exist if it is contrary to the Constitution, and
- b) Constitution creates only skills, whether it pays specific skill to a particular body, as long as itself does not provide the possibility and conditions of re-delegation, this body cannot surrender jurisdiction to another body¹²; “delegation of power forms is

⁶ I. Muraru, *Constitutional Law and Political Institutions*, Actami Publishing House, Bucharest, 1997, p. 52.

⁷ I. Deleanu, *op.cit.*, p. 273

⁸ G. Burdeau, *Manuel de droit constitutionnel*, R. Pichon et R. Durand-Anzias, Paris, 1947, p. 49.

⁹ *Idem*, p. 50.

¹⁰ D.C. Dănișor, *Romanian Constituion commented*, Title I. General Principles, Universul Juridic Publishing House, Bucharest, 2009, p.100.

¹¹ *Ibidem*.

¹² *Ibidem*.

impossible, but material delegation is not, such material is provided as a material power is conferred to regulate the shape of will which is his own”¹³.

Further, it shows that “formal supremacy of the Constitution consists, on the one hand, in special procedures and bodies that contribute to the adoption and revision and, on the other hand, in the fact that it creates principles procedures by which other rules will be adopted, any rule that does not comply with these procedures is invalid, that is not legal norm. Therefore, the laws related to the Constitution in two ways: one material, of compliance, and one formal, of validity. Control of validity should always precede the control of compliance”¹⁴.

In another view, it is considered that the constitution itself pulls its content from a certain supremacy, “it consists of capital rules, which, in a certain way, the basis of all political rights legislation and private law. Such mastery takes not only a political character”¹⁵. Further, it shows that political rule is accentuated by its written character, while the legal supremacy of the constitution is based on rigidity, stiffness would not be possible without the written character.

Other authors consider that the supremacy of the Constitution is based on the fundamental principles of organization and functioning of the State, as follows: → principle of legality, with the argument that there is close connection between legality and constitutionality.

In this regard, it states that “if the principle of legality requires compliance at the forefront of constitutional norms, we must admit that the legal supremacy of the Constitution is based on the principle of legality, as determined by the content of this principle”¹⁶.

→ principle of democracy¹⁷ in this respect showing that the Basic Law is one of the principal means of achieving the organization and activities of the government, of democracy, the exercise of state power by the people who holds sovereign state power in any mode democratic.

→ principle of the uniqueness of the government, he was legally own socialist constitutional doctrine. This view can be studied only from a historical perspective or in conjunction with other doctrinal opinions¹⁸.

Through The Constitution is legitimate power, is conferred authority to governors, is ensured legal in the state, are established the relations between public authorities and between them and the citizens, are enshrined and guaranteed rights and freedoms. The rules contained in the Basic Law have legal force superior to any rules of a state system of legal norms.

Kelsen¹⁹ show that law is not a system of legal rules, all located at the same level, but a building with several floors, a pyramid; in other words, a hierarchy consisting of a number of levels or layers of legal rules, the top of which is the constitution.

The Constitution is the fundamental legal document that enjoys supremacy over all other legal acts. Supremacy of the Constitution is a complex concept whose content we find in its political and legal values, showing the dominance of the Constitution in the legal system, but also in the entire socio-political system of a state.

¹³ Hauriou, Précis de Droit constitutionnel, second edition, Paris, p. 265, cited by D.C. Dănișor, op. cit., p. 100.

¹⁴ D.C. Dănișor, op. cit., p. 100.

¹⁵ J. Barthelemy, Traite elementaire de droit constitutionnel, Paris, 1928, p. 189.

¹⁶ M. Lepădătescu, The general theory of constitutional review of laws, “Didactică și Pedagogică” Publishing House, Bucharest, 1974, p. 43.

¹⁷ Idem, p. 64

¹⁸ See extensively, A. Iorgovan, Constitutional Law and Political Institutions. General Theory, Publishing House “J. L. Galleries Calderon”, Bucharest, 1994, p. 80.

¹⁹ H. Kelsen, Austrian jurist, philosopher and teacher (1881-1973), where aa is the proposed creation of the first Constitutional Court of Austria. Kelsen has built a hierarchy of rules is based on the Constitution, arguing that legal rules should be applied by the judiciary and not the politics. In his view, the Court is to decide and not political power.

Therefore, the Constitution is the supreme law in the state and has an essential role in organizing the entire socio-political system, legal, economic and cultural center of the state. The Constitution is the source of all regulations in the economic, political, social and legal. Supremacy of the Constitution is a legal political group and is based on the totality of scientific “of economic, social, political and legal factors are closely related and interaction and to be seen in relation to the constitution of their indivisibility”²⁰.

Conclusions

Supremacy of the Constitution is its quality, which positioned it on top of all state institutions and businesses, making it a legal and political reality, not just legal. It is a complex notion comprising elements that ensure a supreme position in the entire state system. Supremacy of the Constitution is having an historical character²¹.

Compliance with The Constitution, its supremacy and the laws are mandatory, rules value as principles are enshrined in the Constitution²².

In order to ensure the supremacy of the Constitution was created constitutionality control, control in our country within the exclusive jurisdiction of the Constitutional Court of Romania. This is the most important legal guarantee of supremacy of the Constitution.

To achieve this control body responsible for this effect must be independent and impartial, without allowing the interference of politics in its otherwise would violate the constitutional order of the state. As shown in the literature, “free interpretation of constitutional provisions mean violation of the fundamental law and democratic principles specific to the civilized world”²³.

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²⁰ I. Muraru, op. cit., pp. 69-72.

²¹ G. Iancu, Constitutional Law and Political Institutions, Treatise, Lumina Lex Publishing House, Bucharest, 2008, pp. 37-38.

²² Article 1. 5 of the Constitution states that: “In Romania, compliance with the Constitution, its supremacy and the laws is mandatory”.

²³ I. Rusu, Critical analysis of provisions of the Constitutional Court, Law Universe Publishing, Bucharest, 2012, page 6.