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LAW AS A REGULATOR OF PUBLIC RELATIONS IN THE CONSTITUTIONALISM DEVELOPMENT CONTEXT

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Abstract

The article analyzes the influence of law as a social regulator on the formation and development of constitutionalism. The role and multifaceted significance of law as a system of rules designed to regulate public relations are considered. It is noted that the norms of law created by the state have a hierarchical system, the upper level of which is occupied by the Constitution. The Constitution, in turn, indirectly determines the content of the legal category of constitutionalism, which in modern legal science does not have a generally accepted definition. The article concludes that constitutionalism is a multicomponent legal category that includes, first, doctrinal political and legal postulates on the constitutional structure; second, the legal and actual Constitution, which determines the functioning of political and legal institutions on certain principles; and third, the existence of an effective institutional and organizational system that implements the mechanism for protecting constitutional norms. It is highlighted that the dynamics of constitutionalism development is correlated with the complexity of public relations at the present moment. The consequence of this complexity is a change in the law, legal norms, including constitutional ones. There is a trend for universalization of national legal norms that affects the development of the elements that constitute the category of constitutionalism. They acquire a universal character as well. It is accentuated that law and constitutionalism, in their interrelation, provide social stability in the modern world.

Keywords: Constitution, constitutionalism , law, public relations, society

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1. Introduction

It is impossible to overestimate the role and importance of law in the modern world. As a phenomenon that defines and regulates social relations, law ensures sustainable stability in society. Political organization of society, embodied in the institutionalized power, i.e. in the state, which, through legal instruments, one of which is the Constitution, fulfills its functional purpose. The implementation of the functions of the state is conditioned not only by the existence of a constitutional act as such, but also by constitutionalism as a multicomponent legal category. The development of constitutionalism is directly correlated with the complexity of social relations, and, as a result, the law determines the dynamics of the constitutionalism evolution.

2. Problem Statement

Currently, the theoretical works devoted to legal issues present different interpretations and understanding of the definition and role of law. The only generally accepted postulate is that law is one of the main public regulators. At the same time, there are no special scientific studies that comprehensively investigate the meaning of law in socio-cultural discourse in the context of the formation and development of constitutionalism as a multicomponent legal category. Conducting such research will allow us to understand, develop theoretical tools and identify trends in the development of constitutionalism in its legal relationship with the modern socio-political reality.

3. Research Questions

The main problematic issues of the research, which are of both theoretical and practical interest, and which allowed us to determine the purpose of the article are:

To determine the role and significance of law as a regulator of public relations, as well as to establish the place of constitutional norms among the set of legal norms.

To identify the structural composition of the constitutionalism category, its development in the changing social and legal reality context.

4. Purpose of the Study

The purpose of the research is to identify the trends in the influence of law as a regulator of public relations on the formation and development of the constitutionalism concept.

5. Research Methods

Both general scientific and specific scientific methods of cognition are used. It should be emphasized that, since law was analyzed in the context of regulating public relations, a culturological research method was used, which makes it possible to comprehend and understand political and legal phenomena, as well as to develop the necessary knowledge, as objective as possible, about the socio-political reality.

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The specificity of the problem raised necessitated the use of a pluralistic methodology, since the key concepts analyzed in the study (mainly law and constitutionalism) can be objectively represented on the basis of a set of methodological techniques. Only through a broad approach, it is possible to identify the system characteristics and general patterns in the dynamics of both law and constitutionalism development, that responds to general validity and universalization of the considered concepts, as well as the historical refinement of the phenomena under consideration.

6. Findings

To date, there is no generally accepted definition of the concept of "Law". The doctrine of law is understood differently: as a regulatory system, as a branch of legal regulation, as a legal culture, as a value characteristic, etc.

Leon Diugi, the founder of legal solidarism, noted that there is no law without society, and there is no society without law. Since the state, fundamentally, is a politically structured society, consequently, there can be no state without law. For the state, understood as a legal state, the goal and, at the same time, its basis is the implementation of the law (Diugi, 2014). Thus, the state as a political entity of society is based on law.

To eliminate ambiguity, we define law as a set of certain rules that are established by the state and authorized by it. These rules are intended to regulate public relations, power, and freedom. This interpretation of the law allows us to perceive the established legal order as intended to limit state power.

It should be noted that the meaning of the law is ambivalent. On the one hand, law establishes or defines social reality as such and forms the structure of human relations. On the other hand, the law regulates these relations, i.e. it acts as a regulator of public relations: ubisocietasibi jus.

In its second meaning, the law, following the logic of I. Kant, is a heteronomous, i.e. an external rule for an individual, that is a rule developed and imposed by an institutionalized power, i.e. the state. This is what makes norms of law or legal norm specific. Reflecting the will of the state power (or the majority in a democracy), it is obligatory by nature (Weinrib, 2019).

There is one more meaning or, more precisely, a function of the law: it not only regulates the existing reality, but also creates a new one. This is the so-called "organizational law", which organizes the life and actions of political power and its functioning (Borella, 2008).

Thus, the role and significance of law is multifaceted. There is no doubt that law regulates public relations that are mediated by the state. The essence of the state is its functional ability to consolidate society by preventing social conflicts, as well as to be a "means" of reaching agreement in society. Law, in turn, acts as a system of rules that regulate life in society, the observance of which is guaranteed by the public authority, i.e. the state.

The law is expressed in certain rules (rules of conduct), which are its formal manifestations. It is the public authority that creates these rules of conduct or legal norms (norms of law) designed to regulate public relations.

The norms of law are strictly hierarchical, and the highest norm is the one that is based on the validity of all the norms that constitute the normative system. The set of legal norms that prevail over all other applicable and produced legal norms in the national legal order (as defined by H. Kelsen) is the Constitution.

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The meaning or role of the Constitution and constitutional norms is contradictory. On the one hand, they come from the state, but they also establish it. On the other hand, they organize the activities of the state and, at the same time, restrict its activities.

The question of the history of the first constitutional acts will be left out of brackets. Let us take it as an axiom that the first written constitutions appeared in the United States, and then in Europe - in Poland and in France at the end of the XVIII century. The adoption of the constitution was preceded by an ideological justification for the need for such restrictions and the search for the best social organization that would meet the needs of society. There were conceptual developments that served as the ideological basis for future constitutions. They were the first element of the law construct, or rather, the legal category that is called constitutionalism.

Constitutionalism in the linguistic sense is derived from the word Constitution. The term constitutionalism is used in various Humanities with different connotations. It has acquired the most common meaning in politology and jurisprudence. However, constitutionalism has not received a unified universally recognized definition, which is due to several reasons.

Firstly, the methodology that is applied by the researcher. When understanding constitutionalism, methodological pluralism is necessary, since the use of certain dogmatic methods of study (both general scientific and specific methods of knowledge) does not allow objectifying such a complex legal category as constitutionalism.

Secondly, the comprehension and investigation of constitutionalism is directly related to the type of legal understanding that the researcher adheres to. However, since constitutionalism is a complex legal category, the constitutional type of legal understanding as a constitutionally determined phenomenon in the context of an integral understanding of law is more applicable for its objectification.

Thirdly, constitutionalism, based on the two reasons given above, is often constricted to its implementation or application. In other words, the functional (from Latin functio - implementation, fulfillment) constitutionalism: real (actual, authentic, judicial), fragmentary, imaginary (fictitious, flawed), nominal, etc. constitutionalism is traditionally meant. This approach narrows the content of constitutionalism, focusing only on its actual implementation. In addition, such a "narrow" understanding of constitutionalism eventually leads just to a set of knowledge about the Constitution (Kruss, 2019).

Therefore, the conceptual approach to constitutionalism involves the use of a pluralistic methodology based on an integral legal understanding, which allows considering constitutionalism as a multicomponent legal category.

Political and legal ideas, views that have influenced the constitutional structure, the legal and actual Constitution, political and legal institutions built on certain principles, and the mechanism for protecting constitutional norms are the components or elements that determine the content of constitutionalism and that are interconnected and mutually conditioned. We think it should be accentuated that each of these elements is correlated and determined by a certain socio-cultural and historical context, which define the legal reality.

Political and legal ideas that influenced the formation of the constitutionalism concept were formed for a long time, starting from Antiquity. However, since modern constitutionalism is determined by the

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Constitution (a written Constitution is meant here), the age of Enlightenment had a decisive influence on its emergence in its legal sense.

In particular, the ideas of French enlighteners, "encyclopedists" and physiocrats in various doctrinal aspects had a significant impact on the theoretical development of the concept of constitutionalism, in terms of its perception through the prism of fundamental postulates (separation of powers, natural equality, determining the degree of freedom, etc.), and on the further actual development of constitutionalism (Censer, 2019). A number of ideas set forth in political and legal writings received, in the words of Chevallier (1958), spread in the minds, which contributed to the undermining of the foundations of the institutions of the "old regime" and led to radical changes in the forms of government.

At the end of the XVIII century, political and legal ideas of constitutionalism were absorbed in the American Constitution, which was built on the principles of separation of powers and federalism. At the same time, the first principle, or rather the idea formulated by J. Locke and S-L. Montesquieu was understood in the American doctrine not so much as a strict separation of powers, but as the allocation of power among the branches of state power (as cited in Slongo, 2019). The actual implementation of constitutional provisions has led to the formulation of the balance of powers concept or checks and balances (Rubinelli, 2019).

Therefore, the political and legal doctrine formed and forms the fundamental postulates of constitutionalism. The adoption of the first constitutional acts at the end of the XVIII century, and then in the XIX century in most European countries, marked the inclusion of new elements in the constitutionalism concept. Constitutional and legal institutions and constitutional and legal principles are considered.

Constitutional and legal institutions are a system of government bodies that are enshrined in constitutions or acts of a constitutional nature. Their totality forms a uniform institutional system, which is one of the attributes of constitutionalism.

Constitutional and legal institutions are built, function and interact on the basis of certain principles. Legal principles, in general, act as general legal regulators of public relations. Since we are talking about constitutionalism, the constitutional-legal or constitutional principles are enshrined in the constitutional norms.

Constitutional principles define the basic ideas of building a state. These include sovereignty (popular, national), form of government, separation of powers, system of checks and balances, rights and freedoms and guarantees of their observance, unitary or federal form of government, etc. The distinctive feature of the fundamental principles is their constancy, i.e. they are unchangeable in the Constitution, since they belong to the so-called "protected provisions" that cannot be changed. For example, the French Constitution of 1958 contains this "protected provision": "The Republican form of government cannot be subject to revision" (article 89).

So, constitutional principles and constitutional and legal institutions are integral elements of the constitutionalism concept and, in many ways, contribute to its existential content.

The fourth element of constitutionalism in its modern interpretation is the mechanism for protecting constitutional norms and monitoring the constitutionality of laws.

First judicial constitutional supervision was applied in the United States, where the U.S. Supreme Court's decision in the case of W. Marbury versus John Madison in 1803 (Marbury versus Madison),

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recognized the power of constitutional supervision of the Supreme Court as a certain attribute of the judicial power derived from the Constitution.

In contrast to the United States, the modern European model of constitutional control was formed only in the twentieth century. It is modern, since the judicial control over the constitutionality of laws established in France under the First and Second Empires was not actually applied.

The first European judicial body with relevant competence was established in Austria in 1919. Such a "lag" of European countries from the United States is due to the fact that in Europe the doctrine of "law-centricism" dominated, the essence of which was the exclusive role given to the law. Since 1789, when the Declaration of Human Rights formulated the postulate ("the Law is the expression of the common will"), the law has been understood only as an act adopted by Parliament, which, in turn, expresses the common will. For example, the French Constitutional laws of 1875 admitted only one criterion of a formal law to be adopted: it had to be passed by the Houses of Parliament. Accordingly, this interpretation also came from article 6 of the Declaration: the legislative activity of the Parliament is the work of the people themselves, i.e. the sovereign. Parliament, since it represents the will of the sovereign, is the highest authority. Its powers, both legislative and other, are part of the sovereignty it is vested with. Thus, it is in the Parliament that national sovereignty is concentrated, with all its advantages over other branches of government (Petrone, 2017). Carre de Malberg (1931) believed that the representative system created by the French revolution on the basis of the principle of national sovereignty is ultimately a system of parliamentary sovereignty. From such a concept, it logically follows that no one and nothing can challenge the legality of a law passed by Parliament.

So, the European model of constitutional control begins to take shape after the end of the First World War. The creation of special judicial bodies in European countries was largely due to a change in discourse in European doctrine regarding the mechanism of constitutional control: guarantees of respect for constitutionality were considered in the context of the creation of a special constitutional court (Kelsen, 1928). This is the main difference between the European model and the American one: in European countries, specialized courts were created to hear cases, for which constitutional control was usually the only prerogative.

The creation of an effective mechanism for constitutional control marked the formation of the constitutionalism concept in its formal sense. However, since constitutionalism is not a "frozen" legal category, it is in constant development, it is important to pay attention to the so-called constitutional practices, i.e. actual constitutionalism, which can be called real, which contributes to the preservation of constitutional identity by states (Khaitan, 2019). Constitutionalism cannot be understood only as a doctrine that asserts the need for a formal Constitution.

Thus, the development of constitutionalism is directly correlated with the complexity of public relations, and, as a result, with changes in law, legal norms, including constitutional ones (Thornhill, 2020). Thus, the law determines the dynamics of evolution and development of constitutionalism. The law is being "adapted" to the new socio-political reality. Law and constitutionalism as a legal construct are designed to ensure social stability in the modern world.

This task is solved through the internationalization of both law in general and constitutional law in particular (Kjeldgaard-Pedersen, 2019). There is a trend for universalization of national legal norms and

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their convergence with the law of other states (legal integration), and certain norms of constitutional law, which are universal, are enshrined in most modern constitutions. At present, all the elements that constitutes the constitutionalism concept are becoming universal. Constitutionalism is increasingly becoming a universal, multi-sectoral legal definition. Increasingly, the term "transnational constitutionalism" is found in the scientific literature, which in various connotations is defined as a theoretical model of the Constitution that embodies universal political and legal values developed by international law and reflected in the general principles of international law (Eggett, 2019). Consequently, based on such doctrinal developments, constitutionalism gradually loses its national identity.

To sum up, when analyzing constitutionalism as a multicomponent legal category, the dynamics of development of which is determined by the law reflecting social and political reality, it is necessary to highlight the trend of universalization of constitutionalism. However, at the moment, constitutionalism has a national character. At the same time, each element that constitutionalism includes has been universalized, and the country model of constitutionalism (English, French, American, Russian, etc.) depends on the existential content of each element of constitutionalism.

7. Conclusion

The following conclusions can be drawn from the conducted analysis:

1.Law is structured by the state into legal norms designed to regulate public relations.

2.Legal norms have a hierarchical character, where the dominant place is occupied by the norms of constitutional law, the role and significance of which is ambiguous in correlation with the state.

3.The norms of constitutional law enshrined in the Constitution are an integral element of the legal category of constitutionalism.

4.Constitutionalism is a structured multicomponent legal category, each element of which is interconnected and mutually dependent.

5.The constituent elements of constitutionalism are universal, which allows constitutionalism as a whole, as a legal category, to be universalized.

6.The dynamics of the constitutionalism development s determined by legal and social factors, which in their interrelation ensure social stability.

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