

THE INFLUENCE OF THE CONSTITUTION UPON THE DEVELOPMENT OF CONSTITUTIONALISM OF LATVIA

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A b s t r a c t

In the report the problem of the influence of the Constitution (Satversme) upon the development of constitutionalism of Latvia is analyzed. First of all the report draws one's attention to the fact that there exist a distinction between concept of Constitution and Constitutionalism. Constitutions are about public power and about the power bodies and power relationships. Constitutionalism is about limiting state power and represents values and methods, thus it serves the stability of state and man's liberty. The main attention is paid to the influence of Constitution of the Republic of Latvia (Satversme) upon the development and consolidation of constitutionalism in Latvia. By evaluating the contextual elements of the Constitution (Satversme) of the Republic of Latvia, the author discovers strikingly dominating features of main blocks of the expression of the constitutionalism in this constitution and its influential role. It covers a wide range constitutionally important factors- people sovereignty, division of the state powers, basic rights and freedoms, constitutional court and rule of law. From the affect of these factors, it supervenes that the state of Latvia and society has developed elements of constitutionalism, which forms a ground for integration into EU structures.

First of all, I would like to express my gratitude to the leadership of this conference, for organisation the conference on such important theme as the Constitution. That approves that you respect and love your Constitution.

The major task of my report is to give a brief interpretation of reciprocity between the Constitution (Satversme) Republic of Latvia and the concept of Constitutionalism, and thus give characterisations, concerning the influence of the Constitution upon the strengthening constitutionalism of Latvia.

The aim of this report is determined, on the one hand, by the place and the role of constitutionalism is the development of modern society and state in the process of transformation of law system, and, on the other hand, by the very caution and even elusive use of the concept of constitutionalism in Latvia and some other countries.

I think, it is therefore, because that the concept of constitutionalism is complicated enough, as well as many-sided and significant [1]. In the works of contemporary Latvian authors, related to such matters, connected with constitutionalism as rationalization and restriction of state power, along with guaranteeing of the fundamental rights such terms subordinated directly to constitutionalism, are widely used, namely, „judicial state“, „a state of democracy“, „constitutional state“, „the rule of law“, etc. Such approach is neither wrong nor insignificant, however, using the conception of constitutionalism more complex understanding about the process of transformation in law could be achieved.

In the context of my theme, I must pay attention to concerning understanding of interrelation between constitutionalism and the concept of constitution. The idea of constitution is firmly established as the basic law of the state power. It is a way to demonstrate the sovereignty of state. State sovereignty is assumed as the basis of constitutional making.

First of all it should be emphasized that a constitution is an indispensable component of constitutionalism, its constituent part, in the sense that matter and form of constitutionalism can express themselves and they do express themselves in it. On the other hand, the very doctrine of constitutionalism embraces teaching of constitution as the main instrument of political power, being its highest judicial force. A situation develops, however, that there exists a constitution in some country, but there is no constitutionalism. The relation of the parties concerned can be discussed in the other way round as well. Constitutionalism is an important indicator of the regime of state power in the countries of democracy nowadays. An option of existence of constitutionalism without the written formal constitution, in its turn, can be illustrated by experience of such countries as Great Britain, Israel and New Zealand. In the countries mentioned the material constitution is not connected with the formal juridical constitution.

The main differences between both the concepts are the following. A constitution is the body of laws, legislation and resolutions, defining, authorizing and regulating state power. It is the juridical framework supporting functioning of state power. Constitution is focused on the order based on the statute, along with organizing of state power and ensuring its stability. It also regulates the form of the state, the order of establishing institutions representing state power and area of their authority, along with the administratively territorial system, persons' legal status and their interrelation with state power.

Whereas, constitutionalism deals more with rationalization of the institutions of state power than setting up their structure, besides, it deals also with issues of their reasonable regulation and restriction. As it has been mentioned before, many aspects have been incorporated in constitutionalism, namely, theory, regulation practice concerning political process and activities of socio-political institutions (usually on the basis of the constitution) and ways of organizing state power. Constitutionalism, thus, being different from the constitution, expresses itself as a theoretical doctrine with explanatory nature having political and ideological tendencies.

That is the reason why it is admissible that constitutionalism reaches beyond the framework of juridical ideology, and political reality, carefully hidden, and comes into contact with morality and philosophy. The main principles of constitutionalism, thus, reflect not only the spirit of constitutional law but also the spirit of the whole legislation.

Next the principles of constitutionalism incorporated in the Satversme of the Republic of Latvia and their main ways of expression will be discussed.

It would be worthless touching upon issues connected with constitutionalism if strong suspicion existed about mutual unconformity and discrepancy between the Satversme and constitutionalism.

At first, now I will mention some general aspects.

It should be added that the Satversme, adopted in 1922, originally followed the model of „a strict state“ typical to European constitutionalism. It was determined by the necessity to grant a crucial role to state power in ensuring national independence, along with implementation of different reforms in society where democratic infrastructure was in initial stage, the middle class was weak and the main initiators were intelligentsia and educated bureaucracy. Dealing with constitutionalism in the Satversme of the Republic of Latvia, the fact that the independent state was being founded as a new state, based on the principle of self-determination of nations, and having the form of a democratic republic should be taken into account. The Satversme was developed as an integrating instrument, establishing a special structure of state institutions. Its general task was also to promote arrangement of the community, i. e., to create a constitutional form being able to solve the existing social and political contradictions and conflicts, thus, ensuring that fight for power, waged in the name of

different interests, would pass off by peaceful means, in the conditions of freedom and democratic solidarity of definite level.

A general fact that a set of constitutional components incorporated in the Satversme of the Republic of Latvia testifies their connection with the contemporary democratic and liberally democratic constitutional models should be stressed first of all. The Satversme was developed on the basis of constitutional experience of the Western countries of that time, and the principles of constitutionalism. It influenced both form and content of the Satversme.

It should be taken into account, that the principles of constitutionalism embraced in the Satversme of the Republic of Latvia, in general, are neither expanded strictly nor defined in bold, comparing to the texts of constitutions of several other countries. As seen from the transcripts of Constituent Assembly, such approach was an intended step not matter of chance [2, p. 1308].

It should be noted that, as mentioned above, the concept of constitutionalism has not found a place in the juridical lexis of the researchers of Latvia; they are not quite familiar with all the range of its problems. During 1920's-1930's this concept was ignored completely because of the opinion that in the period of the positive law doctrine such a conception refers to the past only as one connected with groundless declarations loud slogans, and that it is applied to the „period of constitutional romanticism“ [3, p. 41]. In the works of contemporary authors, the concept of constitutionalism was used for the first time in the collection of articles „Reform of Satversme in Latvia: pros and cons“ [4] and in recently published text book „History of Law in Latvia (1914-2000)“ [5]. A comparative analysis of constitutionalism in Estonia, Latvia and Lithuania is realized in the important research by professor Caroline Taube [6].

However, in spite of being even of such a quality, the performance of the Satversme has proved right in two turning points crucial to the fate of the judicial system of Latvia, namely, during the period of consolidation of national independence (1922-1934), and in the time of restoring national independence after 1990. In both cases the Satversme guaranteed the basis for founding the constitutional system of Latvia, juridical rational and correct. It was connected with the orientation of definite values peculiar to the Latvian people, as well as social conformity with the following basic approaches: juridical necessity and succession of national independence, guaranteeing a judicial state with democratic orientation, along with human rights.

The stress should be laid on the fact that restoration of function of the Satversme in 1993, by no means, can be regarded as a step backwards, on the contrary, it was a step towards future, due to the fact that the Satversme had incorporated important principles of contemporary constitutionalism, which have withstood important historical trial of time.

Speaking on the positive role of the significant mediator, played by Satversme in the transformation processes nowadays; several changes should be emphasized, promoted by the Satversme, namely.

First transition from a totalitarian one-party system to democratic political pluralism, as well as pluralism in other fields of life.

Second transition from the system of state power, not troubled with a burden of rights, to a different system, to the system where „the rule of law“ has been consolidating slowly and gradually.

Third participation in the progress of Latvia towards the legal system of the European Union.

Now, more about details.

In Article 1 and Article 2 of the Satversme the principle of democracy corresponding to contemporary constitutionalism has been consolidated, along with the principle of People sovereignty and state sovereignty. The idea of public power originated from the people and it's functioning in close co-operation with the nation. Therefore Article 1 and Article 2 should be considered in close interconnection. Besides, these articles, together with the introductory text, namely, „the Latvian People have adopted, through their freely elected Constituent Assembly, the following Constitution“ [7, p. 3], reflect the idea, rooted in the modern

constitutionalism.

That means „the people of Latvia" realize their self-sufficiency and exercise their power by electing social self-governing institutions, that is, expressing their will with the help of the legal basis consolidated in the Satversme. The People's „self-government“, in accordance with the Satversme, can express itself both in the forms of representation and direct democracy. Democracy is based on people's free will. The main thing here is to establish a state with goal to accept the order of democracy and ruling of majority. These components of content of constitutionalism acquire a systemic manifestation, that is,

- the absolute majority of the grown-up citizens have the right to vote in general election (Article 8);
- all votes have equal rights (Article 6);
- the Saeima, representing national sovereignty, is elected in general, equal, direct and proportional election by secret ballot (Article 6);
- the persons who are not being elected (executive power);
- are subordinate to the elected with the decisive authority in the adjudicating the most important matters (Article 59);
- the people's will is implemented in laws. Article 64 of the Satversme defines: „The right of legislation belongs both, the Saeima and to the people, within the limits laid down in this Constitution“.

It is needed to stress some significant aspects of constitutionalism, in connection with the above mentioned.

Democracy, consolidated by Article 1 of the Satversme, is based on the thesis that all citizens as subjects of sovereign rights can be authors of laws, due to their citizenship. Such special general definition concerning political status of citizenship in Article 1 is consolidation of a democratic republic. Republican regime provides citizenship, that is, citizens, for the right to participate in legislation. Everybody, who is subject of sovereign power, at the same time, becomes its co-author. The subject of public power is also its author at the same time.

The Satversme does not merge the people's sovereignty with Latvian state sovereignty: „The sovereign power of the Latvian state belongs to the People of Latvia“. It is a very essential manifestation of democratic constitutionalism. The ruling of people is an integral part of democracy. It is a legal basis not only for delimitation of a state and civil society, but also for implementation of the principle referring to division of state power, as well as for restriction of state power. It eliminates, in its turn, option for sovereign state power to subjugate and restrict a person's rights and freedoms.

The principle of people sovereignty, related to the requirements of constitutionalism, thus, should be united with the principle of division of state power, along with the principle of basic freedoms.

In accordance with context of the content of Article 2, Article 8, Article 9 and Article 80 of the Satversme, the „people of Latvia“ are citizens of Latvia as a whole. Sovereign public power in modern society belongs to the people. They are not subject to any other power, but the citizens' will, that forms state power, as well as power of citizens' internal harmony. People are the ultimate and supreme fundament of power.

Space of expansion of state power is determined by mutual agreement of citizens, embodied in the constitution. The Satversme, however, as said before, does not emerge people's sovereignty and state sovereignty in a spirit of Rousseau. Any other subject can not implement sovereignty, owned by people. The Satversme both offers definite institutions for implementation of sovereign power, namely, a state with its institutions, and legitimizes state sovereignty. In context of the Satversme, thus, the conceptions of „constitutionalism“ and „democracy“ can not be either unified or merged. Constitutionalism, incorporated in the Satversme, expresses loyalty only to the democratic solutions widely approbated in constitutional practice. First of all, it refers to the rational forms of democratic legitimization and decision making procedures, namely, general election, popular voting and procedure of legislature. E. Levits deals with options, concerning interpretation of this concept in a more detailed way, pointing out, that the main branches of the principles, originating from the juridical conception of *democracy*, concern public participation in making public decisions, referring to election, in particular, division of public power with priority of the parliament, as well as mutual supervision, the right of subordination of public power, that is, priority of law, meaning the „rule of law“. They incorporate respect and equality of the subjective right of the individuals for public power, especially for human rights, specific principles of a judicial state, particularly, proportional principle and the principle of loyalty, along with social solidarity [8, p. 64].

There is every reason to say that constitutional democracy of wide-scale has been consolidated in the Satversme, but not any campaigns of democratic nature, because in their context open populist and thoughtless determinations can dominate along with ignoring of rights of persons and minorities group. It has been specified in a range of articles, namely, articles 48, 64, 65, 72, 73, 76, 77, 78, 81, 85, 114, 116. Thus, for instance, Article 73 of the Satversme establishes, that the „budget, laws concerning loans, taxes, customs, duties, railway tariffs, military service, the declaration and commencement of war, the settlement of piece, the duration of estate of emergency and its termination, mobilization and demobilization, foreign treaties“ [9, p. 27] can not be put to the popular vote.

Human rights have been defined in the Satversme (1998), as basic human rights, in close connection with international instruments on human rights (Article 89). These basic rights that are characteristic to liberal democratic constitutions have been set up there.

I must stress, that the principles of democratic pluralism and popular governing, incorporated in the Satversme, also guarantee institutional possibilities for social and national groups, comprising the „people of Latvia“, to express their interests both directly and by good offices of their representatives. The principle of democratic pluralism establishes diversity of the public subjects' interests and needs in economic, political and cultural fields of life, along with options to put them into effect in a democratic way. This aspect in the directly way has been consolidated in the articles of the Satversme, guaranteeing basic rights and citizens rights to the people of Latvia.

The most important issue, to our mind, is Article 114, defining that the „persons, belonging to the national minorities have the right to preserve and develop their language, ethnic and cultural singularity“. However, a singular feature, referring to the Satversme, is that the institute of national minorities rights has been consolidated in a way of individual approach. It is determined by the singularity of the structure of the Satversme, namely, the aspect of collective, that is, group regulation of rights is not incorporated in the Satversme. Common laws can add the variant of individual regulation.

It is quite important to note, that law „On national and ethnic groups of Latvia and their right to autonomy of culture“ adopted on 27 March, 1991 was adopted in the period when the rights of ethnic minorities (national minorities) were not consolidated yet in special international instruments after World War II. Only in 1992, a special UN declaration was passed, and only in 1994, the Council of Europe adopted a Framework Convention for the Protection National Minorities. It should be emphasized that the law of Latvia of 1991 was the first document of the kind in the post-communist East European countries [10, p. 54].

The Establishment in context of the Satversme appears in two aspects, both as uniform subject of sovereign power and the structure of interrelated institutions, which perform state power functions in different stages. An important component of the constitution namely, the principle or doctrine, referring to division (not separation of state power) has been evidently included in the Satversme, although not defined in words in the text.

In this aspect establishments and regulations draw one's attention in the text of the Satversme, along with the processes determined by them, in which this principle can be implemented. The main attention in the process of institutionalisation has been paid to functional division of authority among the institutions of state power. Their correlation also has been consolidated, restricting and balancing each other. The main centres of state power, namely, legislative authority, executive power, judiciary power and state control have been consolidated as functionally independent in the Satversme.

It should be noted that the Satversme, setting up area of authority for each centre of power, emphasizes constitutional legal status as ability to implement definite rights, to fulfil definite duties and to assume responsibility for implementation of them. At the same time, it means also performing of functions with different methods, at the level of different institutions, taking into consideration the necessity of balancing „weight and counterbalance“. In the framework of the division system of state power, each institution can implement its function not usurping the right of another institution.

The Satversme is penetrated by the conception that legislative power is regulated by the constitutional system as a whole, whereas, executive power, judiciary power and power of state control, are regulated by the rights embodied in special laws.

The thesis mentioned above, thus, proves right, that constitutionalism is not merely a declarative set of legal regulations. The stress is laid on the processes of different subjects' legal behavior and interrelation.

The Satversme still represents democratization of public power, the main guideline of the constitutional reform, that is, transition from the traditions of a totalitarian state (monopolist) to the state where diverse public needs and basic rights should regulate the framework of activities.

The Satversme incorporates also self-defence means, referring to values of constitutionalism embodied in it. First, mutual power monitoring balance functions within the framework of the institutional structure of power, precluding concentration of too much power at one institution's disposal, but subordinate state power to the rules of constitutionalism, as well as gives people the light to interfere if it is necessary. It is a traditional method of constitutionalism (see Articles 2, 20, 28, 40, 41, 45, 48, 63, 65, 72, 77, 78, 81, 85, 89, 92 and 116 of the Satversme).

Second, the system of providing for pluralism of political process has been incorporated in the Satversme, characterized by legality of opposition, as well as consolidation of protecting rights referring to national minorities (see Articles 72, 74, 91, 92, 94, 114 of the Satversme).

In the Satversme such principle as the principle of law supremacy is included. Article 85 of the Satversme sets up that the Court of the Satversme in the framework of competence, defined by law, deals with the cases on compliance of laws with the Satversme, and it is authorized to recognize laws, provisions or their parts to be invalid if they do not comply with the Satversme. It testifies that the Satversme makes use of the principle of constitutionalism as the rule of law, guiding Latvia along the road of building the state subject to the rule of law. This principle determines that priority of law should dominate power. Since

constitutionalism is an important feature of political regime, consequently, an instrument of primary legislation can be only the constitution. The rule of law over power means that all the institutions and officials of the state follow the rules of democracy, consolidated in the constitution. Presumption of basic rights protection prevails in the rules. Ideology of consolidation and protection of the basic rights dominates in the latter aspect, especially after 1998.

The author is of the opinion that dealing with the most important expression of constitutionalism in the Satversme of the Republic of Latvia is only the beginning of the subject matter. Much broader and deeper research can follow on issues of constitutionalism in Latvia. At the same time, there is also an urgent topic related to improvement of the content of the Satversme in compliance with the level of development of the contemporary constitutions.

One of the greatest drawbacks in Latvia is separate and differentiated development of the state and the civil society. The process of development of the civil society has lagged behind considerably. It is still in the making, that is why its capability to respond to the principles of constitutionalism and to influence political and economic processes of the state is of little importance and could be expected in the distant future. All the factors make the process of constitutionalization in Latvia more difficult and complicated.

However, it should be kept in mind, that one thing is theoretical expression of constitutionalism (formal constitution), but the other thing is implementation of constitutionalism directly in life of society, that is, in practice (material constitution of Latvia). There exist great differences between these levels for the time being.

The need for deep-rooted, refined traditions of constitutionalism in parliamentary democracy is totally felt. It troubles successful performance of the structure of parliamentary democracy defined by the Satversme. In other words, the principles and legal provisions rooted in constitutionalism are quite enough, however, thinking and conduct of individuals and society should be essentially changed and improved. The most urgent issue is level of political responsibility of the Members of Parliament (Saeima) and the Members of the Cabinet. Both the members of Saeima and the officials of the Government quite often are unable to balance their own interests or interests of a narrow group (party) with the interests of the whole nation (state). Therefore the matter of taking an oath before assuming one's duties is very important.

Conclusion

In conclusion, I would like to stress the following cognitions:

Firstly, the Satversme on a whole is a constitutional instrument functioning in reality and in such quality it is a superb factor of establishing the constitutionalism in Latvia.

Secondly, the Satversme's influence and role in the development of constitutionalism, is characterized by the fact, that its principles and norms are implemented in the legalization of constitutional process, i.e., in common laws as well as in legislations and resolutions. These are basic principles of constitutional regulation, namely, people's sovereignty, popular ruling, division of state power, basic rights, a state subject to the rule of law, constitutional monitoring.

Thirdly, the Satversme is the consolidator and enforcer of constitutionalism in the real, practical life, in the processes of constitutional legality and thus it consolidates the juridical-political constitutionalization of Latvia. The principles of the Satversme are used in the legal action of the Court of the Satversme. The Satversme guarantees basic protection in the field of basic rights and in the sphere of protection as to components of a judicial state.

Fourthly, with the constitutionalization of Latvia, the Satversme ensures an optimum development of civil society in the area of social regulation, and in it consolidates the worth of the human freedom.



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Konstitūcijas ietaka konstitucionalizmo raidai Latvijojē

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SANTRAUKA

Straipsnyje „Konstitūcijas ietaka konstitucionalizmo raidai Latvijojē“ analizuojama Latvijos Respublikos Konstitūcijas (Satversme) ietaka konstitucionalizmo procesui.

Darbo pradžioje analizuojamos konstitūcijas ir konstitucionalizmo sąvokos. Konstatuojama, kad nederā jų tapatinti. Konstitucionalizmas suprantamas kaip metodų ir vertybių sistema, garantuojanti valstybės vystymosi stabilumą ir žmogaus teises. Todėl teigiama, kad galimas konstitucionalizmas be konstitūcijas ir atvirkščiai. Tačiau tokia situacija yra sietina su nedemokratišnių politinių režimų praktika.

Straipsnyje tiriama, ar Latvijos Respublikos Konstitūcija (Satversme) atspindi konstitucionalizmo principus ir siekius. Analizuojant Latvijos Konstitūcijas straipsnius pastebima, kad yra bruožų, išreiškiančių konstitucionalizmui būdingus aspektus. Latvijos Respublikos Konstitūcijas (Satversmes) turinyje atsispindi tautos suverenitetas, valdžių padalijimas, žmogaus teisės ir laisvės, konstitucinė justicija.

Analizuojant konstitucionalizmą konstatuojamas jo dinamiškumas, tačiau pabrėžiama, kad tai atspindi Europos integracijos procesus. Teigiama, kad Latvijos integracija į Europos Sąjungą išreiškia ir sustiprina konstitucionalizmo vertybes.

