

The Law and Constitution That Positive Democracy in Timor-Leste (2024)

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Abstract

Introduction: *The Law and Constitution is a set of rules that govern a state, which may or may not be codified as a written document, which enumerates and limits the powers of a political entity. Thus, the Constitution can be applied in any global system of laws that defines the functioning of a Government and State, including several uncodified historical Constitutions that existed before the development of modern Constitutions. Timor-Leste, as highlighted in paragraph 1. Article 1 of the Constitution "The Democratic Republic of Timor-Leste is a democratic, sovereign, independent and unitary State based on the Democratic Will of the People and on the support for the dignity of the human person", and at the same time that paragraphs 1 and 2 of Article 2 of the same Constitution establish that "Sovereignty resides in the people, who exercise it in accordance with the Constitution, and the State is subordinate to the Constitution and the laws in force".*

Objective: *The constituent power assumed an identical relevance to that which fell on the concept of Constitution, much due to the work of the doctrine of the Constitution that is worth his opinion,*

Methodologies: *We use the deductive methodology in this elaboration, because all research is done through the library and other references of the articles that were consulted on the internet as a collaborative means or to assist in the application methods that have constructive value.*

Discussion: *The Law and Constitution lists the organs of sovereignty. But it does not refer to their nature, nor any criterion that allows them to distinguish them from other organs of the State, for example, from administrative organs. A decisive criterion must be the direct reference to the Constitution as a theme for the exercise of state power. Through this direct constitutional reference, the organs of sovereignty are legitimized to exercise the most relevant functions of the State.*

Conclusion: *Ending the direct link to the Constitution is for the exercise of the power of the State considering the special recognition of constituent legitimacy that it confers on them. This reference is more*

decisive in the case of courts that will seek the Constitution in the Democratic legitimacy that does not come to them from elections, and respect the laws in constitutional order cited by (Corte Real AG & Tilman CB., 2024).

Keywords: Law and Constitution, Positives, Democracy in Timor-Leste.

INTRODUCTION

We know that in a broad sense every Democratic Rule of Law has a constitution, but there is always influence from other nations that had the first Constitution in history and has evolved to the entire universe of the world. For the purpose of the study, the origin of constitutionalism is identified with the United States Law and Constitution, of 1787, and the French Constitution, of 1791. It is a factual concept of the Constitution, which regardless of the existence of a written text, or even of norms, written or not, referring to this organization; usually the expression "Material Constitution of the State" is used to describe them. Timor-Leste had an influence of the European Constitution, because it was colonized by the Portuguese Government for 450 years, at the same time it also had the influence of the Indonesian Government, because for 24 years it forcibly invaded the national territory of Timor-Leste, therefore, Timor-Leste had the influence of both States. To this end, on May 20, 2002, it was found with a constitution founded on principles such as Democracy and the Rule of Law and capable of fitting the aspirations of the Timorese people during the struggle for independence. The process of creating CRDTL took a little more than a year. The first formal step in the constituent process was taken in 2001 through the adoption of UNTAET Regulation No. 2001/2, of February (Election of a constituent Assembly for the creation of a constitution for an independent and democratic Timor-Leste). This diploma was of a comprehensive nature, establishing the electoral process for the election of members of a constituent

Assembly, the legal regime of political parties, the creation of an interpretable electoral authority, as well as the definition of the competence and composition of the constituent Assembly and the legal criteria for the approval of the future Constitution in the country cited by (Corte Real AG & Tilman CB., 2024).

Since we continue to discuss the theoretical-scientific place of the so-called "Theory of the Constitution" (verfassungslehre, in German terminology), it can be said that this constitutional knowledge that they assume, fundamentally, as a political theory of constitutional law and as a scientific theory of the dogmatics of constitutional law. Then analyze in depth each of the text approved in each of these theories.

- a. It is political because it intends to understand the constitutional order through the analysis, discussion and criticism of the normative force, and possibilities and limits of Constitutional Law.
- b. It is scientific because it seeks to describe, explain and repute the foundations of theories and ideas, in postulates, construction, structures and method of Constitutional Law.

The theory of the Constitution is more than a political theory, it is a scientific theory of Constitutional Law. According to Morlock, "it belongs to him to discuss, discover and criticize the limits, possibilities and normative force of constitutional law". For the last task, the constitutional reality from the

point of view of the relations between reality, that is, the real constitution, and formal constitutional law. However, we consider it to be one of the determined foundations of the statute of the theory of the Constitution. Like constitutional law, the theory of the Constitution is developed taking into account the structure and function of constitutional norms, but in a much more accentuated way that it maintains a permanent openness to constitutional reality. The theory of the Constitution serves to rationalize the interpreter's pre-understanding of constitutional norms. Now the central meaning of pre-comprehension is hardly discussed to obtain the results obtained by interpreting the constitutional norms, such as knowledge of explanation, criticism and reputation, it is intended that prejudices (legal, philosophical, ideological, religious, ethical) should be avoided from achieving stability.

The constitution, as a human occurrence and above all as an act of a legislative nature, can also be seen in a dynamic way, thus giving concrete possibilities as to its vital moments of birth. All of this is based on the fundamental idea that the Constitution, as a legislative act, must be observed with some peculiarities: it spreads not only a normative and main content, but a set of options that are the result of a certain will to structure the State and Society. According to Emmanuel Sieyes (1789:106) "a useful sound idea was established in 1789 is the division between constituent power and constituted power". The constituent power, which simply consists in the elaboration of a new Constitution, has different phases and scopes, due to the concrete circumstances surrounding its birth, and can be an initial constituent power, when it was exercised for the first time, or a later constituent power, in this case because it has already had the

opportunity to exercise itself before: There, because the State appears at that moment, thus endowing itself with a Constitution for the first time, as happens in cases of political independence; Here, when the new Constitution repeals the old Constitution and purely and simply replaces it for the future in accordance with the need and evolution of the country, it is fundamental in the dynamic process the democracy that grows a lot in a country of Democratic Law with its implementation based on the experience and development cited by (Corte Real AG & Tilman CB., 2024).

Research Objectives.

General Objective: The constituent power that assumed an identical relevance to that which fell on the fundamental concept of Constitution, owing much to the work of the doctrine of the Constitution of Timor-Leste.

Specific Objectives:

1. Originality is a power first, there is no other before it;
2. Independence: to be a hierarchically maximum power, not subordinated to any other type but maintains what exists with value and fundamental principle of Timor-Leste.
3. Absolutely: to be a materially unlimited power, not subject to any other rule or parameter, but must improve what it has to continue in Timor-Leste.

THEORETICAL FRAMEWORK

According to paragraph 1 of article 1 of the CRDTL "The Democratic Republic of Timor-Leste is a democratic, sovereign, independent and unitary State based on the rule of law, based on the popular will and respect for the dignity of the human person." The designation as "Democratic Re-

public of Timor-Leste" is a resumption of the formula used in the texts of the "proclamation of Independence" and the "constitution" of 28 November 1975, approved by Fretilin. While the adoption of this formula, with a content that is inscribed in the historical tradition of the post-war liberation movements, with an anti-colonialist and anti-imperialist ideological orientation, does not represent any political program but only, as stated in paragraph 2 of the same article, the affirmation of the historical continuity of the Timorese resistance and a militant tribute to its founders, designatory, to the first two Presidents: Xavier do Amaral and Nicolau Lobato. The "Republic", highlighted in the epigrapher, without adjectives, identifies the political community in its timeless totality, as a distinct pre-constitutional substratum prior to the State that now, precisely, is intended to qualify and order the laws and to assert functionality.

The dimensions of the Principle of the Rule of Law

- a. The material dimension, transcendent to the public power, which is imposed on it according to an axiology that the public power itself does not control and does not elaborate, but rather owes obedience to it.
- b. Normative dimension, which is assumed in a particular adjustment of the State Legal System at the level of normative sources, with a specific function to be attributed to the Constitution to be valid;
- c. An organizational dimension, which expresses the need for the limitation of this public power to act through its specific distribution among the public bodies, especially highlighting the role of the control of the constitutionality of the same protocol in rigor.

The principle of the Dignity of the Human Person: as a considerable material manifestation of the Principle of the Rule of Law, in general, it reveals that the person is placed as the supreme end of the Rule of Law. The principle of Legality: the reference to the "Rule of Law" imposes the idea of legality through the Constitution. However, it is not just any legality. The idea of the Rule of Law is opposed, precisely, to the arbitrariness of the exercise of power through the Law. The Law of the "Rule of Law" is the Law shaped by popular sovereignty, represented democratically, and by the idea of justice contained in the Constitution (art. 1, n.1 and art. 2, n.2 of the CRDTL). It is the dictatorial of material legitimacy, especially with reference to the catalogue of fundamental rights, and of procedural legitimacy, through democratic participation, already seen. The law that subordinates the action of the radical State to the will and sovereignty of the people. The expression of popular sovereignty by law is measured by democratic representation and legitimacy.

The legal system thus constructed according to the principle of the Rule of Law as: 1) democratic and social; 2) hierarchical under the Constitution; 3) Endowed with Mechanisms that can verify the relations of non-conformity of legal norms with norms of a higher nature. In the case of legal systems. Despite the fact that Article 2(4) of the Constitution only recognizes custom that does not contravene the law and the Constitution (Costume secundum ledge) and that Law No. 2/2002 of 20 November establishes the law as the only immediate source of law, the richness and diversity of these traditional normative systems, as well as the popular recognition of this imperativeness, it also imposes systems of application that escape the structures of the State. The rule of law is a state of constitutionality.

Among the principle of Legality, the Principle of Constitutionality stands out, since the Rule of Law has in the Constitution its normative legal order binding on all public powers that apply in the laws mechanism and procedures in application cited by (Corte Real AG & Tilman CB., 2024).

REVIEW OF THE LITERATURE

The positives of the Constitution is the responsibility of the Courts (Article 118 of the Constitution, maximum Articles 126 and 149). The decisions of the courts are mandatory and take precedence over those of other authorities (Article 118(3) of the Constitution). Constitutional competence is, in particular, exercised by the Supreme Court of Justice (Article 120 of the CRDTL) in a decentralized system of constitutional review. The intensity of the principle of prevalence of the Constitution enshrined here is revealed in the possibility of its violation occurring not only through action, but also through omission (Article 151 of the CRDTL), in terms that will be further studied below. The principle of the rule of law is, therefore, embodied in a principle of the reservation of the Constitution of the Republic with principles and types of action such as:

1. The principle of constitutional typicity of competences, by which the organs of the State only have the competence to do what the constitution allows them to do (the functions assigned to an organ are the measure of its competence!) and
 - A. Legislative: as the knowledge to issue laws, to be delivered to the National Parliament as an assembly of representatives.
 - B. Executive: as the faculty of applying laws to concrete cases, through the administration and through the Courts, to be entrusted to the king and the government.
 - C. Theoretical: theorist defines the division of political power.
2. The principle of constitutionality of restrictions on rights, freedoms and guarantees, providing that restrictions on these rights must be made directly in the CRDTL or through the law, with constitutional authorization and only in the cases provided for in the Constitution (Article 24 (1) of the CRDTL).
 - There are four (4) limits to the legislative power of the state according to John Locke:
 1. Equality of application without variation of par-

ticular cases, such as the poor and the rich, the camper or the courtier.

2. The binding of laws for the good of the people.
3. The need for the consent of the people in the increase of taxes.
4. There is no possibility of granting legislative powers to bodies other than parliament.

The principle of Legal Certainty and Protection of Confidence: The principle of legal certainty requires publicity in the acts of the public power, as well as the clarity and determinability of the sources of law. The principle of equality: it is important to say that it is an unavoidable principle in the Rule of Law. According to Article 16 (1) of our Constitution of the CRDTL, it states that "all citizens are equal before the law, enjoy the same rights and are subject to the same duties." This precept brings together two general principles in the field of fundamental rights: the principle of Universality, according to which all persons, by the mere fact of being persons, are holders of rights and duties, and the principle of equality, according to which all persons are equal before the law, and cannot be privileged or disadvantaged, according to subjective conditions such as race, sex or religion, of all the modality of wealth of the people is important to supporters rights the basic principle of expectative in regulation cited by (Corte Real AG & Tilman CB., 2024).

RESEARCH METHODOLOGY

We use the inductive methodology is based on the consultation of the reference books in the library, and in this elaboration, we also use the internet with the articles it supports as a means of collaboration. Throughout the research and documentary analysis of knowledge of science and argumentative from a legal and literary point of view are modalities to

complete the academic references in the foundation of the methodology cited by (Corte Real AG & Tilman CB., 2024).

DISCUSSION

Three important Meanings of the Law and Constitution under the following conditions:

- a. Formal sense: means that the Law and Constitution is the law of the National parliament, and established to correspond as the supreme norm of the State. however, the Constitution as a law that is different from the others, decreed in force and revised, according to its own rules, and is also like the first law of the State and like the method of validity of the other laws. Second, the CRDTL was even the first law approved by the State, by the NP on May 22, 2002, after the restoration of independence on May 20, 2002, valid and actualization in 2024.
- b. Material meaning: materially, it also integrates other norms, written and customary, with constitutional value, that is, the value of a supreme norm of the State, although they are not included in the formal text of the Constitution, in this case, as provided for in article 23 of the CRDTL, it does not exclude others provided for by law. Such as the right to a name, provided for in article 67 of the CRDTL, because we always follow the rule of interpretation in which article 8 of the CCTL is imposed.
- c. Real Sense: means the Constitution as a phenomenon of the Constitution, as referred to in the norms applied according to the awareness of its constitutional value. As, the value of custom is still the main source of Law in several parts of the territory, such as the matter of marriage, succession and family relations. However, Article 2 (4) of the Constitution and Article 2 of Law No. 2/2002 of 7 August 2002 only admit

the usual validity according to the law and the updated Constitution of Timor-Leste.

follow the current evolution in state of Timor-Leste cited by (Corte Real AR & Tilman CB., 2024):

Representative Democracy and Elections in Timor-Leste

The representative dimension of democracy is understood with the indication of the holders of public bodies, basically of the State, which carries out the mandates on behalf of the political community. The interests pursued through its activity are the general interests; and not private interests, and for this it must have the political confidence of the citizens who thus immediately define those general interests. There are two types of political mandates according to Reinhold Zippels:

- a. The imperative mandate, immune by Jean-Jacques Rousseau, a tributary of direct democracy, in which those elected would have to submit to the general will, and could be removed as a result of its violation;
- b. The representative mandate, defended by Emmanuel Sieves, in which the elected representatives, even if generically submitted to the public interest, would have the power to act - maximally through their parliamentary vote - in a manner different from the particular interests of their constituency or the group of voters who elected them, maintaining their mandate even in the situation of loss of that political confidence.

Timorese constitutional law tells us of the preponderance of this representative dimension, with several bodies of an elective nature, not only at the level of the State, but also at the level of sub-state public entities. That this is the case is one of the initial precepts of the CRDTL and it is demonstrated in article 65 in the implementation is always to

1. The elected organs of sovereignty and local power are chosen through elections, through universal, free, right, secret, personal and periodic suffrage.
2. Electoral re-election is mandatory, private, unique and universal, and is updated for each election.
3. a) Freedom of electoral propaganda
b) Equal opportunities and treatment of the various applications.
4. The conversion of votes into mandates shall follow the proportional representation system.
5. The electoral process shall be regulated by law.

Elections in Timor-Leste

The organs of sovereignty and local government are chosen through elections, through universal, free, right, secret, personal and periodic suffrage, contemplated in article 65 of the CRDTL. This type is what can guarantee the functioning of Democracy in Timor-Leste. Thus, the National Parliament decrees under the terms of paragraph i) of paragraph 2 of article 95 of the CRDTL on political parties and associations in the country under monitoring by the independent National Electoral Commission and members is part of team cited by (Corte Real AG & Tilman CB., 2024).

- Political parties are permanent organizations with the objective of participating democratically in the life of the country and of contributing to the formation and expression of the will of the people.
- Political parties have legal personality and judicial capacity and are made up exclusively of national citizens.

- For the purposes of this Law, Organizations registered outside the national territory, as well as their members or their leadership residing outside the Democratic Republic of Timor-Leste, are not considered political parties, that's a good time to understanding.

CONCLUSION

To position itself at the top of the pyramid, the Law and Constitution that gives astonishment to the other laws are in force in all sovereign States, namely in Democratic States such as Timor-Leste, in which the powers are organically separated in organs of sovereignty contemplated in article 67 of the CRDTL. Thus, in the theory of the Constitution, the law must always describe, explain and refute its foundations, ideas and materials, its conditions of development, ponder in knowledge the complex relations between the National Constitutional and analyze a concrete, positive and current constitutional order, whether written or eventually practiced in certain historical periods. The Constitution, in order to positively Democracy, arises from the ideas of two philosophers: Jean Jacques Rossean and Emmanuel Sieves who say: representative democracy and Election, the latter should have a connection with Article 65(1) of the RDTL Constitution: "the elected bodies of sovereignty and local government are chosen through elections, by suffrage, universal, free, direct, secret, personal and periodic." Thus, in the election in Timor-Leste, the elected bodies of sovereignty and local government are chosen through elections by universal, free, right, secret, personal and periodic suffrage, contemplated in article 65 of the CRDTL. This type is what can certainly the functioning of the Law and Constitution of Democracy in Timor-Leste as a Democratic State of Law and positive the functioning in constitutional order in our country in the im-

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