

CONSTITUTION AGUARANTEE OF DEMOCRACY

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Abstract

Introduction: The constitution is a set of rules governing a state, which may or may not be codified as a written document, which enumerates and limits the powers of a political entity. The constitution can be applied to any global system of laws that defines the functioning of a government, including several uncoded 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 State of Democratic Law, sparse, independent and unitary, based on the popular will and the respect for the dignity of the human person", and to the memsmo that paragraphs 1 and 2 of article 2 of the same constitution, establish that "The superannia resides in the people, who exercise it in accordance with the constitution, and State subordinates itself to the constitution and laws."

Objective: The constituent power assumed an identical relevance to which fell on the concept of the Constitution, being very much due to the work of the doctrine of the Constitution.

Methodologies: We used the deductive methodology in this elaboration, because all the research is done through the library and other references were consulted on the internet as an auxiliary means.

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

Conclusion: It is concluded that the right link to the constitution is for the exercise of the power of the state considered the special recognition of constituent legitimacy that confers on them. This reference is more decisive in the case of the courts that will seek the constitution to the democratic legitimacy that does not come from the elections, and comply with the laws in constitutional order cited by (Tilman CB & Magno U. A., 2023).

KEYWORDS: Constitution, Guarantee of Democracy.

INTRODUCTION

We know that in a broad sense the entire democratic rule of law has a constitution, but there is always influence from other nations that possessed 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 constitution of the United States, 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 norms, written or not, referring to this organization; it is usually used, to describe them, the expression "material constitution of the state". 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 on the Indonesian Government, because for 24 years it forcibly invaded Timor's national territory, so Timor-Leste had the influence of both states. To this end, on May 20, 2002, it was opposed to 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. It took a little over a year to create CRDTL. In 2001, the first formal step in the constituent process was taken 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 had a comprehensive nature, establishing the electoral process for the choice of members of a constituent assembly, jury regime of political parties, the creation of an independent electoral authority, as well as the definition of the competence and composition of the constituent assembly and the legal criteria for approval of the future constitution in the country cited by (Tilman CB & Magno U. A., 2023).

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 science is fundamentally assumed as a political theory of constitutional law and as a scientific theory of the dogmatics of constitutional law. Then analyze 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 refute the foundations, ideas, 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. Second, Morlock, "it belongs to him to discuss, discover and criticize the limits, possibilities and normative force of constitutional law." For the last task of 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 as one of the determined foundations of the statute of the theory of the constitution. Like constitutional law, the theory of the constitution develops taking into account the structure, the 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 there is almost no discussion of the central meaning of pre-understanding to obtain the results obtained by interpreting constitutional norms, as a science of explanation, criticism and refutation, it is intended that it must avoid prejudices (Legal, philosophical, ideological, religious, ethical) end up effecting 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, giving account of concrete possibilities as to its vital moments of birth. All this starts from 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 fruit of a certain will to structure the state and society. Second, Emmanuel Siey s (1789:106) "a useful 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 first exercised, 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 is the case in cases of political independence; Here, when the new constitution repeals the old constitution and simply replaces it for the future in accordance with the need and evolution of the country.

General Objective: The constituent power assumed an identical relevance to which fell on the concept of constitution, being very much due to the work of the doctrine of constitution of Timor-Leste-

Specific Objectives:

- 1) Originality being a power first, there being 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) Absoluteness: to be a materially unlimited power, not being subject to any other rule or parameter, but must improve what has the continuity of Timor-Leste.

THEORETICAL ENQUDRATION

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 popular will and respect for the dignity of the human person." The designation as "Democratic Republic of Timor-Leste" reassumes the formula used in the texts of the "proclamation of Independence" and the "constitution" of November 28, 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, of 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, designate, to the first two Presidents: Xavier do Amaral and Nicolau Lobato. The "Republic", highlighted in the epigrafe, without adjectives, identifies the political community in its timeless totality, as a pre-constitutional substrate distinct from and prior to the State that now, precisely, is intended to qualify and order.

The dimensions of the Rule of Law Principle

- a) The material dimension, transcending the public power, which is imposed on it according to an axiology that itself does not control and does not elaborate but 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;
- c) An organizational dimension, which expresses the need for the limitation of this public power to act through its specific distribution by the public bodies, especially emphasizing the role of aspect of the control of the constitutionality of the same.

The principle of the dignity of the human person: As a considerable material manifestation of the principle of the rule of law, it generally reveals that the person is placed as the supreme end of the rule of law. This is comfortable with the principle that it establishes in our constitution referred to in paragraph 1 of article 1 of the CRDTL. 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 precisely opposed 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, represents 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 dichotomia of material legitimacy, especially with reference to the catalogue of fundamental rights, and of procedural legitimization, by democratic participation, already seen. The right 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.

The legal system thus constructed according to the principle of the rule of law as: 1) democratic and social; 2) hierarchical surmounted by the Constitution; 3) endowed with mechanisms that can verify the relations of non-conformity of the legal norms, with the norms of a superior character. In the case of legal systems. Although article 2(4) of the constitution only recognizes custom that does not contravene the law and the Constitution (costume secundum legal) and law No. 2/2002 of 20 november establishes the law as the only immediate source of law, the rich-

ness and diversity of these traditional normative systems, as well as the popular recognition of this imperative, it also imposes enforcement systems 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.

REVIEW OF THE LITERATURE

The guarantee of the Constitution is the responsibility of the courts (art.118° ff. Of the constitution, maxims art. 126 and art. 149). The decisions of the courts are binding 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 system decentralised from 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 reservation of the constitution such as:

1. The principle of constitutional typicality of competences, whereby the organs of the State have the competence only to do what the constitution allows them to do (the functions assigned to an organ are the measure of its competence!) and
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, by constitutional authorisation and only in the cases

provided for in the constitution (Art. 24(1) CRDTL).

The principle of separation of powers: we know that this principle is one of the oldest principles of the principle of the rule of law in an organizational perspective, it is one of the few themes that time and use have not been spent and, instead, has remained dominant in political reasoning and constitutional texts throughout the nineteenth and twentieth centuries. the principle of separation of powers is found in Article 69 of our CRDTL Constitution, as, "The organs of sovereignty, in their reciprocal relations and in the exercise of their functions, observe the principle of separation and interdependence of powers established in the constitution". The interdependence of the principle of separation of powers will always be institutional, especially between the three poles of the organization of political power: the President of the Republic, the National Parliament and the Government. It is, in particular, the relations of political responsibility, by which certain organs of sovereignty are responsible for the effects of the exercise of their constitutional powers, that best illustrate them. According to John Locke, political power is divided through three distinct functions such as: Legislative, executive and theoretical.

- A. Legislative: as the knowledge to issue laws, to be delivered to the National Parliament as assemblée of representatives.
- B. Executive: while the power to apply the laws to concrete cases, through the administration and through the Courts, to be entrusted to the king and the government.
- C. Theoretical: theoretical defines the division of political power.

There are four (4) limits of the legislative power of the state according to John Locke: mentary analysis of knowledge of science and argumentative both legal and literary.

1. Equality of application without variation of particular cases, such as the poor and the rich, the camper or courtier.
2. The binding of laws for the good of the people.
3. The need for the consent of the people in raising taxes.
4. There is no possibility of conferring legislative powers on bodies other than parliament.
5. The principle of legal security and protection of trust: The principle of legal certainty requires publicity in the acts of 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 CRDTL Constitution, 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 is important cited by (Tilman CB & Magno U. A., 2023).

METHODOLOGY

We use the inductive methodology is based on the consultation of the reference books in the library, and in this elaboration also uses the internet as an auxiliary means. Throughout the research and docu-

DISCUSSION

Three important meanings of the constitution are:

- a. Formal sense: it means that the constitution is the law of the National Parliament, and established to correspond as the supreme norm of the State. But the constitution as it is a law which differs from the others, enacted in force and revised, according to its own rules, and is also as the first law of the State and as the method of validity of the other laws. Second, the CRDTL was even the first law approved by the state, by the PN on May 22, 2002, after the restoration of independence on May 20, 2002.
- b. Material Meaning: materially, it also integrates other norms, written and customary, with constitutional value, that is, the value of the 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 in the law. Such as the right to the name, provided for in Article 67 of the CRDTL, because we always follow the rule of interpretation on which Article 8 of the CCTL is imposed.
- c. Real Meaning: it means the constitution as a phenomenon of the constitution, as stated in the norms applied according to the awareness of its constitutional value. Like, the value of custom is still the main source of law in various parts of the territory, such as the matter of marriage, succession and family relations. Although, 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 constitution. .

Representative Democracy and Elections in Timor-Leste

The representative dimension of democracy is understood with the indication of the holders of public bodies, basically 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 to have the political confidence of the citizens who thus immediately define those general interests. There are two types of political mandates according to Reinhold Zippelus:

- a) The imperative mandate, immune by Jean-jacques Rosseau, tributary of direct democracy, in which the elected would have to submit to the general will and could be removed following its violation;
- b) The representative mandate, defended by Emmanuel Sievès, in which the elected, 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, preserving their mandate even in the situation of loss of that political confidence.

The Timorese constitutional law gives us an account of the preponderance of this representative dimension, with several organs of an elective nature, not only at the level of the state, but also at the level of the infrastate public entities. That this is so is one of

the initial procedures of the CRDTL and demonstrates it in article 65:

1. The elected organs of sovereignty and local government are chosen through elections, by means of universal, free, right, personal and periodic secret suffrage.
2. The electoral resignation is mandatory, private, unique and universal, being updated for each election.
3. a) Freedom of electoral propaganda. (b) Equal opportunities and equal treatment of the various applications.
4. The conversion of votes into mandates shall follow the system of proportional representation.
5. The electoral process shall be governed 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 pursuant to paragraph i) of paragraph 2 of article 95 of the CRDTL on political parties and associations in the country cited by (Tilman CB & Magno U. A., 2023).

1. Political parties are organizations of a permanent nature with the objective of participating democratically in the life of the country and of competing for formation and expression of the will of the people.
2. Political parties have legal personality and judicial capacity and are exclusively made up of national citizens.

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3. Are not considered political parties for the purposes of this Law, Organizations registered outside the national territory, as well as their members or their management have residence outside the Democratic Republic of Timor-Leste.
- antees the functioning in constitutional order cited by (Tilman CB & Magno U. A., 2023).

CONCLUSION

Situated at the top of the pyramid, the Constitution that haunts the other laws in force in all sovereign states, namely in Democratic States such as Timor-Leste, in which the powers Are in the constitution organically separated into organs of sovereignty contemplated in article 67 of the CRDTL. Thus, in the theory of the constitution, the complete law always describes, explains and refutes its founding ideas and materials, its conditions of development, putting into knowledge the complex relations between the national constitutional analyzes a concrete, positive and current constitutional order, whether written or eventually practiced in certain historical periods. The constitution, to guarantee democracy, arises from the ideas of two philosophers: Jean Jaques Rossean and Emmanuel Sievès who say: representative democracy and election, this owed to a connection with paragraph 1 of article 65 of the RDTL constitution: " the elected organs of sovereignty and local government are chosen through elections, by universal, free, direct, secret, personal and periodic suffrage." Thus, the election in Timor-Leste, the elected 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 the constitution of democracy in Timor-Leste as a state of democratic law and, guar-

REFERENCES

1. CANOTILHO, Jorge Joaquim Gomes, professor at the Faculty of Law of Coimbra, "Direito Constitucional" 6ª Edição -Livraria Almedina a Coimbra 1995.
2. SILVA, Kelly Cristiane and SIMIÃO, Daniel Schroeter Timor-Leste behind the stage: international cooperation and dialectics of State formation (Belo Horizonte: Editora UFMG,2007, P.152
3. SIEYÉS, Emmanuel, Qué es el Tecer Estado? - Essay on the Privileges, Barcelona, 1989, pp. 106.
4. SILVA, Helena Resende, Direito- as melhores citações, Braga, 2004, p. 54.
5. CANOTILHO, J.J Gomes and MOREIRA, Vital, Fundamentos Da Constituição, Coimbra Editora, 1991, p. 71
6. VASCONCELOS, Pedro Carlos Bacelar, Annotated Constitution of Timor-Leste, [s.d.: s.l.], October 2011, p. 68
7. MIRANDA, Jorge, A Constituição de 1976, [s.d: S.L.], Rua da Assunção, 90 Lisboa 1978, p. 476
8. FERREIRA, PINHEIRO SILVESTRE, século XIX – The election in democratic regimes, as a fundamental way of appointing the holders of public office.
9. GOUVEIA, JORGE BACELAR Full Professor of the Faculty of Law of the New University of Lisbon, President of the Institute of Aggregate Portuguese Language Law, Doctor and Master in Jurisconsult and Lawyer Law, Constitutional

Law of Timor-Leste, PREFACE President of the National Parliament of Timor-Leste. Lisbon/ Dili, 2012.

10. HELLER, SCHMIT, - Philosophical Theory 53 "Constitutional Law".
11. LOCKE, JOHN, English philosopher known as the father of liberalism.
12. MIRANDA, Jorge, "Manual de Direito Constitucional", Tomo VII, [S.1], Coimbra Editora, 2007;
13. Law No. 2/2016, of 3 February, first amended by Law No. 3/2004, of 4 April, on political parties in Timor-Leste.
14. MOHL, ROBERTO VON, decade 30 XIX- Rule of Law understood the legal limitation of the public power of rules that imposed extrenously to the State itself.
15. ROUSSEAN, JEAN-JACQUES, Social philosopher, political theorist thought; The general will of the majority would be the exclusive holder of the constituent power.
16. Law No. 2/2016, of 3 February, first amended by Law No. 3/2004, of 4 April, on political parties in Timor-Leste.
17. Corte Real AR & Tilman CB, 2023 in articles published <http://www.ajmcrr.com>