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Current Challenges and Prospects of the Constitutionalisation Process of Law in the Republic of Moldova

Key words: *Republic of Moldova, constitutionalisation, constitutionalism, rule of law, legal reforms, european integration*

Abstract: *The article examines the constitutionalisation of law in the Republic of Moldova, addressing its challenges and prospects in the context of European integration. It highlights the growing complexity of legal regulations, insufficiently substantiated legislative initiatives, and the lack of consistent constitutional culture. The study emphasises the importance of interpreting the Constitution as the exclusive source of national law and argues for a systematic consolidation of constitutionalism within Moldovan society.*

Introduction

The interest that the science of constitutional law must show towards the issue of the constitutionalisation of law is also determined by a series of objective factors, whose alarming presence has been noted in the specialist literature[1].

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1 I. Vida, *Legistica formală. Întroducere în tehnica și procedura legislativă*, Lumina Lex, București 2006, p. 24–25.

Among these factors are: the continuous proliferation of legal regulations; the absence of rigorous frameworks for justifying the necessity of new legal provisions; the predominance of legislative initiatives driven by political government programmes; the insufficient substantiation of draft laws; inadequately reasoned legislative proposals; inconsistencies between newly adopted and existing normative acts; and phenomena such as the "tyranny of public administration" and "government by judges", which contribute to a departure of legislation from the expression of the "general will".

For the Republic of Moldova, these factors represent an undeniable novelty as a research subject, especially since our country – unlike other member states of the European Union – is only at the beginning of the process of promoting, in the realities of social life, the principles of European constitutionalism. The knowledge and observance of these principles are particularly important as they shape the "current model" of the state, as well as conceptions about the values and objectives of social development.

In this context, we aim to examine a completely new research topic for the legal doctrine of the Republic of Moldova: the constitutionalisation of law. This approach is justified not only by its scientific novelty but also by the fact that this active dimension of the science of constitutional law significantly influences the process of European integration and the harmonisation of legislation.

The methods applied in conducting this scientific study are: content analysis, analytical method, historical analysis, and comparative study. Familiarity with the doctrine regarding constitutionalism and constitutionalisation, developed in the works of various scholars, allows us to assimilate the potential of methodological pluralism and individualism, on the basis of which the essence and role of the constitutionalisation process can be accurately assessed – particularly in countries that require the establishment of more advanced and refined legal systems, founded exclusively on the normative provisions of national constitutions.

Content analysis possesses significant potential for the strict interpretation of concepts that ensure the correctness and effectiveness of the constitutionalisation process itself. The use of factorial analysis enables the identification of endogenous and exogenous factors that influence the viability of the constitutionalisation process. Comparative study, when analysing complex phenomena, is extremely important as it allows for the updating and reconfiguration of the experiences accumulated by different states.

This latter method is especially valuable for the Republic of Moldova, where a certain dogmatic inertia persists within the science of constitutional law – one that has not yet been sufficiently prepared to consolidate efforts

aimed at harnessing the immense, and far from exhausted, potential of the Constitution, which, in our view, represents a true "treasure trove" of legal norms by its very nature.

Purpose and Objectives

Anchored in the specific context of the Republic of Moldova, this study seeks to demonstrate that the quintessence of constitutionalism lies in the conviction that no partisan political innovation may undermine the constitutional and legal foundations of a people's life – foundations that are identified, shaped, and promoted by the people themselves. Modernisation, including through the process of constitutionalisation, can thus only be understood as the consistent implementation and enforcement of the Fundamental Law.

In order to achieve this purpose, several objectives have been formulated: to argue for a notion of constitutionalism that is coherent with the realities of what we understand as the rule of law; to challenge the ideas suggesting that amending the Constitution could serve as a remedy for all the failures faced by the national legal system; to formulate arguments supporting the hypothesis that constitutionalism is a continuous process of development, accompanied by the gradual penetration of constitutional quality both into national consciousness and into social practice; and to lay the foundations for certain premises and perspectives concerning the constitutionalisation of the legal system of the Republic of Moldova.

Analysis

By distinguishing between two alternative elements of the object of legal science – the norms regulating human behaviour and the human behaviour regulated by norms – Hans Kelsen identified both a static theory of law and a dynamic theory of law[2]. In his view, the static theory concerns law as a system of valid norms, while the dynamic theory refers to the "process of law", through which, according to Kelsen, law is both "produced and applied", a "law in motion" that is itself "regulated by law". In developing this study dedicated to the particularities of the constitutionalisation process of law, we will primarily rely on the postulates of the dynamic theory of law, especially given that, as Kelsen teaches, the production of general legal norms is "regulated

[2] H. Kelsen, *Doctrina pură a dreptului*, Humanitas, București 2000, p. 95.

by the Constitution, and formal or procedural laws regulate the application of substantive laws…"[3]. It is important to emphasise that when addressing constitutionalisation, one must consider that the legislator who invokes the Constitution in the legislative process is obliged to know it, just as the judge applying the law should be familiar with the laws[4]. We would further complete Kelsen's observation by adding that the legislator is obliged not only to know the Constitution but also to scrupulously observe its normative content, treating it as a genuine Fundamental Law.

Although the notion of constitutionalism is no longer a novelty, the idea largely remains hypothetical and only partially aligned with the practical realities of what we understand by the rule of law. Undoubtedly, this situation may be explained by the presence of various objective and subjective reasons.

We do not exclude the fact that the phenomenon of constitutionalisation is also a matter of concern in the legal doctrine of other states – particularly those formerly part of the socialist legal system – states which are increasingly aware of the necessity of shaping more complete and advanced legal systems, with their sole normative source being the provisions of their national constitutions. It is likely that the absence of such traditions in countries of this category hinders and possibly distorts this process. For example, an examination of certain scholarly works reveals that in contexts marked by the "absence of a genuine democratic exercise in Romanian political life", Romania's post-revolutionary constitutionalisation and the consecration of modern constitutionalism are often perceived as a "mere matter of institutional constitutional engineering"[5]. This leads to constitutional-level debates typically unfolding within the "horizon of constitutional import", with reformers' attention directed toward the French constitutional model, regarded as a "pharmacy" where one might find the "necessary remedies for treating the ailing Romanian constitutional system".

A similar tendency can be observed in the Republic of Moldova; however, in this case, the "constitutional pharmacy" is, rather, the European Commission for Democracy through Law of the Council of Europe (the Venice Commission), whose amicus curiae opinions are invoked as indisputable arguments in nearly every attempt to reform the country's legal system. While we do not question the authority and significant impact of the Venice Commission on the process of democratization and legislative reform in the Republic of

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3 Ibidem, p. 96.

4 Ibidem, p. 98.

5 M. Guțan, *Constituționalism și cultură constituțională în România contemporană*, [in:] *Perspectivele constituționalismului în România*, București, Monitorul Oficial R. A. 2010, p. 45.

Moldova, which remains in a transitional stage, we believe – as other scholars also recommend[6] – that it is essential to maintain a close connection between the Constitution, constitutionalism, and the specific constitutional culture of a people.

Even in countries where recent political shifts have largely devalued the image of constitutionalism – such as the Russian Federation – fundamental scholarly research continues to be undertaken on this subject matter[7].

What is at least alarming, if not outright dangerous, is the willingness with which some representatives of legal science in the Republic of Moldova, as well as in other countries, engage in justifying the issues inherent to the construction of the constitutional order by invoking the so-called "depravity" of this very structure, even to the extent of claiming its incapacity to foster a social atmosphere specific to constitutionalism. As early as the end of the first decade of the 21st century, the scholar Manuel Guțan observed that, in Romania, "the entire political discourse and, to a considerable extent, the doctrinal one, obsessively focus on the flaws or limitations of the 1991 Constitution", with most agreeing that "the constitutional text must undergo a revision process, seemingly proceeding… from the premise of a faithful parallelism between theory and practice"[8]. Unfortunately, this tendency has also provoked a degree of scepticism among other scholars, in whose view the evolution of contemporary society "makes it increasingly difficult for the rule of law to fulfil its original purpose…", at a time when it should be capable of "eliminating arbitrariness from the enactment and application of the rule of law"[9].

Some authors in the Republic of Moldova exhibit a defeatist attitude toward the concept of the "rule of law" as assigned to it in Article 1 (paragraph 3) of the Constitution. In their view, the construction of the rule of law in the Republic of Moldova is difficult to achieve primarily because the "very consolidation of our statehood" must first take place. Others believe that a state can only become a rule of law state "under conditions in which social, economic, ethical-moral, and political-organisational requirements are met"[10]. According to these authors, "a backwards country is incapable of building a rule of law state"[11]. While we do not believe the term "backwards" applies to the Republic

[6] Ibidem.

[7] В. И. Крусс, *Конституционализация права: основы теории*, Норма: ИНФРА, Москва 2016.

[8] M. Guțan, *Constituționalism*…, p. 44.

[9] R. Duminică, *Criza legii contemporane*, Editura C. H. Beck, București 2014, p. 23.

[10] B. Negru, A. Negru, *Teoria generală a dreptului și statului*, Chișinău, ÎS FEP "Tipografia Centrală" 2017, p. 624.

[11] Gh. Costachi, I. Muruianu, *Reflecții asupra concepției contemporane a statului de drept*, [in:] *Revista Națională de Drept 2009*, Nr. 5, p. 18.

of Moldova, we agree that a rule of law state must be able to face any social and economic challenges, ensuring a high level of social protection and the well-being of its population. Professor Gheorghe Costachi, a few decades ago, noted in reference to the Republic of Moldova that "our state is only taking its first steps" toward becoming a rule of law state, which means we are "still at the beginning of the road". In his view, much remains to be done before the construction of the rule of law state can be achieved, including the need to align laws with constitutional provisions – that is, the constitutionalisation of the law[12]. Although, in another work, the same author, when expressing the intention to delve deeper into "some moments and aspects" of the process of building the rule of law state, avoids acknowledging the actual state of affairs that reflects the real perspectives for implementing the rule of law concept in the Republic of Moldova[13].

The aspiration to "explain" the imperfections of the Constitution of the Republic of Moldova, to justify the necessity of its essential revision, or more radically – its abrogation and the adoption of a new Constitution, is presented as the development of constitutional doctrine, regardless of the cost, if not the shock, that such "innovations" impose on the legal system of the Republic of Moldova.

In a study dedicated to the constitutional reform in Romania, it is mentioned that "the fundamental law needs to undergo a process of regaining credibility", with the solution being found in its revision[14]. In our opinion, the credibility of a constitution can and must be ensured, first and foremost, through the implementation of constitutional principles in all areas of social life, particularly through legislative measures, especially through the constitutionalisation of the law. This ensures that the defining elements of that constitutional stage achieve maximum generalization in social life, securing the adherence of public authorities, all social bodies, and citizens.

Only in this way can we ensure the stability of the Constitution as one of its most important qualities. Indeed, its stability is the primary condition for forming a durable legal system, capable of ensuring the proper functioning of any state. The well-known author from Romania, Elena Simina Tănăsescu, observes that for the stability of a Constitution, it needs to be drafted in such a way that

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12 Gh. Costachi, *Edificarea statului de drept – fundament al funcționării instituțiilor democratice*, [in:] *Funcționarea instituțiilor democratice în statul de drept*, Materiale ale conferinței teoretico științifice internaționale, Chișinău 2003, p. 43–44.

13 Gh. Costachi, *Direcții prioritarea ale edificării statului de drept în Republica Moldova*, Chișinău 2009.

14 *Reforma constituțională: analiză și proiecții: raportul comisiei pentru o nouă Constituție*, Coordonatori Elena Simina Tănăsescu, Bogdan Dima, București, Universul Juridic 2012, p. 26.

it "represents a reference system" for the political and legal life of a society for "as long a period as possible"[15]. In her opinion, the stability of the Constitution is the guarantee of the stability of the entire normative system of the state.

Regrettably, amending the Constitution is often viewed as a remedy for all the failures that the national legal system faces. Rarely does a doctoral thesis in the field of law in the Republic of Moldova fail to include proposals to amend the text of the Constitution "for the purpose of improving" it. It creates the impression that the authors of these "recommendations" are even confident in their "exclusive" scientific frankness and in the belief that the legal system derived from the constitutional field will easily survive the rupture of its "rhizomatic" links and will immediately yield the expected results.

A reality, lacking justification, characteristic of the early 21st century seems to be the opposition between real constitutionalism and imaginary constitutionalism. Such an approach substantially diminishes and even erodes the image of contemporary law. An example in this regard is the concept of "flexible law"[16], defined as "the set of tools that cumulatively meet" several conditions. One of these conditions is that these tools aim to modify or direct the behaviour of their addressees, promoting their adherence. However, these tools do not create rights or obligations for participants in social relations, as is the case with "hard law". Similarly, they present a "degree of formalization and structuring that is related to the rules of law".

In our opinion, constitutionalism must be treated as a process of continuous formation, accompanied by the gradual penetration of constitutional qualities both in national consciousness and in social practice. It is also a process of long-term constitutional cleansing of these two dimensions. For such a course, it is crucial that constitutional scholars focus on the philosophical dimension of responsible constitutional constructivism, on the strategy of continuously increasing the degree of constitutional evaluation of conceptions about legal phenomena and their interconnections, with the fundamental cornerstone being attachment to the goal of constitutionalizing the national legal system.

The foundation of premises and perspectives for the constitutionalization of the legal system in our country has been presented by us in previous works[17]. Even back then, we noticed a certain danger associated with the fact

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15 *Constituția României. Comentarii pe articole*, Coord. I. Muraru, E. S. Tănăsescu, Ed. A 2-a rev., Editura C. H. Beck, București 2019, p. 1346.

16 M. Duțu, *Dreptul: între ipostaze teoretice și avatarurile mondializării*, Editura Academiei Române: Universul Juridic, București 2014, p. 247–248.

17 I. Guceac, *Constituționalizarea dreptului la apă, o condiție indispensabilă pentru accesul la apă ca sursă a vieții și demnității*, [in:] *Culegerea Armonizarea cadrului normativ al Republicii Moldova la Dreptul European în domeniul valorificării durabile și managementului resurselor de apă*, CEP USM, Chișinău 2010, p. 65–79.

that the legislator in the Republic of Moldova is characterized by a claim of autonomy in the legislative creation process, in the sense of an independence that ignores the field of legal sciences, whose assistance must be utilized within the strategy of political pragmatism and conformity, but certainly not neglected.

At the same time, the legal doctrine seems to be increasingly inclined towards the effective recognition of the objective predetermination of this situation and, therefore, becomes a hostage to its own dysfunctionality. Along with this, the laws adopted are not always subject to scientific criticism, and when they are disapproved, this is often criticism for the sake of criticism, or one based on archaic stereotypes or unwavering illusions towards an abstract ideal. Such positioning of domestic legal science is, we believe, fuelled by an undeniable conviction in its own truth or in having a "mandate" to formulate legal truths, even though law itself is considered a set of more or less separate, yet self-sufficient elements due to the autarchy of the branches.

This perspective is further encouraged by the inevitable crisis in the methodology of legal research, which is either rejected or ignored. In most doctoral theses, as if under a standard model, references are made to the same traditional research methods, a certain general philosophical methodology, as well as an extensive toolkit attached to it, the reliable signs of the application of which are not at all visible in the scientific conclusions and recommendations. Traditionally, doctoral theses mention the "use" of the historical, systemic, empirical, logical-formal, and comparative methods. Some doctoral theses also name other methods, such as observation, research of acts…, dynamic analysis, evolutionary method, prospective method, descriptive method, complex research method, complex and interpretive analysis of normative acts, formal-legal and economic-legal methods, formal-dogmatic method, sociological method, monographic method, etc.

In fact, the issues of branch-specific normative regulation are mainly highlighted through a formal analysis of the texts of normative acts, considering the collisions that arise in the application process. However, even such results can seem significant against the background of the achievements of innovative methodological approaches, detached from the legal material.

The post-classical methodology of law is based on the heuristic value of positivism, surpasses the temptations of neopositivism with its apologetics of the verification principle and structuralism, which allows any textual configuration of legal values. Post-structuralism could remain, for jurisprudence, a purely philosophical orientation until it acquires a prospective connection with the "requirement" to recognize the unity of nature and the decisive importance of the national constitution text for the legal system, based on

the universal recognition and supreme value of fundamental human rights, freedoms, and duties of citizens, until legal phenomenology, hermeneutics, and anthropology are correlated with the constitutional essence of the law.

We must also consider the fact that methodological abstraction and the void produce a state of weightlessness in legal research. For the most part, research in the field of law consists of the results of a monitoring process accompanied by criticism of observed flaws and proposals for the "remodelling" of certain normative texts. We cannot overlook the tolerant indifference to inter-branch dialogue, which, by its nature, profoundly undermines the perception of the constitutional phenomenon. The dialectical identity of the form and content of law is given only by the constitutional text, which is the only fair platform for constructive scientific debates. Only within such an atmosphere can contemporary legal science independently formulate its tasks and outline the methods and procedures for addressing them.

The process of naturalising the concept of "constitutionalisation" takes place in an atmosphere of competition with a diversity of concepts that also try to reflect social dynamics in all its external, empirical manifestations, or in a balanced and logically tested manner. Indeed, it would be incorrect for legal science to be on the periphery of the scientific efforts to generate the processes of modernisation. However, such a contribution should not lead to the loss of scientific identity.

In this regard, it seems alarming the tacit approval or complacency of several legal scholars toward the uncompromising aspiration of the legislator and other bodies, including those from civil society, involved in the normative creation process, to respond with their acts to the objective transformations in social life and to the "guiding calls" of the authorities about how the innovative development of the national legal system should unfold, without considering the Constitution of the Republic of Moldova.

We express our concern about such a trend, because reliable legal science must always express a certain type of understanding of legal reality. This legal reality is based on a postulate stated many years ago, according to which "the Constitution represents the highest step from the perspective of positive law"[18]. This hypothesis was taken and developed in constitutional law doctrine, acknowledging that "the main effect of the supremacy of the Constitution" is the constitutionalisation of law – a complex legal phenomenon that affects the legal system through the interaction between the norms of the fundamental law and other legally inferior norms[19].

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[18] H. Kelsen, *Doctrina*…, p. 272.

[19] I. Muraru, E. S. Tănăsescu, *Drept constituțional și instituții politice*, Ed. a 13-a, Vol. I, Editura C. H. Beck, București 2008, p. 81.

The indisputable importance of such an outlook is perfectly valid for the phenomenon of the constitutionalisation of law. This is why the answer to the question regarding the foundation and limits of renewing legal reality, the normative reality, and the legal system that "connects" the state of the Republic of Moldova and civil society can only be formulated in constitutional terms, a law, having the perspective of being valid, as Hans Kelsen said, "only on the basis of the Constitution".

Any further statements regarding the means and methods of ensuring the supremacy of the Constitution and human rights as a supreme value will be marked by an inevitable failure.

Therefore, any scientific researcher in the field of constitutional law can, but more precisely, must see the perspective of the ideal, without the fear of being accused of idealism, and strive to direct social and political transformations towards the constitutional modernization of state organization and the constitutionalisation of law, taking into account the qualitative difference between these two states, obscured by the absence of a universally accepted legal theory, which today can only be the constitutional theory of law.

Accordingly, the fundamental mission of legal science is to offer a doctrinal understanding of the constitutionality – or unconstitutionality – of legal norms, to provide the theoretical foundations for their necessary constitutional recalibration, and to contribute to the design of long-term optimal legislative acts, viewed through the lens of constitutional consistency and coherence.

At a first approximation, constitutionalisation may be understood as an autonomous process of institutional and normative improvement of the state's image and the content of law corresponding to the national constitutional model. Within this framework, it is appropriate to conceptualise the legal system of society as the primary object of constitutionalisation, viewed holistically through the interrelated components of legal consciousness, the legal order, and legal practice. Ultimately, this process entails infusing a fundamental dimension of societal life with constitutional ideas, values, and institutions.

The *Romanian Legal Encyclopaedia* defines constitutionalization as a "process of harmonizing a country's legislation with its Constitution". According to the authors of this explanation, the process of constitutionalization should be carried out by the legislative authority "directly or through a specialized body…" and by the Constitutional Court, through "decisions declaring the unconstitutionality of normative acts"[20]. Moreover, the constitutionalisation of law is also interpreted as a general process that spans a certain period of

[20] *Enciclopedia juridică română*, Editura Academiei Române: Universul Juridic, București 2018, p. 856.

time, starting with the adoption of the constitution and continuing "under the control of the constitutional jurisdiction specifically created… by the fundamental law to guarantee its supremacy", a process that gradually affects all branches of the legal system[21].

Given that the objective of constitutionalisation involves the "progressive interpretation" of both constitutional norms and hierarchically subordinate legal provisions, two distinct phenomena emerge within this process.

The first, referred to as the "ascending phenomenon", is characterised by the quantitative expansion of constitutional norms. This ascendancy is regarded as a direct consequence of constitutionalisation, manifesting through the "absorption" of principles originating in other branches of law into the Constitution, – thus elevating these principles to the rank of constitutional norms and affording them corresponding constitutional protection. Illustrative examples include several fundamental legal principles enshrined in the Constitution of the Republic of Moldova, such as the right of free access to justice (Article 20), the presumption of innocence (Article 21), and the principle of non-retroactivity of the law (Article 22), among others.

This quantitative enrichment of constitutional norms may also occur through the interpretation of provisions within the constitutional normative framework by the Constitutional Court.

The second element, referred to as the "descending phenomenon" or the "diffusion of constitutional norms throughout the legal system", involves the substantive deepening of constitutional norms. This process consists in "impregnating branches of law with directly applicable constitutional norms".

Since constitutionalisation is inherently a dynamic process, it must unfold within its ontological framework, grounded in fundamentally normative provisions. The aspirations and values enshrined in these provisions possess a determinative character, in the sense that all other components of the legal system should develop from the same constitutional foundation. Considering various provisions of the Constitution of the Republic of Moldova, particular emphasis should be placed on the rights and freedoms of individuals and citizens, as well as on constitutional duties, which together constitute core elements of the constitutional system.

Referring to the "practice of different states", constitutional doctrine asserts that the process of constitutionalising law is "accelerated" in the domain of fundamental rights, given that "the direct applicability of constitutional norms is more readily observable" in this area[22]. In support of the semantic and doc-

21 I. Muraru, E. S. Tănăsescu, *Drept constituțional…*, p. 81.
22 Ibidem, p. 81.

trinal coherence of the notion of constitutionalisation, we assert that any effort to "modernise" the legal framework of human rights – if detached from a continuous, guiding, and corrective relationship with the Constitution of the Republic of Moldova – is both futile and normatively indefensible.

Often, or in most cases, the concretisation of the normative content of human rights and fundamental duties is entrusted to constitutional review bodies (the Constitutional Court) or to other institutions, notably, the European Court of Human Rights. These bodies often merely indicate the direction of relevant searches, which is also quite close to the prospective idea of constitutionalisation. This state can be explained, first and foremost, by the specific competence of the Constitutional Court of the Republic of Moldova, and secondly, by the fact that human rights, like positive law extracted from the text of the Fundamental Law, are in fact inexhaustible in content.

The identification of the essence of human rights cannot be limited only to the ontological characteristics of these rights and especially requires an axiological dimension. At the same time, it is epistemologically incorrect to abandon the idea of the semantic identity of human rights. The gradual and deepening understanding of the legal phenomenon – its semantic enrichment considering evolving societal realities – should not be mistaken for a discovery of an entirely new legal category. A newly articulated right is, in essence, a distinct right, just as a new constitution is, by definition, different from its predecessor.

Within the process of constitutionalisation, situations may arise in which several fundamental rights and freedoms – due to their shared nature and underlying homogeneous principles – exhibit partially overlapping normative content. The existence of such overlaps does not diminish the importance of conducting a comprehensive and reliable legal analysis aimed at identifying and distinguishing their specific characteristics within the broader perspective of constitutionalisation.

For example, the principle of national sovereignty enshrined in the Constitution of the Republic of Moldova (Article 2) is concretely expressed in the right of citizens to participate in the administration of public affairs, either directly or through their elected representatives. Accordingly, the will of the people serves as the foundation of state power (Article 38, paragraph 1). Moreover, the meaning of the right to "participate in the administration of public affairs" extends to the other provisions of Article 38 of the Constitution (paragraphs (2) and (3)) in the sense that citizens of the Republic of Moldova enjoy the right to vote and to be elected, according to the law.

Similarly, the right to freedom of thought, opinion, and freedom of expression in public through speech, image, or any other possible means,

enshrined in Article 32 of the Constitution, partially overlaps with the right of access to information of public interest (Article 34 of the Constitution), as well as with the right to freedom of assembly (Article 40 of the Constitution).

Any legal construction and enforcement regime of a fundamental right, as a special form of implementing legal norms, can only be developed based on the constitutional content of human rights. Nevertheless, the legislative authority cannot unilaterally interpret the essence of human rights. Only constitutionalisation provides consistent support to the legislator, stimulating this activity solely in terms of clarifying the content of human rights, by confirming or refuting the coherence of the outcomes obtained. At the same time, these very outcomes largely determine the diversity of possible patterns in the process of sectoral regulation of human rights, as well as the quality, and the completeness of their guarantee. Human rights as expressed and developed in sectoral legislation should always be understood as a concretization of the fundamental human rights with which they intersect. Therefore, although rights developed in sectoral legislation may be similar in importance, they are not identical, since fundamental rights themselves are not identical. Without a consistent analysis of this circumstance, we risk weakening the substantive content of human rights and diminishing their value.

The proper design of the content of human rights is reflected in the corresponding tasks of the state. Thus, the Constitutional Court of the Republic of Moldova, when examining the constitutionality of a decision whereby the Government, by way of derogation from the Law on Pension Provision for Military Personnel and Command Staff and Personnel in Internal Affairs, imposed restrictions on pension payments, by linking their amount based to the pensioner's employment status, held that the state, "in pursuing the goal of ensuring a decent standard of living for various categories of the population, takes into account the existing economic conditions and establishes mechanisms that provide for real social protection measures"[23]. In another case, the Constitutional Court, referring to the Constitution of the Republic of Moldova (Article 47, paragraph (1)), reiterated that the state is obliged to take measures to ensure that every person enjoys a decent standard of living, ensuring their health and well-being, as well as that of their family. In the Court's view, the

[23] *Hotărârea Curţii Constituţionale despre constituţionalitatea prevederilor punctului 2 din Hotărîrea Guvernului nr. 677 din 6 octombrie 1995 cu privire la majorarea salariilor angajaţilor din sfera bugetară şi a pensiilor cetăţenilor* (în redacţia Hotărîrii Guvernului nr. 55 din 30 ianuarie 1996), nr. 9 din 03.03.97, Monitorul Oficial al R.Moldova nr. 18/6 din 20.03.1997.

right to a decent standard of living implies continuous improvement of living conditions, for which purpose the state has the responsibility to ensure the sustainable and upward development of the economy and the progressive social protection of its citizens[24].

We do not exclude the possibility that, in certain cases, other purposes and objectives of constitutionalisation may also be invoked as primary, but they will always be closely monitored in relation to the issue of human rights.

Constitutionalisation of law is a historical phenomenon that has manifested at various stages in the constitutional landscape of different states. With regard to the constitutionalisation of law as a legal phenomenon in the Romanian legal space, the idea is promoted that it originated "with the appearance of the Constitution of 1866"[25]. As an argument, Article 130 of this text is invoked, which stated that from the day the Constitution came into force, all provisions in laws, decrees, regulations, and other acts that contradicted constitutional provisions were repealed. At the same time, an important role in stimulating the process of constitutionalisation that was to unfold after the entry into force of the 1866 Constitution is also attributed to Article 132, which required that "as soon as possible" special laws be drafted regarding: administrative decentralisation; the responsibility of ministers and other agents of the executive power; the prohibition of holding multiple offices; amendment to pension laws; the conditions for eligibility and advancement in public administration positions; the development of communication routes; the exploitation of mines and forests; navigable or floatable rivers and waterways; regarding the organization of the army, the rights to promotion, retirement, and various ranks of officers; and military justice[26].

Likewise, the 1923 Constitution of Romania contained provisions related to the constitutionalisation of Romanian law. Thus, Article 137 of the Constitution required the revision of all codes and laws existing in various parts of the Romanian State "in order to harmonize them with the Constitution" thereby

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[24] *Hotărâre pentru controlul constituționalității unei prevederi din Anexa nr. 2 la Legea nr. 156-XIV din 14 octombrie 1998 „Privind pensiile de asigurări sociale de stat" în redacția Legii nr. 358-XV din 31 iulie 2003 „Pentru modificarea și completarea unor acte legislative" și pct. 33 din Regulamentul cu privire la modul de calculare a pensiei, aprobat prin Hotărîrea Guvernului nr.843 din 10 septembrie 1999*, nr. 14 din 06.07.2006, Monitorul Oficial nr. 112-115/13 din 21.07.2006.

[25] D. Pișteа, *Constitucionalizare și suspendarea condiționată a executării pedepsei*, [in:] *Perspectivele constituționalismului în România*, Monitorul Oficial R. A., București 2010, p. 102.

[26] *Constituția României din 1866*, https://www.cdep.ro/pls/legis/legis_pck.htp_act_text?idt=37755 (15.03.2023).

ensuring legislative unity. From the day of its promulgation, provisions in laws, decrees, regulations, and "any other acts contrary to those enshrined in the present Constitution" became null and void[27].

Additionally, Article 131 maintained the constitutional character of provisions found in agrarian laws concerning arable land, forests, and wetlands subject to full or partial expropriation, as well as those relating to their legal status, subsoil, valuation, methods of payment, and so forth.

This tradition was maintained in the 1938 Constitution of Romania, which stipulated (in Article 98) that all laws and other acts in force were to be revised "with a view to unifying the legislation, bringing it into harmony" with the principles of the Constitution[28].

Even the 1948 Constitution of Romania (Article 105) provided for the revision of all existing codes and laws "in order to bring them into conformity with the Constitution"[29]. However, the 1952 Constitution of Romania, which was heavily influenced by Soviet doctrine, did not include such provisions in its text[30]. This practice was also not adopted by the 1965 Constitution of Romania[31].

Regarding the socialist constitutions of the historical past of the Republic of Moldova, we observe the complete absence of such provisions. It was only the 1994 Constitution of the Republic of Moldova (Title VII) that placed the responsibility on the permanent parliamentary committees and the Government to examine, within one year from the date of entry into force of the Constitution, the conformity of legislation with the constitutional text and to submit the respective proposals to Parliament[32].

Conclusions

To fully understand the essence of constitutionalisation, it is necessary to recognise that constitutional reality coexists with non-constitutional social and normative layers, which cannot be meaningfully developed or sustained within

[27] *Constituția României din 1923*, https://www.cdep.ro/pls/legis/legis_pck.htp_act_text?idt=1517 (15.03.2023).

[28] *Constituția României din 1938*, https://www.cdep.ro/pls/legis/legis_pck.htp_act_text?idt=9206 (22.03.2023).

[29] *Constituția Republicii Populare Române*, Monitorul Oficial nr. 87 bis din 13 aprilie 1948.

[30] *Constituția Republicii Populare Române din 1952*, Buletinul Oficial, nr. 1/27, septembrie 1952.

[31] *Constituția Republicii Socialiste România din 1965*, Text republicat în Buletinul Oficial nr. 65/29, octombrie 1986.

[32] *Constituția Republicii Moldova*, Monitorul Oficial Nr. 1 din 12.08.1994.

the framework of constitutional law. From this perspective, it is methodologically unsound to oppose *de jure* constitutions or to advocate for legislative reform irrespective of the content of constitutional provisions.

In practice, constitutionalisation must be pursued in a manner that fosters coherent logical connections among the structural elements of the national legal system – presenting legal norms as consequences deduced from broader, more general concepts, and thereby transforming legal substance into logical components of a system structured along a hierarchical scale.

One of the essential tasks of constitutionalisation is to promote, by all available means, the development of a high level of legal culture, and to foster a form of legal professionalism rooted in unwavering commitment to constitutional principles.

The Constitution of the Republic of Moldova will become truly meaningful only when it is understood and valued by individuals who possess a deep constitutional education. Only such individuals can fully exercise the rights and freedoms granted by the Constitution and other laws, being prepared to assert and defend those rights through the legal mechanisms established by legislation. Such people respect the democratic legal order, fulfil their civic duties with integrity, are devoted to the state, and are prepared to uphold the constitutional order regardless of their political, social, religious, or other beliefs and convictions.

It is acceptable that, because of constitutionalisation, a "simplification" of the legal system may occur – one that prevents rigidity and continuously encourages liberalisation. In this regard, the concept of constitutionalisation is directed against doctrinal "innovations", whose implementation could lead to the proliferation of individuals largely unaware of the objective to reinforce constitutionalism and to promote broad popular consensus on the nature of the constitutional legal order.

At the same time, we must recognise that viewing law through the lens of constitutionality excludes the legal validation of any instance where the exercise of human rights is accompanied by abuse, as constitutionalisation ensures, among other things, explicit opposition to such unconstitutional practices.

Therefore, the true meaning of the concept of constitutionalisation – and its potential recognition as an independent scientific category – is inextricably linked to the imperative of interpreting the Constitution of the Republic of Moldova as the exclusive source of national law.

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