

THEORETICAL AND PRACTICAL BASIS FOR APPLYING METHODOLOGICAL PECULIARITIES IN CONSTITUTION INTERPRETATION

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Introduction

In the process of legal interpretation, a question frequently arises as to whether the provisions of the constitution and other normative legal acts should be interpreted according to the same methodology or possess distinct characteristics. This question is prompted by two main factors: firstly, the constitution's unique legal nature, which grants it a distinctive position and role within the legal system, along with its inherent value; secondly, despite having certain peculiarities, its classification as a normative legal act.

In this research, we focus on exploring the reasons that necessitate the application of a distinct methodology in interpreting the constitution. Our objective is to examine the relationship between general legal interpretation and the interpretation of the constitution, aiming to determine whether these reasons warrant considering constitutional interpretation as a distinct type within legal interpretation. We seek to ascertain whether the weightiness of these reasons justifies applying a specialized methodology, or if these reasons are not essential, suggesting that the constitution should be interpreted according to the same rules as other legal norms.

The stated goal presents several objectives to the research: highlighting the distinctive legal nature of the constitution as a unique legal act, identifying its value characteristics, comparing these characteristics with those of other legal norms, and ultimately assessing whether the general methodology of legislative interpretation is capable of ensuring the proper interpretation of constitutional norms.

It is worth noting that the issue under consideration has not been thoroughly studied in jurisprudence, and theorists do not unanimously agree on this matter.

Some researchers believe that constitutional interpretation and legislative interpretation are identical, and there is no sufficient reason to distinguish them within the framework of legal interpretation. Others argue that constitutional interpretation possesses distinctive characteristics significant enough to warrant its classification as a special type of legal interpretation¹.

The practical significance of this research lies in elucidating the methodology employed in interpreting constitutional provisions, aiming to enhance the overall interpretation of the constitution. The theoretical importance and scientific novelty stem from the establishment of a scientific foundation for identifying this methodology and substantiating the necessity of its application.

We hold the perspective that the distinctive features of the constitution are of such significance that they necessitate the use of a specialized methodology in interpreting its norms. However, given that the constitution is fundamentally a legal act in its own right, we do not find it appropriate or reasonable to categorize the

¹ See **Գ. Հովհաննիսյան**, Ընդհանուր իրավագիտություն և իրավաբանական մեթոդաբանություն, Երևան, 2020թ., էջ 337, Ribeiro, Gonçalo de Almeida, International Journal of Constitutional Law, Jul 2022, Vol. 20 Issue 3, p1130-1161, page 18.

interpretation of the constitution as a distinct type within the broader context of legal interpretation.

Terminological confusion between the expressions “interpretation of the constitution” and “constitutional interpretation”

When discussing the interpretation of the constitution, one should first distinguish between the terms “interpretation of the constitution” and “constitutional interpretation”. The interpretation of the constitution or the legal interpretation of the constitutional norm includes all the ways, tricks and methods through which the meaning of the norms of the constitution should be revealed, whereas the constitutional interpretation is the interpretation of other legal norms in accordance with the constitution or their constitutional-legal significance, that is, the clarification of the given norm’s constitutional-legal content.

The main differences between constitutional and legislative regulation from the point of view of the special legal nature and value essence of the constitution which require the application of a special interpretation methodology

The methods, ways and tricks of interpreting any legal norm are directly related to the essence of the legal norm that is the subject of interpretation, including its place in the hierarchy of legal acts, and also derive from it.

Selecting the appropriate interpretation methodology and defining its boundaries enables a more precise and comprehensive understanding of interpreted norms taking into account the specific features of the legal norm under interpretation.

In this context, it is necessary to address the specific features of the Constitution. Generally, the constitution’s position in the legal hierarchy, along with its several essential features, forms the basis for attributing to the constitution a unique legal character¹ and the role of a benchmark for other normative legal acts² in theory.

In countries where a written Constitution exists as a separate legal act, it holds a unique status within the legal system of those states. There are multiple examples of other types of legal acts (e.g., laws, codes, sub-legislative normative legal acts), whereas the constitution stands alone and cannot have a counterpart³. It is noteworthy that in a number of countries the constitution is called the basic law.

The uniqueness of the Constitution is particularly esteemed in the legal system, given its status as the legal act with the highest legal force. In other words, the constitution holds a guiding and foundational significance for all other legal acts of the state, and no legal act can contradict the constitution. From this perspective, the application of the systemic method results in a unique interpretation of any provision of the constitution. Given that all other legal acts possess lower legal authority, the application of this method may be restricted solely to internal constitutional provisions.

Among the features of the constitution is its unique role as both a legal and a political document. The legal nature of the Constitution is evident to the extent that it is itself a legal act. However, unlike other legal acts, the constitution is essentially a political document. It serves as a mutual agreement among the people and political forces united in the state, reflecting the collective will, goals, and values of the

¹ See Խմբ.՝ Ն. Ա. Այվազյան, ՀՀ սահմանադրական իրավունք, Գիրք առաջին, ԵՊՀ, Երևան, «Տիգրան Մեծ» հրատ., 2016, 62-69 էջեր.

² See Այվազյան Վ. Ն., Սահմանադրականության սիստեմատիկական, ԵՊՀ իրավագիտության ֆակուլտետի պրոֆեսորադասախոսական կազմի գիտաժողովի նյութերի ժողովածու, 1(1) 2018, Երևան, 2018, էջ 86.

³ It does not refer to the constitutions of subjects of federal states, of which there may be more than one in a federation.

population. It is typically shaped by political processes that include conflicts, civil wars, debates, negotiations and compromises between different groups and interests in society. From this point of view, the Constitution is also characterized as a “social agreement on the fundamental rules of life”¹. It defines the political principles and structures governing the nation.

The definition of declaratory norms and norm-goals within it, which are typically absent in other normative legal acts, arises from the political nature of the Constitution. Consequently, it is natural that such norms cannot be interpreted in the same manner as, for instance, norms that delineate responsibilities, prohibitions, or confer rights.

Constitutions and legislation differ significantly in their subjects and regulatory methods. A pivotal factor in defining the scope of constitutional regulation is that it reflects the will of the people, while legislation mirrors the will of the state. Hence, the constitution should establish regulations that restrict public authority to safeguard fundamental rights and freedoms, thereby in a certain sense delineating boundaries for both legislative activities and the interpretation of laws. At the same time, it defines the structure of the state, the principle of the separation of branches of power, and outlines the state bodies and procedures responsible for adopting legal acts subordinate to the constitution in terms of legal force.

Therefore, this characteristic of the constitution implies that the focal point in interpreting its norms should be the limitation of public power. It is also with this logic that the fundamental human rights and freedoms are fixed in the Constitution, thus limiting the public power.

It is legislation that defines the necessary organizational structures and procedures by which fundamental rights and freedoms must be effectively implemented. Therefore, in order to discover the essence of these rights and freedoms, the provisions of the constitution itself should be interpreted, not the provisions of the legislation establishing procedures for their implementation or protection. It should be noted that Article 80 of the RA Constitution stipulates that the essence of the provisions on basic rights and freedoms is inviolable. This is a distinctive interpretation rule that defines the boundaries of revealing the meaning of constitutional norms. It should be exclusively applied during the interpretation of provisions related to fundamental rights and freedoms guaranteed by the Constitution. The need for such a rule arises from the imperative to minimize the risk of diminishing the significance and meaning of these fundamental rights and freedoms through interpretation. This ensures that they retain their status as a limiting factor on governmental power, serving as an end in themselves. As a rule, constitutional regulations typically offer broad principles rather than detailed provisions. This characteristic necessitates and permits a broader interpretation of constitutional norms. In contrast, legislative regulations are specific and detailed, addressing particular issues and situations with rules governing specific aspects of public relations. The Constitution establishes a general framework, leaving the task of providing detailed regulations to the legislation.

The next feature of the constitution is the more stable nature of its provisions, providing a firm foundation for the legal system. The procedure for implementing changes is significantly different in the case of the constitution and legislation.

¹ See **Գ. Հարությունյան**, Սահմանադրական նորմերի մեկնաբանման հայեցակարգային մոտեցումները Հայաստանի Հանրապետության սահմանադրական արդարադատության պրակտիկայում, Զեկուցում սահմանադրական արդարադատության հիմնախնդիրներին նվիրված միջազգային կոնֆերանսում, Ալժիր, 30 հոկտեմբերի 2008թ., էջ 7.

Amendments to the constitution are possible and permissible, but they are usually rarer than legislative amendments. The ability to make changes in the legislation should not be too flexible, but at the same time it should allow the legislature to promptly respond to social developments and changes. Constitutional stability does not imply absolute rigidity “The Constitution must remain responsive to societal progress rather than transforming from a catalyst to an inhibitor. The Constitution should not result in impasses; instead, it should serve as the most effective stimulus for the development of civil society”¹. The general nature of constitutional provisions should not hinge on the possibility of frequent legislative changes. The stability of these provisions directly necessitates and permits a broader interpretation of constitutional norms. Failure to do so may result in the Constitution lagging behind the development of public relations, leading to some aspects falling outside the scope of legal regulation or causing deadlocks and crises in constitutional regulation. An alternative to frequent constitutional amendments, which would undermine constitutional stability, poses a threat to the legal security of the state.

The Constitution has a value character: “It is not a text, **but** is a value system, values that live, are reproduced, and guide public life”². “The constitution is a mutual agreement on the fundamental rules of coexistence built on the value system generalizations of the given state. The doctrine of self-sufficiency of the Constitution is based on the concept that the interpretation of the constitutional norms is based on the fundamental constitutional values and principles”³. “A constitution is legitimate because of the values it embodies, not because of the political power behind it. Thus, the popular will is not identified with the constitutional majority, but with a priori values, principles, or reasons”⁴.

The constitution is filled with symbols that reflect the features of the historical development of the statehood of the given nation and give the constitution inherent characteristics of the people who adopted it and the statehood created by them. Despite the influence of legal globalization and the trend towards a universal structure for constitutions due to the emergence of world democracy, the creation of exemplary “impersonal” constitutions remains impractical. This is because these constitutions cannot be directly tailored to the specific context of each state and may lack guiding principles to elucidate the meaning of the most “sensitive” constitutional norms. The preambles of constitutions serve as a reflection of the constitution’s value nature and symbolism to the fullest extent⁵. Unlike legislative acts, constitutions include preambles intentionally. Therefore, we argue that when interpreting constitutional norms, the preamble should be considered, ensuring that no meaning is assigned to a constitutional norm that contradicts it.

¹ See **Մանասյան Ա. Ա.**, Սահմանադրական կայունությունը՝ որպես կայուն ժողովրդավարության կարևորագույն գրավական, ISBN 978-9939-838-82-3, Երևան, «Հայրապետ» հրատ., 2019, էջ 46.

² See **REPRESENTING POPULAR SOVEREIGNTY: The Constitution in American Political Culture by Daniel Lessard Levin.** Albany: State University of New York Press, 1999.

³ See **Գ. Հարությունյան**, Սահմանադրական հիմնարար արժեքների իրացման երաշխիքները պետական քաղաքականության մակարդակում և հասարակական պրակտիկայում, էջեր 3,9.

⁴ See **Ribeiro, Gonçalo de Almeida**, International Journal of Constitutional Law, Jul 2022, Vol. 20 Issue 3, p1130-1161, էջ 18.

⁵ For example, the preamble of the RA Constitution clearly defines several constitutional values. These include the sacred message from the freedom-loving ancestors of the Armenian people, emphasizing the restoration of a sovereign state, the strengthening and prosperity of the motherland, the assurance of freedom and general well-being for future generations, the promotion of civil solidarity, and the commitment to upholding universal values.

As G. Harutyunyan remarks: "It is almost impossible to solve the problems of the constitutionalization of public relations without deep value analyzes of the Constitution. The concept of "Constitution" itself has a valuable content. ... These values cannot be manifested in isolation, they are coordinated at the constitutional level and appear in complementarity and mutual agreement. Therefore, it is impossible to achieve significant success by excluding this or that fundamental constitutional value, distorting it in public practice, relying on other values"¹.

It is noteworthy that the Constitutional Court of the Republic of Armenia refers to the values of the Constitution when interpreting the norms of the Constitution in a number of its decisions. In the mentioned context, the following idea mentioned in Decision No DCC-1680 of 24.03.2023 of the Constitutional Court of RA deserves special attention: "The Constitutional Court reminds that the interpretation of any constitutional norm deviates from its values if it is not compatible with the goals, values and principles declared in the preamble and other immutable provisions of the Constitution. ... The Constitutional Court emphasizes that in the preamble of the Constitution, the assurance of loyalty to the universal values of the Armenian people, especially regarding the fight against the most serious crimes that threaten universal peace and their impunity, as a value guideline for the interpretation of the provisions of the Constitution, is also the basis of the constitutional imperative to consider the historical, ethical and the civilization standard, that the importance of the fight against the crimes and their impunity set forth in the preamble of the Charter was already recorded in the process of Armenia's independence, with the declaration of support for the international recognition of the Armenian Genocide (Declaration of Independence of Armenia, Clause 11)"². And in Decision No DCC-1081 of 16.04.2013 of the Constitutional Court of RA recognizes the consideration of constitutional values as a distinct method for interpreting constitutional norms. The Court emphasizes that "the Constitution, being self-sufficient, allows for resolving apparent inconsistencies in the text by relying on its values and fundamental principles"³.

Thus, the combination of the above-mentioned features is more than enough to apply a special methodology when interpreting constitutional norms, which is neither necessary nor appropriate for the legislative interpretation process.

The foundations of the special methodology of interpretation of the constitution in domestic legislation and legal practice

At the theoretical level, the necessity for applying a specialized methodology in the interpretation of the constitution is unclear, whereas the Republic of Armenia's legislation provides a clearer answer to this question.

The only legal act defining the rules of interpretation of normative legal acts in the RA legal system is the RA Law "On Normative Legal Acts". The hierarchy of legal norms is defined in Article 5 of the RA Constitution. According to part 1 of the mentioned article, the Constitution has the highest legal force, and according to part 2, laws must comply with constitutional laws, and sub-legislative normative legal acts

¹ See **Գ. Հարությունյան**, Սահմանադրական հիմնարար արժեքների իրացման երաշխիքները պետական քաղաքականության մակարդակում և հասարակական պրակտիկայում, Երևանյան XII միջազգային խորհրդածողովի զեկուցում, Երևան, 2008թ., էջ 3.

² See Decision No DCC-1680 of 24.03.2023 of the Constitutional Court of RA, Legal information system of Armenia, <https://www.arlis.am/DocumentView.aspx?DocID=175904> (last access: as of 05.12.2023).

³ See Decision No DCC-1081 of 16.04.2013 of the Constitutional Court of RA, Legal information system of Armenia, <https://www.arlis.am/documentview.aspx?docid=82731> (last access: as of 05.12.2023).

with constitutional laws and laws¹. Therefore, the rules of legal interpretation defined by the RA Law "On Normative Legal Acts" cannot be applied to the interpretation of the provisions of the Constitution. It is already obvious from the above that at least the legislation of the Republic of Armenia differentiates the legal interpretation methodology that should be used for the interpretation of the provisions of the Constitution and other normative legal acts.

The 2015 edition of the Constitution of the Republic of Armenia² defines one rule of interpretation of the norms of the constitution, that is, to take into account the practice of the bodies acting on the basis of international treaties on human rights ratified by the Republic of Armenia when interpreting the provisions of the Constitution on basic rights and freedoms.

The constitutional court addressed the differentiation between branch-specific and constitution-specific methodologies in legal interpretation. It emphasized the importance of applying a methodology that corresponds to this distinction throughout the process of legal interpretation. In particular, this becomes evident in Decision No DCC-934 of 04.02.2011 of the Constitutional Court of RA, wherein it is stated: "The Constitutional Court notes that, in terms of criminal procedure, RA legislation has not defined the concept of the "specific case under the proceedings of the RA Prosecutor General". The legislative changes of the last three years have made the situation even more complicated. In practice, during the investigative and preliminary stages, the investigative and preliminary bodies handle the case proceedings, while in the court stage, it is the responsibility of the court. Hence, the constitutional provision regarding "a specific case under the proceedings of the Prosecutor General" cannot be interpreted using branch-legal methodology. It is necessary to interpret it in accordance with its constitutional significance within the framework of the constitutional powers of the Prosecutor's Office of the Republic of Armenia"³. The quoted position implies that the phrase "a specific case under the proceedings of the Prosecutor General" can take on different meanings depending on the methodology used during its interpretation, as determined by the Constitutional Court of the Republic of Armenia.

Conclusion

Several key characteristics define the constitution, making it a unique legal act with the highest legal force in the legal system. As both a legal and political document simultaneously, it exhibits specific objectives and methods of regulation, aiming to limit public power. The constitution's broad, general regulations, stability, value-based nature, and incorporation of legal symbols necessitate a distinct interpretative methodology. This methodology should go beyond the leading methods of legislative interpretation and the main purpose of which should be to ensure the interpretation of the constitution in accordance with the values reflected in it.

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¹ See RA Law "On Normative Legal Acts", Article 5, Legal Information System of Armenia, <https://www.arlis.am/DocumentView.aspx?DocID=143723> (last access: as of 05.12.2023).

² See Constitution of the Republic of Armenia in the edition of 2015, Article 81, Legal Information System of Armenia, <https://www.arlis.am/DocumentView.aspx?DocID=143723> (last access: as of 05.12.2023).

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Սամվել Զաբաղյան

ԵՊՀ սահմանադրական իրավունքի ամբիոնի հայցորդ

Իրավական մեկնաբանման գործընթացում հաճախ հարց է առաջանում, թե արդյո՞ք սահմանադրության և այլ նորմատիվ իրավական ակտերի դրույթները պետք է մեկնաբանվեն միևնույն մեթոդաբանությամբ, թե՞ դրանք ունեն որոշակի առանձնահատկություններ:

Ուսումնասիրելով այն պատճառները, սահմանադրության այն հատկանիշները, որոնք առաջացնում են սահմանադրության մեկնաբանության գործընթացում առանձնահատուկ մեթոդաբանություն կիրառելու անհրաժեշտություն, այդ թվում՝ իր տեսակով եզակի իրավական ակտ լինելը, իրավական համակարգում բարձրագույն իրավաբանական ուժ ունենալը, միաժամանակ և՛ իրավական, և՛ քաղաքական փաստաթուղթ լինելը, առանձնահատուկ կարգավորման առարկա և մեթոդ ունենալը, հանրային իշխանության սահմանափակման նպատակ ունենալը, լայն և ընդհանուր կարգավորումներ ունենալը, կայունությունը, արժեքանական բնույթն ու իրավական սիմվոլներ պարունակելը՝ գտնում ենք, որ դրանցով առաջանում է անհրաժեշտություն, որ սահմանադրության նորմերի մեկնաբանությունն իրականացվի առանձնահատուկ մեթոդաբանությամբ, որը սահմանափակված չի լինի օրենսդրական մեկնաբանման հիմնական մեթոդներով, և որի կիրառման հիմնական նպատակը պետք է լինի սահմանադրությունը դրա մեջ արտացոլված արժեքներին համահունչ մեկնաբանելու հնարավորության ապահովումը:

ТЕОРЕТИЧЕСКИЕ И ПРАКТИЧЕСКИЕ ОСНОВЫ ПРИМЕНЕНИЯ МЕТОДОЛОГИЧЕСКИХ ОСОБЕННОСТЕЙ ТОЛКОВАНИЯ КОНСТИТУЦИИ

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В процессе юридического толкования часто возникает вопрос о том, следует ли трактовать положения Конституции и других нормативных правовых актов единым методологическим подходом, или у них есть определенные особенности.

Изучая причины и особенности Конституции, которые порождают необходимость использования специальной методологии при ее толковании, включая уникальность этого правового акта, его высшую юридическую силу в правовой системе, двойственное свойство как юридического и политического документа, наличие конкретного объекта и метода регулирования, целью которого является ограничение публичной власти, наличие широких и общих норм, стабильность, ценностную направленность и наличие в нем юридических символов, мы приходим к выводу, что они обуславливают необходимость

толкования норм Конституции с использованием специальной методологии, выходящей за пределы основных методов толкования законодательства, основной целью которого должно быть обеспечение толкования конституции в соответствии с отраженными в ней ценностями.

Key words - methodological feature; value essence; preamble; legal symbol; constitutional-legal significance; self-sufficiency of the constitution; uniqueness of the constitution; limitation of public power; broad interpretation.

Բանալի բառեր- մեթոդաբանական առանձնահատկություն; արժեքանական էություն; պրեամբուլա; իրավական սիմվոլ; սահմանադրաիրավական նշանակություն; սահմանադրության ինքնաբավություն; սահմանադրության եզակիություն; հանրային իշխանության սահմանափակում; լայն մեկնաբանություն:

Ключевые слова: методологическая особенность; сущность ценности; преамбула; правовой символ; конституционно-правовое значение; самодостаточность конституции; уникальность конституции; ограничение публичной власти; широкое толкование.