**THE CONSTITUTIONALISM AND THE CONSTITUTIONS-**

**THE POLITICS WITHIN THE LEGAL FRAMEWORK**

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 The paper "The Constitutionalism and the Constitutions-the Politics within the Legal Framework," analyzes the link between constitutionalism and constitutions. Constitutionalism conceived as a state of mind, ideology and theory of limited and controlled power is most appropriately defined through a series of elements. These include the Rule of law, Human freedoms and rights, the Principle of separation of powers, and the requirement for a higher law. One of these elements is the constitution. Therefore, it is not uncommon in constitutional and legal literature to define constitutionalism, as limitation of state power with legal means.

 This paper, will try to answer the question whether the constitutions *per se* are *conditio sine qua non* for constitutionalism, or they represent only one of its elements. In this context, the paper will elaborate the matter that relates to the basic characteristics of the constitution as an act, the functions of the constitution and the classification of constitutions according to the criteria whether they correspond with the reality.

 The existence of so-called “facade”, “mystifying” or
“programmatic” constitutions, on the other hand, sets the dilemma, whether their existence in one country, is a sufficient guarantee for the existence of constitutionalism. Therefore, although the constitution is the basic instrument in which the measures, means and techniques for limiting and controlling the power are set and prescribed, they per se are not guarantee for limited and controlled government. In this context, the constitution must not be a manifest or description of the existing established political system in one country. On a contrary, it must contain a framework that will prevent the emergence of a concentrated, arbitrary, subjective and voluntary state power. Finally we can conclude that the constitution is an element for the establishment and control of the state power, but its existence, without the will to implement it in practice, prevents constitutionalism. Therefore, the constitution is an element but not a synonym for constitutionalism.

 The analysis will cover the normative, political and sociological-phenomenological theoretical standpoints in defining the constitution.

1. The Concept of Constitutionalism

 Constitutionalism is a historic achievement of world civilization. Its primary purpose is to establish order in governance and governance in a way that assumes that the individual will be its center. The premise and *conditio sine qua non* for constitutionalism is the individual and his/hers freedoms and rights. The human is first, primary and paramount.

 The idea of ​​limiting state power is a central idea of ​​constitutionalism (Treneska, 2015,17). Therefore, the beginnings of constitutionalism should be sought in historical attempts to find mechanisms and means by which to effectively control power. Hence, constitutionalism is a limited state power. L.R.Barroso points out that ,,in its essence the word constitutionalism indicates a limitation of the power and supremacy of law”( Barroso, Louis 2009,4-6).

 In constitutional legal literature, constitutionalism is often defined by categories, the rule of law, limited power by law, the totality of written and unwritten rules for restricting state power, human freedoms and rights, etc. There is no sole definition of the term constitutionalism.

 Treneska will point out that ,,without a clear definition, the term constitutionalism is an open invitation to enter the verbal quick sand”(Treneska, 2006, 3). Therefore, each of the aforementioned categories used to define the concept of constitutionalism are part of its core. What makes it even more difficult to detect its content, is the question of whether constitutionalism and each of these categories are synonyms and whether constitutionalism is a broader term than any of these categories. It seems that the complex task of defining constitutionalism is further complicated by the use of some terms, such as the term subnational constitutionalism (Phinheiro, de Sigueira 2010, 4).

 Therefore, only a generalized definition of constitutionalism as a limited and controlled state power by legal means, would seem to be the most acceptable. Constitutionalism is a materialized idea of ​​limiting power by legal means, mechanisms, instruments and norms.

 However, it seems that the true discovery of the multilayered content of constitutionalism encompasses the concepts of:

1. The exercise of power within legal limits;
2. The exercise of power conform to the notion of respect for the individual and individual citizens rights;
3. The powers conferred on institutions within the state- be sufficiently dispersed between the various institutions so as to avoid the abuse of power;
4. The government, in formulating policies, and the legislature in legitimating that policy are accountable to the electorate( Barnet 2006,5).

 In attempt to unravel the content of the concept of Constitutionalism, Deskoska points out that the essence of constitutionalism can be described through several elements: limited power, consent of the governed, protection of human freedoms and rights, and the rule of law (Treneska 2006, 35-42).

In summary, constitutionalism suggests the limitation of power, the separation of powers, and the doctrine of responsible and accountable government (Barnet, 2006, 6).

Finally, the constitutionalism is an idea and ideology for limited power with legal means.

1. Diffеrent Theoretical Standpoints in Defining the Constitutions

 If we begin from the premise that constitutionalism is an idea of ​​limited state power by legal means, then its core is inevitably the constitution.

 Olivier Diamel discusses about two basic notions of the constitution, the first a neutral legal traditional definition of a constitution, emphasizing the differences between a constitution in formal and a constitution in a material sense, and the second, a political definition of a constitution (Diamel 1998, 20).

 The second aspect as a category is essential, because it stems from the idea that people constitute the government in order to preserve their equality and freedom. Thus the legitimized and institutionalized power derives from the citizens and exists to protect the rights of everyone.

Thomas Payne reveals a complex set of ideas according to which the constitution is something which is prior to government, or antecedent to government, giving legitimacy to government and defining the powers under which a government may act (Paine 1984, 93). “The Constitution sets limits both, to the powers which can be exercised and to the manner in which they may be exercised (Barnet, 2006, 7). Accordingly, the constitution defines the legality of power.

 The above definitions overlap with the theoretical premises of Sartori who emphasizes that "the constitution is the basic law, a basic set of principles and the totality of institutional solutions that will prevent the arbitrary, authority and provide limited power(Sartori 1962, 25), or Friedrich Haek, according to whom, the constitution is nothing but a device for limiting the power of government, whether unelected or elected.

 All of these theoretical holdings can be classified in the political notion of the constitution.

* 1. The Normative Standpoints of Constitution<0}

 In the attempt to define the traditional (normative) notion of the constitution, in constitutional law a distinction is made between the material and the formal notion of the constitution.

 The core of the material notion of a constitution starts from the premise that every state has a constitution. Such a theoretical understanding is understandable and can be deduced if it is previously argued that the constitution is:

* a set of rules related to the state organization (constitution-state relation),
* a set of rules that are the basis for building the legal system - regulating the jurisdiction of the institutions and the manner in which the legal norms are adopted (constitution- law relation),
* a set of rules for political institutions (constitution-policy relation).

The material term in the attempt to define the constitution uses the term "legal rules", not "legal norms (provisions)", since it does not insist on the requirement that those rules be in writing, nor adopted or amended in a special procedure by a specific body. It means that it encompasses both constitutional customs and constitutional conventions established by the repetition of appropriate behavior and embedded in the DNA code of conduct of people in certain social conditions and circumstances.

Hence, the material notion of the constitution and the conclusion - every state has a constitution is value-neutral. It does not value the state, neither the established political system, nor the state organization. Nor is it a guarantee for the existence of constitutionality, respect for human rights and freedoms, the established regime, the restriction of state power, or constitutionalism.

The formal notion of the constitution, in trying to define the constitution, has a completely different starting point. The introduction of the concept of written constitution in the 18th century is a consequence of ideological, philosophical, historical, and social and political circumstances. In a formal sense, the constitution should be considered as a “written act with highest legal power”(Treneska 2015, 6).<0} {0>Тоа значи дека уставот е во пишана форма која нуди поголема прецизност и одреденост ичија содржина е писмено фиксирана; уставот е кодификуван акт во кој е концентрирана релевантната уставно правна материја и уставот е акт кој има најголема правна сила што имплицира на хиерархиската надреденост над сите останати правни акти.<}0{>It means that the constitution, in its written form which offers greater precision and determination and whose content has been fixed in writing, is a codified act in which the relevant constitutional law matter (materiae constitutionis) has been concentrated, and the constitution is an act with greatest legal power implying to hierarchical superiority over all other legal acts. <0} For Lijphard the written constitution is “a document, clearly designed as the highest law for which the parliamentary majority has much bigger moral obligation to observe than if it is an amorphous collection of basic law and custom”(Lijphard, 1998, 218).

 {0>Како претпоставка за постоење на конститутционализмот во прв ред треба да се земат обележјата на уставот во формална смисла.<}0{>

The principal features of the constitution in the formal sense, are:

* its content - a set of legal norms regulating the underlying *materiae constitutionis*<0};
* it is a written legal act;
* it is a written legal act with the greatest legal force (*lex superior*).

What makes the constitution *lex superior* to other legal acts in a legal system, are its content (*materia constitutionis*) but also the procedure for adopting and revising the constitution, which is much more difficult, longer and more complex than the usual law-making procedure of other legal acts. Or as Lijphard concludes, t<0}{0>Двата битни елементи на уставот во формална смисла, органот и постапката за негово донесување и ревизија, се елементите кои на уставот како акт му даваат статус на основен закон (Lex superior).<}0{>he two important elements of the constitution in formal sense, the authority and the procedure for its adoption and review are the elements that give a status of a basic law (*lex superior*) to the constitution as an act (Lijphard, 1998, 218). <0}

{0>Концепцијата за цврт и тешко променлив устав во дефинициијата за уставот ја вградил Келзен инсистирајќи на потребата од ,,устав како систем од норми кои можат да се менуваат само доколку се постапи во специјална постапка, чија цел е да ја отежнат промената на тие норми”.<}0{>Kelsen embedded the concept of stable and hard to amend constitution in the definition of constitution, insisting on the need of “constitution as a system of provisions which can be amended only if actions are undertaken in a special procedure, whose objective is to impede the amendments of these norms”. <0}{0>Тој, уставот го дефинира како највисока нормаво рамките на државното право.<}0{>He defines the constitution as the highest norm within the frames of the state law.<0} {0>Сфатен во оваа смисла уставот претставува основен критериум, репер и појдовна точка на секој правен систем.<}0{>In this sense the constitution is a basic criterion, benchmark and starting point of every legal system.

Finally, the features of the constitution in the formal sense should be primarily considered as a postulate for the existence of the constitutionalism.<0}

* 1. The Political Notion of the Constitution

The political notion of the constitution is of great importance for the constitutionalism. Тhis especially because the political notion of the constitution puts emphasis to the limitation of the political government, and the constitutionalism per se is an idea of limited and controlled government.

 In a political sense, the constitution exists if there are effective instruments for limiting state power in the system. Thus, the supporters of this theoretical point of view, advocate the thesis that a constitution in a political sense can only be spoken if the subjectivity, arbitrariness and abuse of the holders of state power is inhibited. Deskoska points out that "the main goal of the constitution is to limit the power, especially in relation to man and his rights" (Treneska 2015, 8).

 The constitutions are the basic element of the limitation of power. However, although the constitution is seen as the totality of instruments, measures and means of limiting power, it is of utmost importance not only the declarative limitation of power, but also its effective limitation with effective mechanisms. Sartori, emphasizes that "the constitution is the basic law, a basic set of principles and the totality of institutional solutions that will prevent the arbitrary authority and provide limited power (Sartori 1962, 26). Hence, the political notion of the constitution approaches the theory of constitutionalism perceived in the widest sense, as the ideology of limited power.

 In the political sense, the constitution exists when the subjectivization in the exercise of state power has been avoided. It establishes the abstract will of objective law, against the subjective or personal will of those who exercise power.

 The three principal elements of the political term of the constitution are:

* Separation of state power;
* Guaranteed freedoms and rights;
* A rationalized method of changing the constitution, by which it will provide its longevity, on one hand, and on the other, it will allow its adjustment to the constellation social relations.

 Finally, we can conclude that the basic binding points, of the political notion of the constitution and the concept of constitutionalism are, the internal principle of restraint of power and the external principle of limiting state power. The first, is the principle of separation of power incorporated in the role of the constitution to specify a power map, defining the structure of government, articulating the pathways of power and specifying the procedures for lawmaking. The external principle of limiting state power, is the corpus of guaranteed human freedoms and rights. The way in which these two principles will be incorporated in the constitutional creation, will determine the ability of the ,, foundin fathers” to regulate the constitutional substance on the one hand, while at the same time ensuring its flexibility and longevity.

{0>Оттука,на уставот треба да се гледа како на *пишан акт со најголема правна сила*.<}0{>

1. The Content of the Constitutions

 The next, logical and consequential question is, how the constitution establishes the abstract will of objective law, against the subjective or personal will of those who exercise power. This does not seem to the very form constitution to constitution, from a formal point of view and more importantly to the content of constitutions, i.e. the standard *materia constitutionis*. A constitution is therefore a form of political engineering, to be judged like any other construction by how well it survives the test of time (Sartori, 1962, 26).

 Determining the content of constitutions is within the domain of the ,,founding fathers” . The only rule established on this issue is that the constitutional authority has complete freedom in determining the constitutional matter as well as the manner in which it is regulated. However, looking at the issue of standard constitutional matter, it can be concluded that it is somehow static and that there is a tacit consensus among constitutional authorities on the issues to be covered in the *materiae constitutionis*.

 The development of constitutionality testifies that the adoption of the first constitutions was aimed to limit the state power and to recognize and constitutionally guarantee the rights and freedoms of the individual and citizen. It is, therefore, understandable that these two issues, the organization of state power, and human rights and freedoms are central to constitutions and constitute standard constitutional materiae. The way, instruments and means by which the state power will be restricted depends on the individual decisions and institutes that the constituent maker will incorporate into the constitutional text.

 Finally, in order to provide some flexibility to the established legal political system, and to rule out the possibility of changing the constitution simply, quickly and easily, the standard constitutional matter (materiae constitutionis) contains both the procedure and the manner of amending the constitution.

 Here, the regulation of these issues constitutes, the basic *ratio* for constitution making. Consequently, the constitution is the basic act, instrument and mechanism of limiting state power and *conditio sine qua non* for the existence of constitutionalism.

1. The Reality of the Constitution<0}

{0>Проблемот на реалноста на уставот во суштина се сведува на проблем на реалност на правните акти во целина.<}0{>The issue of the reality of the constitution is essentially an issue of reality of the legal acts in general.<0} {0>Суштината на правото и целта на правните акти е нивната примена и имплементација, а преку тоа и исполнување на нивната задача- регулирање на определени општествени односи.<}0{>Their application and implementation is the essence of the law and the objective of the legal acts, and in this manner the fulfilment of their task – regulating specific social relations as well. <0} {0>Во спротивно, непримената на правото, а со тоа и неисполнување на неговата задача, го лишува правото од неговата суштина.<}0{>Otherwise, the non-application of the law and the failure to fulfil its task, deprives the law of its essence.<0} {0>Сепак, помеѓу целта која се сака да се постигне и вистинските ефекти од остварувањето на правната норма, често постои расчекор.<}0{>However, there is often a discrepancy among the goal which is desired to be achieved and the real effects of the achieving of the legal norm.<0} {0>Дискрепанцата помеѓу the law in books and the law in action не ретко е суштествено голема и во таков случај мора да се превземат мерки и да се спроведат дејствија за нејзино надминување.<}0{>Very often the discrepancy between the law in books and the law in action is significantly big, and in this case measures must be undertaken and actions to overcome it should be implemented. <0}

 {0>И уставот во традиционална смисла не е исклучок од оваа појава.<}0{>The constitution as well, in its traditional sense, is not an exemption of this phenomenon. <0} {0>Иако, замислен да претставува долговечен пишан акт чија постапка за менување би била потешка од редовната законодавна постапка, сепак тоа per se не значи дека уставот претставува еднаш засекогаш даден акт.<}0{>Although conceived as a long-term written act whose amendment procedure would be more difficult than the regular legal procedure, this per se does not mean that the constitution is once and for all given act. <0} {0>Напротив, појавата на несогласност помеѓу уставната реалиа (Constitutional realia) и уставна формалиа (Constitutional formalia) е чест феномен.<}0{>On the contrary, the occurrence of discrepancy between constitutional *reallia* and constitutional *formalia* is a frequent phenomenon. <0} {0>Конечно, оценката за правниот систем и крајната оценка за уставот може да се даде единствено врз основа на тоа како тие се остваруваат во реалноста.<}0{>Finally, the evaluation of the legal system and the final assessment of the constitution can only be conducted on the basis of their implementation in reality. <0} {0>Тргнувајќи од тука, се чини дека нивното имплементирање и остварување во практика претставува срцевината на проблемот на реалноста на правните акти.<}0{>As a result of this, it seems that their implementation and putting into practice, is the core of the issue of reality of the legal acts.<0}

{0>Проблемот на оценка на реалноста на уставот е комплексен.<}0{>The issue of assessment of the reality of the constitution is a complex one.<0} {0>Се чини дека анализата на елементите кои влијаат на реалноста на уставот, најблиску можат да не доближат до неговата суштина.<}0{>It seems that the analysis of the elements influencing the reality of the constitution can bring us closest to its essence. <0}

* 1. {0>Основните својства на уставот и неговиот карактер е клучен елемент кој ја детерминира неговата реалност.<}0{>The main features of the constitution and its character is a key element that determines its reality.<0} {0>Од посебно значење е утврдувањето на тоа дали уставот претставува општ правен акт или идеолошко-политички документ, односно позитивно правен акт или акт кој е програмски.<}0{>It is of particular importance to determine whether the constitution is a general legal act or ideological and political document, that is, positive legal act or act which is programmatic.<0} {0>Тргнувајќи од ова, се смета дека кога на уставот се гледа како на позитивно правен акт, а priori се верува дека општествената реалност ќе биде вметната и преточена во неговите норми.<}0{>As a result of this, it is considered that when the constitution is seen as a positive legal act, it is believed a priori that the social reality will be included and translated into its provisions. <0} {0>Овој акт ја пресликува уставната реалност.<}0{>This act reflects the constitutional reality.<0} {0>За разлика од ова, уставите кои поседуваат програмски или идеолошки елементи како цели кои во иднина треба да се остварат или настојувања кон кои воспоставениот систем треба да се стреми, се чини не соодветствуваат на реалниот уставен моментум.<}0{>Contrary to this, the constitutions having programmatic or ideological elements as objectives which should be pursued in future or strivings to which the established system should aim, it seems they do not correspond to the real constitutional momentum. <0} {0>Доколку овие елементи се видливо неостварливи и оставаат впечаток на потполн расчекор помеѓу уставот и de facto констелацијата општествени односи, тогаш уставите се квалификуваат како мистификаторски, козметички и потполно нереални.<}0{>If these elements are visibly unfeasible and give the impression of complete imbalance between the constitution and de facto constellation of social relations, then the constitution is qualified as mystifying, cosmetic and completely unreal. <0}
	2. {0>Содржината на уставот е втор елемент кој ја детерминира неговата реалност.<}0{>The content of the constitution is the second element which determines its reality. <0} {0>Имено, уставот кој ги уредува и гарантира основните човекови слободи и права од една страна и државното уредување и воспоставениот политички систем од друга, мора да биде прилагоден на условите и потребите на општеството и државата.<}0{>Namely, the constitution regulating and guaranteeing fundamental human rights and freedoms on the one hand, and the state order and the established political system on the other hand, must be adapted to the conditions and needs of the society and state.<0} {0>Оттука, јасно е дека уставот за да биде реално остварлив и применлив во вистинска смисла на зборот, неопходно е да ја уредува оваа уставна материја на начин да таа рефлектира не само реална слика на општествените односите туку и да биде возможен, применлив, да се остварува и да живее.<}0{>It is therefore clear that in order the constitution to be realistically achievable and applicable in the real sense of the word, it is necessary to regulate this *materiae constitutionis* in a way that it reflects not only the real picture of the social relations, but also to be possible, applicable and to live. <0}
	3. {0>Фактор кој ја условува реалноста на уставот е и неговата старост.<}0{>The age of the constitution, conditions its reality, as well. <0} {0>Се претпоставува дека уставот кој е одамна донесен и кој не претрпел измени и дополнувања долг временски период има мала веројатност дека реално ќе ја отсликува уставната реалност.<}0{>It is assumed that there is a slight possibility the constitution that was adopted a long time ago and did not undergone amendments for a long period of time, to realistically reflect the constitutional reality. <0} {0>Општестевните односи се променлива категорија.<}0{>Social relations are a variable category. <0} {0>Тие се постојано подложни на промени и неминовно наметнуваат потреба на усогласување на правните акти кои ги регулираат, па согласно тоа и на уставот.<}0{>They are constantly susceptible to changes and inevitably impose the need of harmonisation of the legal acts by which they are regulated, and according to this, the constitution as well.<0} {0>Тогаш кога правните акти ќе станат застарени и неприлагодени на општеството за кое се наменети, потребно е да се менуваат.<}0{>The legal acts need to be changed whenever they become obsolete and unadjusted to the society for which they are intended. <0} {0>И уставот е акт кој подлежи на промени.<}0{>The constitution is also an act susceptible to amendments.<0} {0>Неговото менување е неминовно доколку интенцијата е одржување на уставен систем во кој нема да постои дисцрепанца помеѓу уставната норма и реалноста.<}0{>Its amendment is imminent if the intention is to maintain the constitutional system in which there will be no discrepancy between the constitutional provisions and the reality. <0} {0>Иако, постапката за уставна ревизија може да биде конструирана како исклучително тешка за реализирање и иако уставотворецот може да предвиди апсолутна забрана за менување на определени уставни одредби, сепак тоа не значи дека уставот нема да подлежи на промена, тогаш кога ќе бидат созреани условите за тоа.<}0{>Although the constitutional review process may be constructed as extremely difficult to implement and although the constitutor may predict absolute prohibition on amending certain constitutional provisions, it does not mean that the constitution will not be subjected to amendments when the time comes.<0} {0>Затоа се чини, дека еден од условите за реалноста на уставот е неговата ,, современост” односно ,, младост”.<}0{>Therefore it seems that its “modernity”, that is, its “youth” is one of the conditions for reality of the constitution.<0}

{0>Доколку се анализираат кумулативно сите наведени фактори, неминовно ќе се заклучи дека органот надлежен за оценка на уставноста на правните акти има исклучително значење за реалноста на уставот.<}0{>If all the aforementioned factors are being cumulatively analysed, it will be inevitably concluded that the authority competent for control of the constitutionality of the legal acts is of outmost importance for the reality of the constitution. <0} {0>Имено, долговечноста на уставот како акт, неговата флексибилност како квалитет кој му овозможува усогласување со променливите општествени односи, директно е условена од активноста и методологиите на уставните судови во процесот на толкување науставната норма.<}0{>Namely, the longevity of the constitution as an act, its flexibility as a quality enabling it harmonisation with the changing social relations, is directly conditioned by the activity and methodologies in the process of interpretation of the constitutional norm. <0} {0>Од друга страна содржината на уставот и начинот на кој истата е уредена ја рефлектира интенцијата и умешноста на уставотворецот да креира текст кој низ историјата ќе го поседува квалитетот да опстои и умешно да се прилагодува на уставната реалност.<}0{>On the other hand, the content of constitution and the way in which it regulates the *materia constitutionis* reflects the intention and the skill of the constitutor to create a text that will have the quality to survive through the history and to skilfully adapt to the reality. <0} {0>Веројатно најсоодветниот пример за ваков устав, е Уставот на САД кој повеќе од 200 години опстојува во лулката на уставната историја.<}0{>Probably the most appropriate example of such a constitution is the Constitution of the United States which exist in the cradle of the constitutional history for more than 200 years.<0} {0>Причините имено, за тоа не треба да се бараат единствено во уставниот текст, туку и низ одлуките на Врховниот суд кои се чини ја вбризгуваат неговата младост, го осовременуваат и прилагодуваат на новата констелација општествени односи.<}0{>Namely the reasons for this should not be sought only in the constitutional text, but also through the decisions of the Supreme Court, which seems to inject its youth, and modernize and adapt it to the new constellation of social relations. <0} {0>Оттука нема да се погрешни ако се заклучи дека активноста на уставните судови во процесот на толкување на уставната норма, одлучувањето во услови на посточка уставна празнина, прифаќањето на техниките на самоограничување во постапувањето или манифестирањето на формите на судски активизам, секако го детерминираатопстојувањето на уставот и неговата долговечноста и ,,современост”.<}0{>Hence, it will not be wrong if we conclude that the activity of the constitutional courts in the process of interpretation of the constitutional norm, the decision making in conditions of existing constitutional gap, acceptance of self-restriction techniques while undertaking actions or demonstration of the forms of judicial activism, of course determines the existence of the constitution and its longevity and "modernity”.

Conclusion - Is Constitutionalism Possible Without a Constitution?

Finally, it can be concluded that constitutionalism is a multilayer term for which there is no single definition. Constitutional legal literature insists on defining it by analyzing its individual elements. However, a general definition of constitutionalism as a belief and idea of ​​limited and controlled power would be acceptable.

On the other hand, it seems that the problem of defining constitutionalism is more difficult to analyze seems having in mind the different theoretical standing points of the constitution. Analyzing the traditional (normative), political, and even sociological notions of the constitution raises the question of whether this categories of constitution and constitutionalism have the same meaning.

Very often, the premise that constitutions are a legal instrument and an act containing the measures, the means, the instruments of restraint of power, lead to the conclusion that the said categories are synonymous. However, it must not be forgotten that constitutionalism is a broader term that encompasses a number of other categories such as the rule of law, human rights and freedoms, the concept of constitutionality and legality, etc.

What can be accepted as a thesis, is that in the continental legal tradition, the existence of a written codified constitution as an act with the greatest legal force is a *conditio sine qua non* for constitutionalism. This is because the constitution is an act with the highest legal power, and an act that is revised from a specific body (the constitutional authority) in a more complex and difficult procedure on one hand, and the so called *materia constitutionis*, regulates the principal and necessary instruments for restricting state power and ensuring constitutionalism, on the other.

 Hence the dilemma is, whether there is any constitutionalism without a constitution as an legal act. Reduced to its core, the question is whether there can be limited and controlled power in one country without having a constitution in written and codified form. The answer is YES, and probably the most appropriate example is the United Kingdom. On the other hand, the existence of a constitution in the traditional normative sense does not guarantee the existence of constitutionalism as a system of limited power by legal means. This is especially so, if constitutions are categorized as unrealistic, programmatic or facade constitutions.

*Bibliography:*

* Arend Lijphard.1999. *Patterns of Democracy*. Yale University press.
* Barroso, Luís Roberto (2009), Curso de direito constitucional contemporâneo: os conceitos fundamentais e a construção do novo modelo. São Paulo: Saraiva, at 5; Tarr, G. Alan (2007), “Subnational constitutional space: an agenda for research”, World Congress of the International Association of Constitutional Law, Athens, 2007. Available at: http://camlaw.rutgers.edu/statecon/workshop11greece07/workshop11/Tarr.pdf

Bernhardt. Rudolf. *Different Concepts of Modern Constitution. General reports from the First Congress of IACL in Belgrade.* Fribourg.Switzerland.

Giovani Sartori. 1962 *Constituttionalism: A Preliminary Discussion*. 56 American Political Science Review.

* Hayek Fridrich. 1993. *The Constitution of Liberty.* London.
* Hillaire Barnet. 2006. *Constitutional and administrative law.* Routledge Cavendish.Oxon.

Jovicic Miodrag. 2006. *Constitution and Constitutionalism.* Belgrade:Sluzbeni glasnik.

* Julio Pinheiro, Faro Homem de Siqueira. *What is subnational Constitutionalism*. Sant Anna School of Advanced Studies. Department of Law. ISSN 1974-5656.Reasearch Paper 7/2010.

Kelzen Hans. 2001. The General theory of the Law and the State. Belgrade: Slizbeni glasnik

Olivie Diamel. 1998. *The Constitutional law- democracies*. Paris.

Paine Thomas. *Rights of man*. New York.1984

Treneska –Deskoska Renata. 2015.*Constitutionalism*. Skopje: Faculty of Law ,,Iustinianus Primus”

* Treneska-Deskoska Renata. 2006. *The Constitutionalism and the Human Rights.* Skopje: Faculty of Law ,,Iustinianus Primus”