

THE RULE OF LAW AND THE SUPREMACY OF LEGAL RULES - BASIC PRINCIPLES

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Abstract

The concept of the "rule of law" is not a mere philosophical concept, but a much discussed essential constitutional necessity which implies that the science of law is permanently and indissolubly linked to the state, on the one hand in order to create the necessary rules but also to ensure the finality and effectiveness of these legal rules, and on the other hand the state is dependent on law in order to be able to express its force with the aim of establishing a general and mandatory behaviour to achieve the general good. In any period of the evolution of a state into a state governed by the rule of law, the legal system created by the state for various fields of activity is implemented voluntarily or through the coercive force of the state. In the application of this legislative system to enforce the supremacy of the law, there may be a number of controversies concerning the interpretation of articles of law or controversies concerning the legal classification of a case or any other kind of controversy but in normal situations, a law, even if it is considered to be unjust, must be respected and any case brought to court demands a solution under the law but it is obvious that the legitimacy of a law as well as the constitutionality of the procedure for adopting a law may be discussed.

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The doctrine of the rule of law is the political doctrine with the widest spread in social practice regarding the state and the law. The genesis of this doctrine has its starting point, related to the beginning of the modern era, in the Enlightenment period, with John Locke, Montesquieu, J.J. Rousseau. In the contemporary era, this doctrine is shared by the majority of political scientists and politicians who act in practice for its materialization. Based on the separation of power in the state, on the free election of the bodies of political power under the conditions of political pluralism, on the freedom of expression and organization, based on the law, the rule of law represents today the most popular political institution, having a first-order role in ensuring a prosperous and civilized life.

The supremacy of legal science in litigation, regarding the person as an individual as a subject of rights, the generality of the law (Popa, 1992:132) in the sense of its application in similar cases, the formalistic character of the law are part of the set of legal rules implemented in European culture as a fundamental component in the evolution of humanity.

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The concept of supremacy of law in the rule of law has the following significant attributes:

- strict observance of existing law in the settlement of disputes;
- exclusion of any other methods and considerations in the realization of law and implementation of legislation such as: bribery, coercion of representatives of state institutions entrusted with the dispensation of justice;
- recognising each individual as a subject of fundamental rights and freedoms;
- observance of the basic characteristics of the law in terms of its formalistic, general character and the supremacy of the law in disputes.

At any stage in the development of a modern state, a legal system must be implemented even if controversies may arise over the interpretation of certain articles of law, different opinions may arise over the legal classification of the cases before the court or any other kind of controversy. Any case before the court requires a solution based solely on legal provisions and the law that is valid at the time must be used. The law in force, even if it is not agreed by all, especially by the losing party in a dispute, is the law that must be observed.

St. Augustine's theory of laws is based on the fact that secular laws are not just, but human laws, though unjust, must be observed. (Georgescu, 2001:34-35)

It is necessary to question the legitimacy of a law, or rather of legislation, just as the legality of the procedure for adopting a law can be questioned. When it comes to compliance with the law, we are dealing with a fundamental value in itself that cannot be conditional. The supremacy of the law implies unconditional observance of the law in force, and no one or nothing can compel anyone to apply or not apply the law, even if in the course of history there have been such situations, this does not mean that they can be used as a precedent for invoking non-compliance with the law and legislation. Any of the persons or institutions involved in disputes that are addressed by the application of the law is subject to inalienable rights and freedoms and the supremacy of the law implies recognition of the other as such subject. There is no supremacy of law and rule of law where a certain asymmetry of fundamental rights and freedoms has been implemented for whatever reason. The supremacy of the law implies that the law applies to everyone, regardless of his or her position in the political, social or economic hierarchies, so that the law applies to everyone, without any consideration other than that of the supremacy of the law in the cases before the court.

The supremacy of the law also means that laws must be adopted in a way that is clear and unambiguous, that is understood by all, that is known, general, expressly promulgated, formulated and non-retroactive, thus ensuring that citizens, as subjects of law, know what obligations are imposed by law and can expect these obligations to remain unchanged until the law is changed. No one is above the law and cannot be exempted from the application of the law and discrimination and arbitrary decision are excluded from the supremacy of the law.

The supremacy of the law is ensured by existing laws, not by future laws or doctrines, and implies the evolution of a society through new laws.

The supremacy of the law assumes decisions in litigation which are taken by someone impartial, of unimpeachable moral probity, for the law itself is, in intention, above private interests, and the application of the law and the achievement of the law remains bound to the same intent.

The independence of justice (Draganu, 1992:13-74) is an inherent consequence of the supremacy of the law in the sense of preventing any interference by the executive power in the settlement of disputes

Independence of justice obviously means that justice is done without any interference from politics and politicians. But, as a fact worthy of consideration and to be cherished as an undeniable reality, the establishment and enforcement of the independence of justice are dependent on politics and the action of politicians. Only politics can ensure the existence of institutions that enjoy independence from the politics that are actually promoted. Today the interest in the rule of law is high for many reasons.

First of all, it is not possible to achieve a democratic society in which the political will is the result of public debate by citizens on issues of public interest without taking into account the supremacy of the law, which is the solution in all areas when it comes to democratisation and the modernisation of states.

In any state governed by the rule of law, the practice of drafting laws and the real independence of justice must be cultivated, leading to firm solutions that will make it possible to make a major shift from the ideological proclamation of the rule of law to ensuring the supremacy of the law in disputes as a defining part of the principle of the security of justice. The rule of law is defended by those who assume the requirement of the rule of law through the application of the rules of law and work to improve them and to create the necessary and sufficient conditions for justice to triumph in litigation.

The rule of law that ensures justice and the rule of law in litigation can only be achieved through a set of measures that cover many sides, and a real rule of law will never be achieved if the measures adopted are only half measures.

The Kelsenian approach shows that the rule of law cannot be reduced to the simple hierarchical arrangement of legal rules without taking into account the content of these rules. Kelsen drains the concept of "rule of law" of the political and ideological meanings it has historically taken on. (Miculescu, 1998:226)

The refounding of the rule of law will require the integration of new values (rights of claim) that emerged during the dynamic expansion of the welfare state, through which the liberal basis was cracked and shaken. (Chevalier, 2023:314)

Rights of claim are added to rights-freedoms, but they even change their importance; while the concept of classical freedoms set limits to the state, the achievement of the new rights requires mediation, intervention and responsibility on the part of the state, and their unlimited extension justifies the unlimited extension of state intervention in social life.

By correlation, the democratic principle, far from helping to curb the expansion of the state, will serve it as a powerful driving force by favouring the exercise of political freedoms, and under pressure from the electorate the new rights will be enshrined; the state becomes the means of replacing the power of the nation, allowing the sphere of collective consumption to develop. *Salus populi suprema lex* (the welfare of the people shall be the supreme law) is surely such a just and fundamental rule that he who follows it surely cannot go wrong. (Locke, 2011:94)

If the theory of the rule of law (Bobos, 1994:87) has sought to halt the advance of democracy, it will soon be overtaken by it; at the same time, the shift from a "governed democracy" to a "governing democracy", in which the people no longer rely on their rulers but understand to intervene directly in political life, and from a "political democracy" to a "social democracy", in which rights are conceived as demands, requirements, translates into a powerful change in democratic logic. Paradoxically, the theory of the rule of law has contributed to this development through its virulent criticism of the representative system and its desire to introduce the procedures of semi-direct democracy.

The welfare state is marked by a desacralisation of law. The legal rationale on which the rule of law was built in the liberal democracies is in crisis; not only has the law lost certain attributes that placed it fully in the rational order, but the relevance of the legal utility as a device for social regulation is no longer relevant. A new law has emerged with the establishment of the welfare state, interventionist law, conceived as an instrument of action in the service of the state, serving to implement public policies and aiming not only to frame behaviour but also to achieve certain objectives and produce certain economic and social effects, thus marking the transition from "law-rules" to "law-measures". (Vrabie, Popescu, 1993: 183-197)

Seeking to adapt to changing and evolving situations, law is increasingly emerging as a transitional law. Law no longer has the characteristics (Ceterchi, Craiovan, 1998:113-115) of systematicity, generality and stability which traditionally were the signs and testimony of its rationality. Casting this law into traditional liberal legal forms has had the effect of profoundly altering the configuration of the legal system, compromising its rationality, i.e. the loss of its traditional characteristics. Thus, law is no longer a set of general, hierarchical and articulated rules, but a patchwork of multiple, diversified, interlocking texts, aimed at more accurately encompassing social reality and thus reflecting its complexity.

At the same time, there is a loss of effectiveness of the law; normative inflation leads to a devaluation of the law and prevents it from fulfilling its regulatory function in a satisfactory manner.

In the new conception, the rule of law must be understood as implying adherence to a set of values and principles which will be explicitly enshrined in law and accompanied by specific guarantee mechanisms. The formal concept is linked to a material or substantive concept, which encompasses and goes beyond it: the

hierarchy of rules becomes itself one of the components of the substantive rule of law.

There is an internationalisation of fundamental human rights; fundamental rights are explicitly enshrined in law and are placed at the highest levels of the legal order, so that the hierarchy of legal rules becomes a means of protecting rights, and the two dimensions of the rule of law - formal and material or substantive - are rely on one another.

In conclusion, the rule of law, propelled from the legal to the public plane, has become a value in itself, transformed into an axiological constraint and experiencing an overload of meanings. The issue will pass into the political field, becoming a means of legitimizing power, then a constitutive element of political discourse; although it was a legal notion with tried and tested content, honed by generations of jurists, its use by laymen transforms the rule of law into "discourse", resounding if not confused, functioning as an argument of authority. The rule of law is an ideal form of state organisation in which the supremacy of the law is assured, even over the law-making bodies, and in which all subjects of law, including political actors, are subordinated to the law; it is a notion that includes the rule of law, which is adopted by a parliament expressing the sovereign will of the nation; it is a social response to the abuse of power.

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