

The rule of law

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Abstract

The state as an international entity and its impact on the individual's right has been and still continues to be a crucial factor in the relationship between private and public persons. States vary in terms of their political system, however, democratic states are based on the separation of powers and human rights within the state. Rule of law is the product of many actors in a state, including laws, individuals, society, political system, separation of powers, human rights, the establishment of civil society, the relationship between law and the individual, as well as, individual-state relations. Purpose and focus of this study is the importance of a functioning state based on law, characteristics of the rule of law, separation of powers and the basic concepts of the rule of law.

Keywords: *State, Law, Analysis, rights, concepts.*

Introduction

The rule of law has been one of the main factors in the implementation of the rule of law in the

Relations between the state and citizens. Separation of powers and of the rule of law, are very important in creating the checks and balance between state institutions. The idea of the rule of law comes back from the ancient times. It was described as a tool that makes efficient ethics (Aristotle, 1987). Laws must be clear, consistent, and applied equally, in the protection of fundamental rights, including the protection of persons and property. This means equality of all before the law.

To understand the genuine rule of law in a country, we should analyze the legal systems of countries which have different legal systems. In many countries good laws and a proper legal state, in any form, cannot be constituted without relying on law and the fundamental human rights. The essence of law should be the protection and development of freedom. The power of law, lies in the existence of a stable rule. Overcoming this rule makes people lose freedom, for if I violate the law, then it should be subject to sanctions, and therefore lose freedom (Locke, 1690).

Love for equality in a democratic system, limits ambition in a single desire, namely the desire to carry on homeland sublime services. But not all citizens are able to perform the same services as opposed to their homeland, however, all citizens are obliged to act and perform services for the benefit of the state (Montesquieu, 1748). Of particular importance are rights and freedoms, no matter if they are individual or collective rights, because these rights derive as natural or hereditary. These subjective rights are part of objective law conceived as legal norms, which express the will and readiness of the state and ruling position in the country. The rule of law is not absolute, but freedoms and rights are considered as natural rights that no man and no one, nor the state can violate. Some theorist sources of these rights and freedoms were based on the principle underpinning

of the social contract like: "All are born equal in nature and must live as such" (Hobbes, 17; Stumpf, 217). In this sense it is only for the benefit of society, that the governments should not arbitrarily exercise the law on the individual, but it should also be accepted by the citizens (Locke, 1690). Such an arrangement in most cases can evoke the illusion of a stable coexistence and social relations, but there are always political mixed with economic interests. Examples that rely on innate inequality prove the possibility of establishing agreements with dubious basis, which can be justified for a certain period of time, but cannot possibly be comprehensive in a long term.

In this sense, the rule of law is characterized by some features which include:

- supremacy of law, as an expression of popular sovereignty through the principle of representation, a hierarchical system of legal norms in the top of which is the Constitution (Eid, 2005, 55).
- separation of public powers, each in a particular area of competence as a guarantee of democracy.
- principle of legality, which is in compliance with the applicable law and administration of a system of administrative appeal against unlawful actions.

The rule of law as a concept is perfected reaching recognition and the possibility of a judicial appeal against the political and legislative acts, always through constitutional justice bodies and elimination of the precedent of the exercise of control over administrative acts (Shehu, 2004, 26). In this regard, the meaning of the rule of law is connected with some elements in order to define it. The rule of law is a set of legal norms, which should be respected strictly. Their implementation is ensured by the state.

The notion of a state consists of three basic elements: separation of powers; state submission to the law and the state's social mission (Omari, 1999, 160). Legal state mainly relies on the separation of powers; there are cases of double sharing their strict separation between the legislative and the executive. The principle of separation of powers also requires specialized bodies in the exercise of independent competences. The role of the separation of powers is a multiple one, because through the filtering of organs checks and balances can be controlled (Filo 2001, 114). The system of power sharing today represents one of the key components of the rule of law and the principle of political pluralism (Bajrami, 2002, 85).

Concepts of the rule of law are beginning to be used, especially in recent times, thanks to the rapid development of constitutionalism and parliamentarism in the World. On this basis legal theory and legal systems were established worldwide. The principle of the rule of law is set alongside the first demands of the sovereignty of people. "If so, and this is the very issue-democracies should be what the word itself describes: systems and political regimes in which he who commands is the people" (Sartor, 1998, 14). In this sense the constitution should respect the sovereignty of all citizens. Equality before the law means no discrimination or minimum tendency, positive or negative, racial, religious or gender. Law shall be subject to the same social classes and all individuals without distinction, a process that will be applied by ordinary or constitutional courts. And the phrase "rule of law" in the broadest sense understands, "induction of all government bodies and any holders of public authorizations and to every individual under the Constitution and law, respectively, with the mean subjecting them to a Legal desirable place " (Sartor, 1998, 104).

In traditional and contemporary theory, legal criteria are devised in the form of elements,

principles and institutions. Among them, the most important are:

- priority of freedoms and human rights;
 - legitimacy of the government;
 - separation of powers;
 - constitutionality and legality (legality);
 - independent courts;
 - rights and freedoms, including the right to private property and free economic activity.
- Based on the above arguments, historical experiences have proved that each system is concentrated in one body, and however democratic it would have been, there have always been difficulties. Therefore, the rule of law in society is seen as the most essential element and most important principle of the legal system of each country.

Conclusions

This paper is based on the analysis of the legal state and the importance of the rule of law and its functioning. At the beginning of the paper we have provided facts and arguments on the rule of law since ancient times. Rule of law is based on the separation of powers, their importance in the exercise of their function and state control of these institutions, creating state control through the separation of powers. The fact of the separation of powers creates a stronger foundation for a legal state, its establishment and operation. Legal state and its elements are based on the principle of separation of powers, rule of law, respect for human rights, and equality of all before the law. Although many arguments about better functioning of legal state were presented, many democratic countries are faced with challenges for the strict implementation of the checks and balances between state institutions.

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