

## THE RULE OF LAW - A DETERMINANT OF GREATER SECURITY OF CITIZENS AND BUSINESSES

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**Abstract:** *Today, it can be emphasized with certainty that the rule of law is the foundation of modern economics, politics, culture, education, etc. There is no area of the social system that is not dependent on and protected by the implementation of the rule of law. According to the criterion of whether this principle is applied, states are classified as totalitarian and democratic. There are differences in the understanding, meaning and implementation of the rule of law in different countries. There are also differences in the normative regulation of this fundamental principle. In the Republic of North Macedonia, the rule of law is a constitutional principle. It`s application is protected by the highest norms in the hierarchy of the legal order. However, in practice there are cases that represent a classic derogation of this principle. The danger is evident if we take into account that the violation of this principle occurs in the institutions of the system, by the holders of the system of power. Although these may be isolated cases, their impact on citizens' perceptions of the application of this principle is enormous. Therefore, it is necessary to overcome the discrepancy between the declared and the factual, between the normative and the real. The actual application of the rule of law will largely depend on how much this discrepancy will be overcome.*

**Keywords:** *constitutional principle, totalitarian and democratic states, freedoms and rights, institutions of the system.*

## Introduction

Today, after several decades of state independence, it can be noted with certainty that there is no issue more exposed to the public than the rule of law. This constitutional principle, in its meaning, occupies the focus of interest of politicians, economists, sociologists, experts and ordinary citizens. The media report with all zeal on cases where the rule of law has been violated; in their articles they link the realization of Euro-Atlantic aspirations to the rule of law; respect for human rights and freedoms is determined by the rule of law. Numerous graduate, master's and doctoral theses are dedicated to the essence and application of the rule of law. However, all this activity in reality does not reduce the conflict between the normative and the factual, between the declared and the implemented, between the constitutional concept of the rule of law and its concrete application in practice. Critics of the government regularly call for blatant violations of the rule of law. But their criticism exists only when they are in opposition. The moment they are in power, in a position where they appear as violators of the rule of law for some higher party or personal goals! Therefore, on a scientific basis, there is a need to explain the theoretical design of the constitutional principle - the rule of law through the prism of its reality, ie application in practice.

It should be noted that there is no area of the socio-political system that is not determined by the basic postulates of the rule of law. The police, educational institutions, business systems, health care, as well as everyone else in their work are committed to the consistent application of the rule of law. This commitment of the institutions to this principle implies a state in which:

- No entity has the right to violate certain rules, including the one that adopts them;

- The minority has certain rights and freedoms guaranteed

- - The rules themselves were adopted in accordance with certain principles in democratic institutions.<sup>5</sup>

The rule of law is a constitutional imperative for the development of democracy in the global world. V. Vasović points out that the issue of the relationship between law and democracy, ie the rule of law, is undoubtedly much more complex and difficult than it seems or points out. Namely, it is not entirely clear which law is in question. Is it some kind of natural law or is it a positive law? If it is the first, then it is known that there are great hesitations and disagreements about what is a natural right. It is not uncommon for different authors to understand and cite different human rights in a closer definition of natural law. Some, in the group of natural rights, include certain human, civil and political rights and give the same status to economic and social rights; some private property consider it a natural right and others do not, and so on. Therefore, it is indisputable that the rule of law has a fundamental meaning in the functioning of the entire system of government, which in our country is based on the principle of separation of powers.

### 1. Theoretical design of the rule of law

A society governed by the rule of law is like a huge machine in which, in achieving its goals, all parts, without interfering with each other, function in harmony. Such a flawless functioning of the legal order is hardly noticed by people, which is not surprising at all. Order as a legal value, in terms of peace and security, has an instrumental value. In general, the existence of order in society is its immanent need. Social order, as a whole, ie. The system of established social relations in reality, even in its spontaneous dimension, cannot be realized without any order, without certain rules, even if they are purely social. In the normatively organized segment, the social order acts as a dialectical set of several constituent parts, ie. Private order. These

<sup>5</sup> Stanovčić V., Civil Society and the Rule of Law in Multinational Communities, Proceedings:

"Suppressed Civil Society", Eco Center, Belgrade, 1995, p. 121-122.

parts of the overall social order are: legal, economic, moral and other orders. Normative social order as a whole maintains the stability and permanence of society, which gives people a sense of security and personal belief that by respecting and applying the norms of the legal order can safely achieve the desired desires, goals and interests.<sup>6</sup>

The principle of the rule of law includes three particularly relevant factors: first, the rule of law, ie. The Constitution as a constitutional order; second, the inviolability of certain individual rights and third, the independence of the court or judiciary.<sup>7</sup>

Raz adds that the rule of law is only one of the characteristics that the legal system can possess and with the help of which it should be assessed. Institutions may or may not be based on proper organization, but their essence is more the establishment of a certain formal structure and rules of behavior and interaction between individuals. Institutions structure social life, defining clear roles of the individual, rules of conduct, mutual relations within the institution and interaction between institutions, ie. Roles of individuals in each institution. Today's society cannot be imagined without such a formal institutional structure, based on legal, economic and other rules and norms or conventions. The rules that determine the role of the individual and his behavior in institutions and towards institutions are largely defined as legal norms. Institutionalization, as a basic characteristic of modern society, goes hand in hand with regulation, because only legal norms, behind which the state and its coercion, guarantee the certainty of expectations regarding the social role of individuals and institutions, as well as their mutual relations. But the problem of regulation - deregulation is not reduced to the question of the existence of rules of conduct, because they have a constitutive meaning and without such rules there are no institutions, but whether such

rules are set and sanctioned by the state or they are autonomous, conventional social norms, supported by morality, religion, customs or other illegal normative systems.<sup>8</sup>

The Macedonian Constitution, in Article 8, paragraph 1, line 3, determines the principle of the rule of law as the fundamental value of the constitutional order of the Republic of Macedonia. This in the broadest sense means that all holders of public office, all bodies and institutions in the exercise of their responsibilities and in the adoption of appropriate acts must adhere to the letters of the Constitution, laws and other bylaws.

## **2. Implementation of the rule of law - problems and challenges in practice**

The democratic processes that have occupied our country since 1990 have undoubtedly increased the curiosity and interest of the scientific and academic community in researching phenomena that were perceived as a phenomenon or a challenge for practice at the beginning of its establishment. One of these phenomena is the concept of the rule of law as a general, generative principle, which has a long practice and significance in developed democracies. It is indisputable that in the conditions of the initial democracy, the concept of the rule of law was introduced into the Macedonian constitutional order in our country, an introduction that can be metaphorically explained by the phrase "growth after rain". However, at an accelerated pace, this principle began to be associated with legal, economic, cultural and other subsystems of the social. Therefore, there is a danger of overuse, fetishization or glorification. This has been confirmed in science, with the view that there is a resemblance between words and objects; Constant and frequent use makes them pleasant, like any habit, but sometimes they are exaggerated by overuse and lead to fatigue and satiety. Therefore, both in life and in theory, there are continuous cycles of changing the way of

<sup>6</sup> D. Bajaldzhiev, On the concept of (legal) value and security, peace and order (order), as essential values in the current moment of the Republic of Macedonia, Proceedings of the International Symposium, Faculty of Law Skopje, 2004, p. 109-110.

<sup>7</sup> V. Vasović, , Contemporary Democracies I, Official Gazette, Belgrade, 2006, p. 73.

<sup>8</sup> V. Kambovski, Preface, Proceedings of the Scientific Discussion, no. 5, MANU, Skopje, 2008, p. 11-16.

expression. As ways of dressing and behaving change, so the vocabulary of social theory cannot resist the dictates of new changes.<sup>9</sup>

The rule of law in our constitutional and socio-political system is embedded in complex social conditions: almost fifty years of living in an "original" and incomparable society - the transition to communism! It ended unhappily in the 1990s. We have entered the transition again. Now to capitalism, that is, to liberal democracy, market economy, political pluralism, rule of law, civil society. how long will it take? Has it ended in an act of legal overthrow of the one-party authoritarian system or does it involve a process of consolidating democracy and the emerging economy that is still ongoing? But norms and institutions are not enough for democracy. Democracy grows from below, and civil society develops from within. Both at the bottom and inside, the picture was and remains as follows: exhausted economy, weak and dysfunctional institutions, dependent and inefficient judiciary, poor middle class, submissive political culture, oligarchic and unethical elite, underdeveloped public opinion, politicized and party administration, lack of democracy, a fragile and inauthentic civil society.<sup>10</sup>

It can be said that one of the limiting factors for the implementation of the rule of law are shortcomings or shortcomings in the normative framework. Therefore, the following weaknesses can be cited: The Constitution is not perfect, just as no constitution is perfect. It has weaknesses in the following relations: a) the balance of legislative and executive power and the independence of the judiciary. These relations are not an insurmountable obstacle, with the help of the law, to reach for constitutional changes and the introduction of new chaos. Frequent changes in laws and regulations also destabilize the legal system. The Assembly adopts unconstitutional laws, and if necessary, they will be changed once a

month. And what is the quality of the solutions contained in the regulations? Illegal regulations are passed by the Government with its ministries and everyone else in the hierarchical scale of regulations, following the example of the powerful (Parliament and Government). No one is responsible for the irresponsible construction and functioning of the legal order and no one is responsible for the legal consequences for the freedoms, rights and property of citizens, except themselves, to suffer the consequences first, and then to turn to the Constitutional Court.  
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The problems of the rule of law in our society are related to the realization of protection against discrimination, ie the realization of equality of citizens, which in many cases has been called into question. Namely, "the right to equality, above all, covers the political and legal equality of citizens and refers to the denial of any discrimination of citizens according to the law and in the enjoyment of political rights. The most consistent confirmation of this right of citizens is in principle according to which "everyone is equal before the law". The principle contained in almost all constitutions in the world is in fact an affirmation of the principle of human freedom from all discrimination. This principle especially obliges the legislator with an explicit constitutional prohibition in laws to introduce provisions that differentiate people, as well as the obligation for all bodies that apply the law and other regulations, to apply it equally to all, which means to make the same decisions in the same cases. case and its individualization according to the character, not according to the participants." Equality implies diversity, ie. It means the existence of different people who should be treated equally. Cases of discrimination that essentially mean a direct or indirect restriction of freedoms and rights by circumventing legal norms are one of the

<sup>9</sup> V. Pavlović, Civil Society and Democracy, Official Gazette, Belgrade, 2009, p. 10.

<sup>10</sup> G. Siljanovska-Davkova, Proceedings of the Scientific Discussion, MANU, Skopje, 2007, p. 234-235.

<sup>11</sup> B. Gagovska, Constitutionality and Legality in the Republic of Macedonia, Skopje.

factors that negatively affect the implementation of the rule of law.

Finally, the undemocratic practice of the government and the opposition is a factor hindering the process of concrete implementation of the rule of law. Namely, democratic institutions are as delicate as flowers. They must be guarded and nurtured, because democracy bears the seeds of self-destruction by giving its citizens freedoms, some of which will be abused. A democratic police system exists to protect those freedoms, and only when citizens realize that the police really protect their security and freedom will they have confidence in its system. Liberal democracy protects individuals and minorities from potential excesses of power. Authorities are generally stable and moderate in avoiding extremism in political activities, as consensus is needed for legislation to work on fundamental issues. The development of democracy in the Republic of Northern Macedonia and the concept of the rule of law are linked to the realization of Euro-Atlantic aspirations. Confirmation of this is the fact that the European Union together follows the known political criteria in order to acquire a better idea of the country's progress.

### **The rule of law as a determinant of the security of citizens and the business community**

The security of citizens, their property and business entities is inconceivable without the consistent application of the basic elements of the constitutional principle of the rule of law. The concept of the rule of law obliges the police to respect the legal order in the country in their work, but also to protect it from criminal and other harmful phenomena and acts. It achieves this by procedures and procedures prescribed by a legal norm and in the spirit of the principles of legality and legitimacy. Application of the concept of rule rights is recognized by the wording in the Law on Police "defined by the law of measure", "protection of freedoms and rights", etc. The Code of Police Ethics contains a special section - Legal basis of the police function, which predicts:

- The competencies of the police and its organization are determined by law and bylaws (Article 3);
- Police interventions are always carried out in accordance with ratified international agreements (Article 5);
- Police officers perform their duties in accordance with the law and are subject to regular legal procedures and sanctions (Article 6)
- Police officers are subject to legal regulations that apply to all citizens of the Republic of Macedonia, except in cases provided by law, in the interest of proper performance of the police function.

When it comes to the rule of law, no less important are the provisions relating to police interventions to which certain general principles apply, which in fact ensure the legality and legitimacy of those interventions. Therefore, both their taking over and exceptions must be prescribed by law, ie the norm: police officers will not use firearms, unless it is necessary and in accordance with the law; police officers perform police duties in accordance with the law and ratified international treaties; police officers always check the legality of their planned actions; police officers should respect the written and oral orders of their superiors, in accordance with the law and bylaws; a police officer, without fear of sanctions, will refrain from carrying out the illegal orders they make committing a crime and others.

The rule of law is a condition for the development of the national economy. Foreign investors are encouraged to invest in our country provided there are strong

guarantees of the rule of law and to secure their business interests. The business community often points out that “investor confidence has been undermined, which is another great challenge for our countries. "We are all facing the same challenges that are part of the European Union's requirements that need to be regulated, and those are problems with the rule of law, corruption and non-transparent and rapid change of legislation." Therefore, the rule of law in the country is "the subject of consideration by the business community, as an important precondition that needs to be fully met, so that we can further address issues related to the economy, economic growth and better business environment”<sup>12</sup>

These states of light emphasize the crucial importance of the rule of law in relation to the functioning of enterprises, business development on the one hand and the security of citizens, their lives and property on the other.

## Conclusion

The process of applying the rule of law as a constitutional principle, principle and basic value in the practical functioning of political, economic, cultural and other institutions is complex and difficult. For its implementation, only a formal proclamation, provisions in the Constitution, laws and other normative acts of the state are not enough. His political marketing or prominence in leadership speeches, party campaigns and documents is not enough. On the contrary, concrete implementation is needed, its real revival, daily integration into the decisions of the institutions that decide on the freedoms, rights and interests of citizens and legal entities. The past years of independence are a period of testing the basic postulates of democracy and democratic values, in which the rule of law has a special place

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<https://www.mkd.mk/makedonija/ekonomija/vlade/enje-na-pravoto-kako-imperativ-za-stabilni-preduslovi-za-vodenje-biznis>, 20.03.2021.