

## Legal rule in the rule of law

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### **Abstract**

*The legal standard is a pattern of behavior in society. It is a "program" containing the claims and demands of society towards the conduct of its members in certain categories of relationships. The issue of legal rules in the rule of law can be made at the deepest level, namely obedience to the rule of law. The three dimensions of the rule of law - the principle of hierarchy of norms, the principle of obedience to the rule of law and of the content of the law in force - constitutes all the values and principles defended and must be well articulated. The concept of "rule of law" involving two juridical aspects, namely normative ideology, evoking the idea of mood and legitimacy.*

**Keywords:** *legal standard, state, law, legitimacy.*

### **1. General considerations**

Basic cell of a law - the legal standard - is the basic legal system of the state. Outside normative reality, right and there can not be explained. Conscious representation of the legislature in relation to possible conduct or the subjects participating due to social relations is stored in the content of any legal norms. [1, p. 151]

Throughout the development of human society, customs, norms of religious and moral norms primitive times, with the advent of state vacate the legal regulations of social relations by rules imposed by state law. The legal standard is therefore the primary element of the system of law. Today it is a rule of social conduct, legislation enacted or sanctioned by the state, which is enforced if necessary by coercive force of the state. [2, p. 211]

Since the state creates law, national rules are likely to be settled by coercive force of the state. Meaning that the unitary binding rules of conduct, right, as the state is a product of social development. Legally, it is formed in the state organized society as a regulator of social relations. As the great jurist argued Giorgio del Vecchio, human activity is regulated by a complex system of rules, which is found in every historical stage of development of the state. [3, p. 45]

The right, as a set of legal rules include the fundamental relations, structural, legal normative principle for. As stated in the literature, the right has internal logic that ensures functionality, applicability, expressing interdependencies between legal norms, forming a package that is not reduced to its component parts. [4, p. 211]

Law is an extremely complex social product, but it is also extremely important in the regulation of the human relationships. In fact in the modern society living cannot be conceived beyond the legal norms, outside the legal institutions, and human existence outside the legal phenomenon is unconceivable. [5, p. 469]

The legal rules with legal relations arising in their base form legal order, as part of the social order. Social order is not confined to the rule of law is more than the rule of law, as it concerns activities, relations, with rule of law without contingency. The rule of law constitutes the core of social order and this is the basic equilibrium of society, guarantee essential rights of individual achievement and functioning of the institutions. [1, p. 152]

Legal norms are, in reality, means of achieving the ideal of social justice in accordance with the will that is expressed in the contents of its provisions. Analysis of legal rules leads to the conclusion that they may, in addition to the rules of conduct and other rules. This may include general principles of law, definitions (definition of property, the contravention of the contract, the crime, etc.), explanations of legal terms, the legal capacity description etc. Prof. Ion Deleanu stated that the state law is the work product of the manifestation immanent state taxation plan and achieving the general will, binding to ensure the common good. [6, p. 113] However, we must admit that once set right, it must state law itself also subject to other subjects. To force to impose law requires some minimum requirements:

- Postulation by law norms of moral values, political, authentic and persuasive global civil society and for the individual;
- The establishment of a democratic ambience;
- Consolidating the principle of state responsibility;
- The establishment of efficient and stable control means;
- Promoting strict principle of legality and constitutionality principle;
- Axiologic cardinal landmark human transformation.

Of course, all this should be in institutions. [6]

Throughout history, the link between the state and the law was different, moving in opposite directions: either toward authoritarian totalitarian state, the right is neglected, relying on force, either towards democratic state, that is based on law. The rule of law must accomplish the rule of law in all its work, both in relations with the citizens and in relations with the governing bodies.

The existence and manifestation of the state involves a certain status of "power" limited to the extent possible to avoid to become a prerogative of those exercising that discretion. In all its work, the state should encourage good, but always in the right shape so that any act of his to be based on law, which is the manifestation of the general will. [3, p. 292]

In social life, human freedom manifests as of right, freedom is governed by legal rules. The concept of rule of law has emerged through a long historical process of interference of different theories, especially German and French doctrine. [7, p. 23]

As literature specifies, freedom in all its forms is guaranteed by any democratic constitution and by any lawful state, but the individual freedom has some legal limits and it should be exercised so that the freedom of other people should not be affected. [5, p. 470]

French lawyer Jacques Chevallier defined the rule of law as the type of political regime in which state power is framed and limited by law. [7]

## **2 Characteristics of legal rules**

The legal rule to be invoked against a standard of conduct and evenly and continuously each individual should address diffuse and impersonal addressees. With these features, the legal standard is different from the individual act, which by its nature is concrete and personal. As Ulpianus wrote swears non singulas personas, sed generaliter constituuntur (right arrays not individual man but for all). [1, p. 153]

The legal rule eliminates the concrete, the particular, the abstract and abstracting it. The legal standard envisages an average generality of relationships and behavior. The general character of the legal norm can not be defeated either on grounds of local autonomy. Hegel, based on the general nature of the legal norm, characterized it as a universal determination to be applied to the specific case. To the identical formula,

repeatability, in a legal rule, the legislature seeks General, what is universal in a bundle of social relationships, and make in relation to this type of conduct. The legal standard requires a between-report, it is binding, intervening in key areas of society, governance areas that are either contingent or watch the being social, public or private, individual. [1, p. 157]

The purpose of the rule of law, justice purposes accomplished, with binding activity and national administration, is essential to ensure safety and harmony of social relations under a value ideas considered by the legislature. To the extent technically understandable and responsible interest that represents the legal norm will achieve its purpose.

In a state of law, the legal standard is mandatory and apply the benefit of human coexistence and common life in defense of specific values, whenever the conditions contained in normal situation. [9, p. 36)

The legislature should describe a specific legal provision conduct, conduct a required subject in all the circumstances and in connection with this conduct is fixed and some form of reaction (penalty). Acknowledging time, the subject will act in accordance with the conduct referred to in it, will reject a purpose prohibited by a regulatory prescriptie, refraining from action or, conversely, will assume the risk prescriptia evading sanctions or in violation of it. We have to mention that all of this: the conditions, conduct penalty, legal rule called up elements and structure of the legal norm. [10, p. 88; 4, pp. 57-61]

As content elements of law, legal rules are in constant relationship with the legal consciousness that considers the source material Mircea Djuvara of positive law and, thereby, the entire material and spiritual conditions of society. [11, p. 16]

The legal rules are the sides that form the right content, are sine qua non prerequisites and conditions of order and social control instruments. Being bearing social beliefs, legal rules correspond to a command and behaves functionally purposeful value. The human factor is, for any legislator, the central area of interest. By regulating people's behavior within various categories of social relations, legal norm relates to permanent human presence in the society, the ability to influence and even to transform the social. [1, p. 70] To enjoy the effectiveness, rule of law must evoke concrete images

of the individual conscience, so to incorporate human psychological heritage. The rules should remove legal uncertainty, provide positive alternatives man, to establish the meaning of its existence.

Efficiency action law, its legal rules is related to the complex psychosocial functioning mechanisms legislature which gives them satisfaction, prefiguring the rules of conduct as alternatives to consider as useful both socially and individually ct.

In a state of law protects human dimension of rights, above all the core rights of the individual, rights that guarantee full equality of all people, the opportunity to show their unhindered under justice and freedom, because man, by nature, is a free and dignified existence. The legal rules are based policy framework - administrative and judicial hierarchy, likely to promote a common framework for people living and homogeneous, in which they assert the legitimate interests. [12, pp. 172-193]

Current development of social relations attests inter and intra incontestable reality cooperation of States in the essential human rights. The concerns of the international community on compliance by States of human rights and their legal regulation tend to be matters of principle. In this context, legal norms tend axiologizare acquires a shape ever safer and reinforce the idea that the right belongs to the empire of reason and no reason empire. [13, p. 24]

In conclusion, it can say that the legal rules governing human conduct, behavior of people in society and the state intervenes by means of coercion when people violate legal norms. Building solutions by the legislature normative action appears as a complex reality conditioned by social, economic, spiritual, axiological domestic or international.

The right of juridical norms that a will is inviolable, as stated Neo-Kantian Rudolph Stammler, in that its rules are mandatory and coercive. What differs in this respect the right of other social normative system is precisely this quality normative legal will that expresses the entirety of rules, with all the consequences of that fact. Content of the right side is the dominant component system of legal norms. Any system of law achieves its functions by the action of the rule of law and the mechanism of its influence on social relations is essentially linked to how the standard of conduct that includes the rule penetrates into the fabric of human relations. Mircea Djuvara opined

that their contents are always different laws, although in essence and in form there is something hanging over them, and served them permanent framework, the idea of obligation ideal trend toward legal sanction, topics and subject to the legal relationship. [11, p. 16]

Of course, as the system evolves with society constantly highlighting the legal reality in its essence. In their content, rules and regulations vary in time and place, so Georges Ripert wrote: "No lawyer would dare today to support the right not evolve." [14, p. 32]

The theory of the rule of law requires that the State acted as (by building a hierarchical legal system) and it is governed by the law, and not only its organs, for law is the state itself. [7, p. 86]

The legal rules are enacted to enforce them, the legislature is considering drafting legislation, major social interests, seeks to provide guarantees good development of relations between people and protect social values. Fundamental coordinates action legal norm in a state of law are time, space and person. In principle, acting on an indefinite legal norm in a space dominated by the notion of territory and subjects involved in the legal circuit in this space. [9, p. 46]

Legal subordination of the administration of the law is a prerequisite for defending the rule of law and judicial review is an effective guarantee thereof. For a democratic government by the existence of a state of law is absolutely necessary separation of powers. [15, p. 348]

The rule of law is established clear competences for each public authority, so substituting in place of another authority be legally excluded. Any public authority is obliged to perform the tasks and prerogative that was invested. [16]

In contemporary society, the legal rules governing the bulk of social relations, but cannot regulate everything, which is why they are interdependent, coexisting with other categories of social rules that form the legal system.

## **CONCLUSIONS**

The legal rule in a state of law must regulate these social relationships aimed at the smooth conduct of relations in society and constitute the foundation of all social order.

Legal norms know specific forms and methods of transposition in life insurance, forms and means found anywhere in any other category of social norms.

The essence of the rule of law is that the state, in all its activity is organized and run by law is subject to legal rules, both the state apparatus and the state within the meaning of sovereign organized population in a given territory.

The content and essence of the rule of law, the relationship between the rule of law and democracy and fundamental human rights, individual rights and man's natural and essential aspects of the controversial rule of law.

If the legal state based on the will of the majority is entrusted to guarantee the rights of law whose servant is judge, rule of law system is the constitutional judge who has the task through control over law.

In our opinion, the true state of law can only be a natural state law, the state court, where justice should be seen in the following aspects: philosophical, as a value; moral, as a virtue; sociologically as constituting a state; technical and legal, accounting technical method.

#### References:

- [1]Popa, N. (1999). General Theory of Law. Bucharest: Actami
- [2] Mihai Gh.C.; Motica, R.I. (1997). Fundamentals of law, theory and philosophy of law. Bucharest: All
- [3]Del Vecchio, G. (1993). Lessons legal philosophy. Bucharest: Europa Nova
- [4]Ceterchi, I.; Craiovan. I. (1993). Introduction to the general theory of law. Bucharest: All
- [5]Niemesch, M. (2014). Law Achievement and Application from the Perspective of the Legal Protection of the Human Rights. Volume of the session of scientific communications of the Institute of Legal Research of the Romanian Academy "Simplification – A Necessary Element for the Modernization and Amelioration of Law Quality". Bucharest: Universul Juridic Publishing House
- [6]Deleanu, I. (1996). Constitutional and political institutions. Treaty. Vol. I. Bucharest: Europa Nova
- [7]Miculescu, P. (1998). The rule of law. Bucharest: Lumina Lex
- [8] Chevalier, J. (1993). État de droit. Encyclopédique the Dictionnaire du droit sociology et Theora, Deuxième edition, sous la direction of André-Jean Arnaud, Paris, LGDJ, p. 240
- [9]Ciongaru, E. (2011). General Theory of Law. Fundamentals. Craiova Romanian writing.
- [10]Ionescu, O. (1933). Considerations of the legal norm. Iasi: Printing concessionaire Alex Terek & Gh. Caminschi.
- [11]Djuvara, M. (1930). General Theory of Law. Vol. I. Bucharest: Socec
- [12]Muraru, I. (1998). Constitutional Law and Political Institutions. Bucharest: Actami
- [13]Schwartz, L. W. (1980). Ideal du droit et réalité. Paris: L.G.D.J.
- [14]Ripert, G. (1955). Les forces du droit créatrices. Paris: L.G.D.J.
- [15]Smith, S. (2000). General theory of law. Bucharest: Lumina Lex.
- [16]Vedinas, V. (2014) Administrative Law. VIII edition revised and updated. Bucharest: legal universe.