



REGARDING THE RULE OF LAW AND LEGAL PRINCIPLES

Sanokulov Asilbek Elbek o'g'li

2nd year student of the Faculty of
International Economics and Management,
+998993336066

sanoqulovasilbek0808@gmail.com

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Abstract: the article analyzes certain aspects of the rule of law and the law, pays attention to interpretation in the context of the legal system.

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At present, our country has embarked on the formation of the rule of law, which undoubtedly determines the need to increase the role of the law in the state and public life of the country. the law, reflecting social interests in a concentrated form, acts as the main regulator of public relations, a kind of guarantor of the rights and freedoms of a citizen. It serves as the most important means of transformation in the economic, social and other spheres and at the same time contributes to the stabilization and stability of the social situation. the law establishes the legal framework for the activities of all state and public institutions, occupies a leading place in the legal system.

The problem of the correlation of law and law for legal science. Since the very concept of law appeared, the problem of the relationship between law and law has almost always been considered in domestic and foreign jurisprudence. B. N. Chicherin opposed the mixing of law and morality, for their interpretation as independent principles, although legal law and moral law have a common source - the recognition of human personality. "Law, he emphasizes, is not only the lowest level of morality, as moralizing lawyers and philosophers claim, but an independent principle that has its own roots in the spiritual nature of man.". But in terms of the interaction of law and morality, as B. N. Chicherin pointed out, "morality sometimes serves as the fulfillment of law," and where the legal law is insufficient, "morality may require actions on an internal impulse, for example, in the performance of obligations that have no legal force."

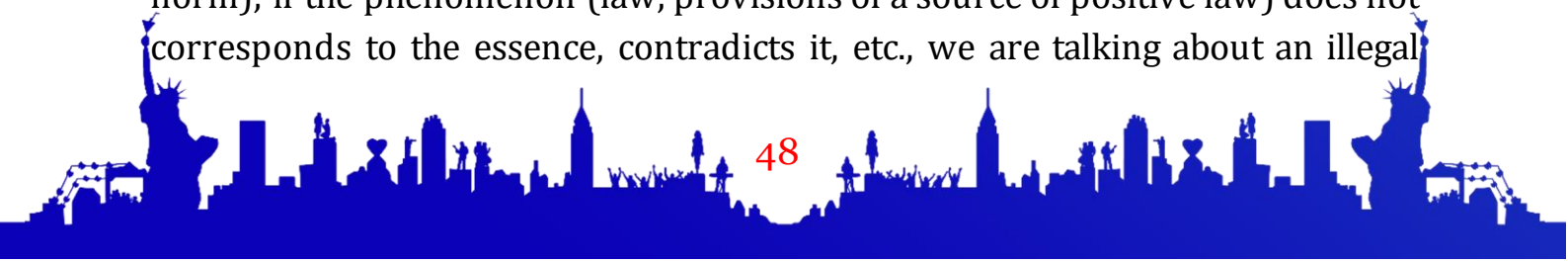
According to N. A. Berdyaev, the ratio of law and law appears as the ratio of "ideal law" and compulsory law. the law is just as sinful as power: the "coercive law" is "the opposite of freedom. Within the framework of Berdyaev's philosophical and legal views, law and law are irreconcilable opposites, so the possibility of a legal law is in principle excluded here. Moreover, Berdyaev's





teaching lacks an understanding of the legal meaning of equality, its connection with freedom and justice. On the contrary, he rejects equality and justifies inequality. At the same time, Berdyaev recognizes the state's support for the "minimum of goodness and justice, however, not because of the state's love for goodness, which is alien to him, but because without such a minimum of goodness and justice, chaos will ensue, threatening the strength and stability of the state. In this context, Berdyaev admits that "the coercive law itself can be a protection of freedom from human arbitrariness." "The legal state is very relative... Human rights and freedoms are infinitely deeper than, for example, universal suffrage, parliamentary system, etc., they have a sacred foundation." The relevance of the question of the relationship between law and law lies in the fact that not all laws meet legal criteria; they should be considered legal laws. After all, there is a coincidence of law and law. However, there may be laws that do not meet the legal criteria, therefore, they do not coincide with the law. Therefore, the question of the justice or injustice of the law is always relevant - it is essentially a question of the legal or non-legal nature of the law, its compliance or non-compliance with the law. As S. S. Alekseev noted, "laws (with their most concise and general characteristics) are fundamental official legal documents containing the norms of the positive law of a given state. With all the definite and clear differences between "law" and "law", they are quite often brought together in content and meaning. Sometimes they identify. And here the most important advantages of laws are manifested, especially codified ones, acting as legal means of a legal and intellectual nature, capable of purposefully equipping the legal system with modern legal values.

Differentiating between the concepts of "law" and "legality", S. S. Alekseev draws attention to the fact that the initial premise of legality (the possibility of strict fixation in a regulatory document to the smallest details and particulars of regulated relations and the consequences of the corresponding behavior of persons) is not always consistent with the processes of modernization of society, its democratic development, sometimes to a greater extent to authoritarian political regimes, when the task is to firmly consolidate ("forever"), perpetuate existing authoritarian relations and orders. Taking into account the noted distinctions of law and law, we can say that the variants of their relationship look as follows: if the phenomenon (law, provisions of certain sources of positive law) corresponds to the essence, we are talking about a legal law (about a legal norm); if the phenomenon (law, provisions of a source of positive law) does not corresponds to the essence, contradicts it, etc., we are talking about an illegal





law (illegal, infringing, anti-legal law, illegal norm, illegal positive law). Within the framework of this concept of the distinction and correlation of law and law (as, respectively, the essence and phenomenon), by the essence of law we mean the principle of formal equality, which is the unity of three essential characteristics of law implying each other - universal equal measure of regulation, freedom and justice. The universal equal measure inherent in law is precisely an equal measure of freedom and justice, and freedom and justice are impossible outside and without equality (a common equal measure).

In our opinion, the legal form of human relationships is a relationship that will be regulated on a single and universal scale, as well as in an equal norm of permissiveness and prohibitions. Consequently, it can be said that equality, freedom and justice, as properties of a legal entity, are formal in nature, are included in the concept of law, are possible and expressible only in a legal form. The law speaks and acts with the language and measures of equality and, thanks to this, expresses the freedom of people. In this sense, we can say that the legal mathematics of freedom. Humanity has not yet invented another form of being and expression of freedom in the public life of people, except for the legal one. As V.S. Nersisyan correctly notes: "the legal law and the rule of law are internally interconnected: in both cases, we are talking about different forms of expression (normative and institutional forms) of the idea and the principle of the rule of law. This freedom of individuals is expressed, first of all, in the fact that they act as formally equal persons - as subjects of law and subjects of the state.

The rule of law presupposes, first of all, the existence of laws with legal content (legal laws), as well as the connection of state power with legal laws, that is, law. The main thing in the idea of the rule of law is that the state is bound by law. The rule of law is primarily the rule of law. It is expressed in the fact that the main, key, fundamental social relations are regulated (normalized) by laws. The transformation of law in itself into law through legislation gives law a form of universality and genuine certainty. The subject of legislation can only be the external aspects of human relations, but not their internal sphere. However, history knows laws that are not bad in literary design, the texts of which proclaim freedom, equality and justice in order to mask disenfranchisement, terror, violation of basic human rights and freedoms. Such a striking example is the Constitution of the USSR of 1936, the democratic provisions of which were declarative in nature and were a form of communist propaganda during the years of mass repression.





The recognition of the principle "what is not prohibited by law is allowed" is natural for Russia, which has chosen a course of transition to the market, which in itself implies private entrepreneurship, free activity of owners. The rule of law, led by the principle of the rule of law, and civil society do not fit in with the directive–distributive economy. Consequently, legal regulation should also change its orientation, its tasks and functions, i.e. it should become more flexible and liberal.

In real practice, ensuring the rule of law requires enormous efforts and a set of actions – material, legal, organizational, psychological restructuring. And the difficulties on this path are very noticeable. It becomes clear: the rule of law is not limited to the recognition of this provision as a principle, it does not limit its effect to the sphere of both the legislative process and the law-making process as a whole. The rule of law must also be identified and implemented at the law enforcement stage. And the first step to this is to increase the role of the law as the main and primary regulator of public relations. Despite the fact that legislation is developing rapidly, there are still many areas where there is no law at all or its regulatory impact is almost not felt. In practice, many provisions of laws are sometimes interpreted very arbitrarily, which leads to violations of the rule of law." So, considering the provision on the rule of law and the law, the characteristic of the rule of law is relevant (along with the separation of powers and the binding of the state and citizens by mutual rights and obligations). At the same time, the objectively existing discrepancy between law and law forces us to consider the rule of law and the rule of law separately. The idea of the rule of law is historically much older than the idea of the rule of law.

The legal system, being the main force regulating social relations, carries out legal regulation in accordance with the existing social, economic, political, spiritual and legal principles based on them that exist in society at a specific stage of its development. The effectiveness of the legal system directly depends on the quality of the expression in legal norms of the principles of legal regulation corresponding to the public legal consciousness, which serves as a criterion for the legitimacy of a regulatory legal act.

The constitutive aspect of the construction of the legal system is its objectification, which finds its expression in the totality of normative acts issued by state authorities. Therefore, the main task, without which it is impossible to achieve success in any sphere of public life, is, first of all, the strengthening of the state in the person of all institutions and all levels of government. Currently, there is a process of formation of the current Russian legal system, which arose





as a result of changes in the social structure in the Russian Federation as a whole. Until recently, the legal system of the Russian Federation was part of the family of socialist law that had ceased to exist, which was formed by countries that had previously been part of the socialist legal community. Before the emergence of the socialist legal family, these countries belonged to the family of Romano-Germanic law. The peculiarity of the Russian legal system of the transition period was that at the initial stage of its emergence, most of the normative acts of the former RSFSR were in force, and some of them remain legally valid to this day. Over time, the newly formed state authorities issued their own regulations, thereby ensuring the emergence of an updated legal system of the Russian Federation. Currently, in the Russian Federation, among the legislative elements of legal education, there are also regulatory and judicial elements. This can be seen from the fact that an increasingly important role in the legal regulation of most industries is beginning to be played by the doctrinal interpretation of legislative provisions carried out by judicial authorities, by making appropriate decisions on controversial issues of legislation, as well as in the absence of legislative regulation of any issue. First of all, it concerns the decisions of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, the Supreme Arbitration Court of the Russian Federation.

The principles of the rule of law ensured the formation of objective law in accordance with the new political and legal doctrine, which entailed a significant change in the content of the norms that form the basis of the Russian legal system. At the same time, the norms of the previous legal system often remained in effect, but only to the extent that they did not contradict the newly emerged principles of legal regulation.

As for the legal system, there have been changes in the composition and content of the norms of both public law and private law branches. Moreover, the change in the content of private-law impact directly depends on the corresponding change in the public-law regulatory regime. This is due to the fact that public law includes the main issues of the formation of the legal system and ensuring its stability in the conditions of ongoing changes. In the branches of public law, the changes are related to the fact that the main principles of legal regulation have become the principles of the rule of law, the supremacy of human and civil rights and freedoms, the priority of international law over national law. These principles have become the beginnings of legal regulation in constitutional, criminal, administrative, tax, civil procedure, criminal procedure, arbitration





procedure law, as well as in complex public and private law branches and institutions (for example, in land, labor, banking, etc.).

The rule of law presupposes, first of all, the existence of laws with legal content (legal laws), as well as the connection of state power with legal laws, that is, law. It is necessary to identify five basic principles of the rule of law:

The Government of the people, governed by the people and existing for the people; legislative bodies and leading representatives of the executive branch should be elected at general elections according to a system that guarantees permanent accountability, as well as their honesty and openness.

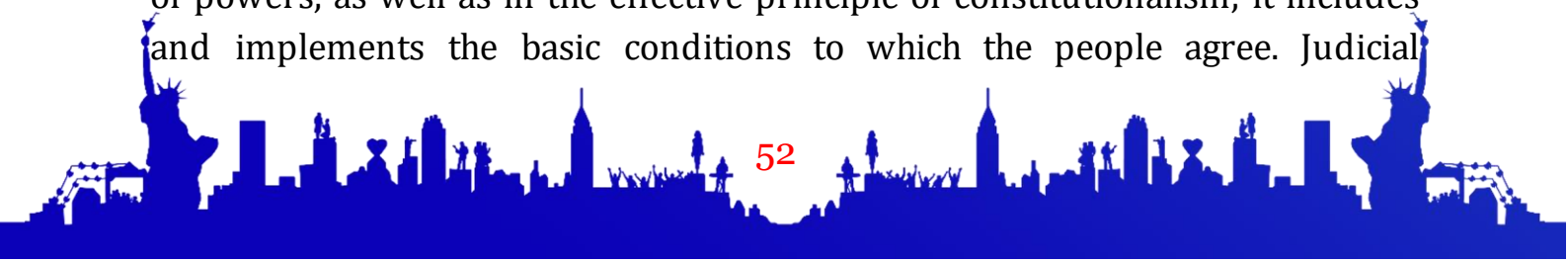
Separation of powers and the principles of the relationship between legislative, executive and judicial power. As Sh wrote. Montesquieu:

"The political freedom of an object is a balance of mind arising from the understanding that each individual has about their security. In order to have this freedom, it is required that the government be organized in such a way that people are not afraid of each other. When legislative and executive forces are united in the same person or magistracy body, freedom is impossible, since there may be fears that the same monarch or senate will be able to introduce tyrannical laws, use them in a tyrannical way. If the party establishes control over the state, all the principles of separation of powers will be annulled and all the benefits provided by this principle of the rule of law will be lost.

Representative democracy, procedural and substantial restrictions on government actions directed against private individuals (protection of personal freedom and personal dignity). Every democratic system faces the problem of how to protect the rights and dignity of citizens from government actions - arbitrary or approved by the majority. The best solution is to provide guarantees of personal rights and freedoms of citizens by the Constitution

Limited government and federalism. A limited central government is necessary in order to maximize regional and local control over government functions that fundamentally affect the population at local levels. This principle simultaneously allows the Government to respond more easily to the needs of the population and be more open to civil control, as well as encourages diversity in public policies adopted by regions in accordance with regional characteristics.

Judicial proceedings by an independent system of judicial bodies as a central mechanism for the implementation of constitutional laws. An independent judicial system is the most important component in the principle of separation of powers, as well as in the effective principle of constitutionalism; it includes and implements the basic conditions to which the people agree. Judicial





proceedings by an independent judicial body is the only way to effectively assert the priority of the Constitution.

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