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## Rule of Law: Some Theoretical Questions

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### ABSTRACT

*The article analyzes the issues concerning the rule of law, its role in the legal development of society, the state and the individual. The correlation of the principle of the rule of law and law supremacy, different approaches of scientists to understanding these legal categories are considered. The essence and principles of the rule of law and rule by law, the role of the rule of law in ensuring the rights and freedoms of the citizen and the individual, in the formation of civil society and the establishment of the rule of law in Uzbekistan are analyzed.*

**KEYWORDS:** *Rule of law, rule by law, rights and freedoms, personality, human rights, freedom, guarantees of human rights, civil society, rule of law, correlation of law and law.*

**Introduction.** In 2022, the Republic of Uzbekistan rose his position from 85th to 78th in the world ranking of the rule of law, compiled by the international organization World Justice Project[1]. This is an encouraging indicator for a country following a difficult path of democratic development. In this regard, the analysis of theoretical issues regarding both the content and application of the rule of law is of particular relevance.

**Materials and Methods.** In socio-political, in particular in legal literature, one can often meet word combinations (or terms) (or terms) "rule of law" and "rule by law ". At the same time, in the scientific literature among scientists, philosophers, sociologists and political scientists continue to discuss the rule of law, the rule of law, the relationship between law and act. At the same time, discussions about the conceptual relationship between the rule by law and the rule of law continue to track the attention of philosophers, sociologists and political scientists in the scientific literature.

The term "rule of law" has the meaning of supremacy of law in English legal literature. However, In the national legal doctrine of Uzbekistan, the above-mentioned term "rule of law" is certainly associated with the theory and practice of legal statehood, being its essential condition.

The founder of the doctrine "rule of law" or "supremacy of law" Albert Dacey, noted three main concepts of the rule of law:

First, the "rule of law" is characterized by the absence of arbitrary power;

Secondly, the idea of "equality of all before the law and the courts" is based on the "rule of law";

Third, England, dominated by the "rule of law" and the spirit of legality, is distinguished from others by the fact that it is the decisions of the English courts that form the general principles of the English constitution[2]. It should be noted that, the Anglo-Saxon and continental legal families differ from each other, for example, the role of judicial decisions in English law is significant, while acts play an important role in the continental law family.

**Discussion.** Indeed, the rule of law is one of the most important and significant among such concepts as "rule of law", "constitutionality", "legality", "dignity of law", "equality of all", "social justice", "pluralistic democracy". The term "rule of law" (VI Rule of Law), on the contrary, initially did not

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occur in scientific sources, but was enshrined in legal documents of the XVII - century, later on the idea of the rule of law was developed in legal science[3].

The well-known scientist, legal theorist F. Hayek, having studied the issue of the rule of law, described it as follows: "The rule of law is the doctrine of what law should be and what specific laws should be." Therefore, the principles of the rule of law that limit state power, according to Hayek, reflect the characteristics of good law. It should be noted that despite the importance and relevance of the study of this category, at present it is impossible to call its doctrinal, in particular methodological base, sufficiently developed[4].

Scientists from the CIS countries V. Nersesyants, D. Kerimov, S. S. Alekseev, M. N. Marchenko and others in their studies considered the issues of the correlation of law and act, legal legitimacy. According to the famous legal theorist S. S. Alekseev, the idea of the rule of law "in its essence means the unconditional priority of law over power, over the state". The rule of law includes consideration and solution of all important issues of the state and society from the point of view of law and act, rational combination of universal moral and legal values, ideological and legal justification of any decisions of state and public bodies, assumes the existence of reliable mechanisms to ensure human rights[5].

Thus, although today in the legal and philosophical scientific literature the terms legal law and legal legality are often considered, but at the same time the question about their criteria is still open, and the discussion on this issue continues. As M. N. Marchenko writes, naturally arise such questions as, whether there are criteria for the definition of "legal acts" in general? Which Acts correspond to law and which do not? What are the criteria for classifying Acts as legal or non-legal? What determines their legal and non-legal nature? legality or illegality?[6].

Taking into account the complexity of bringing all the approaches on this subject within the framework of one article, we will limit ourselves to summarizing the opinions expressed in the scientific literature on this issue: that legal Acts are acts that comply with the general principles of law and fundamental human rights and the principle of justice. Accordingly, non-legal acts are the antipode, the opposite of legal acts. It should also be noted that in the national legal literature, the rule of law and the rule by law are sometimes regarded as concepts close in content, but at the same time there are not enough researches that specifically examine their correlations, differences and similarities, etc.

In this regard, it is worth mentioning the monograph by N. Zhavliev "The concept of law and its social value", in which he considered the issue of the rule of law. According to the author, although the term "rule of law" does not often appear in legal literature written in Uzbek, but it can be seen that its ideas are expressed in such terms as "rule by law", "rule of legal acts", "legality" and "legal validity"[7].

At the same time, Professor Sh. Saidullaev writes, that "in the legal literature, the concept and content of the rule of law and the rule by law are different. Since any law is not always of a legal nature, that is, it does not reflect the position that gives a person the right to freedom, equality and social security. The rule of law is the supremacy of the law in the activities of all state bodies, officials, individuals and legal entities and their observance"[8].

Here it is worth mentioning the views of the great thinkers of the East Al-Farabi, Nizamulmulk, Navoi, Khoja Samandar Termizi on just laws, although in scientific literature there are opinions that justice is a category of morality, not law, and law is a legal category[9]. There is another opinion, in particular, a modern representative of legal positivism Joseph Raz, when analyzing the concept of "internal morality of law" of Lon Fuller, considers the rule of law as a sign of dignity and value of law, bringing it closer to the moral foundations of law[10].

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In this context, logically continuing the opinion of Professor H. Adilkariev that "The urgent task of our time is to develop a scientific concept of legal law, to create a unified scientific-theoretical model of law"[11], it should be added that it is also necessary to develop criteria for the definition of legal law, to clarify and specify the interaction with existing legislation and the implementation of laws, with the process of law enforcement.

**Results.** In the document adopted by the Copenhagen Meeting of the Organization for Security and Cooperation in Europe (OSCE) on June 29, 1990 the following requirements for the rule of law have been established:

- the government must follow the Constitution and laws of the country;
- the armed forces are accountable to civilian authorities;
- legislative acts should be openly discussed and adopted;
- administrative decisions must be made public through the media otherwise, they will not have legal force;
- availability of effective tools for challenging administrative decisions;
- if information can negatively affect a person, then inform in advance about the consequences of this information;
- independent judiciary and independence of lawyers.

Hence "The principle of the rule of law – it is not just formal legality, but justice, recognition of the dignity of the individual[12].

**Conclusion.** In conclusion, it is important to note that before the national social science, especially jurisprudence, there is an important task of developing the theoretical foundations, concepts, content and criteria of the principle of "rule of law", its connection with the "rule by law", relationship between law and act, as well as "legal legislation".

## REFERENCES

1. <https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-open-government-index/global-scores-rankings>.
2. Аблаева Э. Б. Основные идеи Альберта Дайси о господстве права // Проблемы экономики и юридической практики. 2018, №1, С.124-203;. Основы государственного права Англии: Перевод, дополненный по 6-му английскому изданию. Введение в изучение английской конституции /Дайси А.В., проф. Оксфорд. ун-та; Под ред.: П.Г. Виноградов, проф.; Пер.: О.В. Полторацкая. – 2-е изд. – М.: Тип. т-ва И. Д. Сытина, 1907. – С. 212-213/
3. Виноградов В. А. Правовое государство и верховенство права: доктрины, конкуренция юрисдикций, обеспечение правовой свободы. Позиции КС РФ в отношении правового государства // Доктрины правового государства и верховенства права в современном мире: Сб. статей. / Отв. ред. В. Д. Зорькин, П. Д. Барен-бойм. М.: ЛУМ, Юстициформ, 2013. – С. 373.
4. Hayek F. A. The Constitution of Liberty. P. 205—206.
5. Алексеев С.С. Восхождение к праву. Поиски и решения. "Норма". М., 2001. С. 485/
6. Марченко Н. Проблемы общей теории права и государства. 2-изд. Москва. Проспект, 2019. С.32.
7. Жавлиев Н.Б. Ҳуқуқ тушунчаси ва унинг ижтимоий қиймати / Масъул муҳаррир: 3.М.Исломов. – Т.: ТДЮИ нашриёти, 2005. – 48 б.

<https://cejsr.academicjournal.io>

8. Сайдуллаев Ш.А. Давлат ва ҳуқуқ назарияси. Т.: ТДЮУ, 2022. –Б.214;
9. Четвернин В.А. Демократическое конституционное государство: введению в теорию. М., 1993. С.3
10. [www.gramota.net/materials/3/2018/4/15.html](http://www.gramota.net/materials/3/2018/4/15.html)
11. Одилқориев Х. Конституция ва фуқаролик жамияти. Т.: Шарқ, 2022. –Б.276.
12. Conference on Security and Cooperation in Europe. Document of the Copenhagen Meeting of the Conference on the Human Dimension. June 29. 1990.