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Implementing the Rule of Law^{*}

1. The Rule of Law

(1) The Rule of Law as Such. By 'rule of law' we shall understand the principle according to which any state act whatsoever should be subject to the law, i.e., to the legal rules which govern it. No need to say that such a principle requires that any state act is actually governed by legal rules.

(2) Its Scope. The mentioned principle applies to any state acts. This means that the rule of law holds for judicial, executive (administrative), and legislative acts.

Being "under" the law is a matter of course as far as the judiciary is considered, since the judicial function is – under its prevailing definition – a law-applying activity. Subjection to the law, however, is no matter of course as far as the executive and the legislative functions are concerned.

As applied to legislative acts, in particular, the rule of law supposes a rigid constitution, since the legislature cannot be bound but by constitutional laws. A rigid constitution is a set of legal rules which can not be changed by way of ordinary legislative acts, i.e., by the existing political majority – they can be changed only by means of the special procedure of constitutional amendment which requires the agreement of the minority (at least, of a part of it).

(3) Its Substantive Features. The rule of law is a purely formal principle – it says nothing about the contents of the law itself. Nevertheless, the rule of law has no practical import if the law does not state any substantive limits to the powers it confers.

Therefore, the constitution should not confine itself to conferring law-making power to the Parliament – it should also include a bill of rights (and perhaps a number of principles) that the legislature may not infringe.

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