DOI 10.51558/2490-3647.2023.8.2.443

UDK 340.131:340.15

Primljeno: 17. 06. 2023.

Izvorni naučni rad
Original scientific paper

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TRACES OF THE RULE OF LAW AS AN IDEA AND LEGAL PRINCIPLE IN THE THEORY OF THE ANCIENT AND MEDIEVAL PERIOD: SOME OF THE CHARACTERISTIC THEORETICAL CONSIDERATIONS AND THEIR CONTRIBUTION TO THE CONTEMPORARY MEANING

When talking about the rule of law as a contemporary constitutional and theoretical principle, most of the public usually refers to the period of the emergence of theoretical models that tend to the modern understanding of the organization of the state, legal order, and society, from the period of the Enlightenment to the period of various theoretical concepts of the modern era. However, as it is known in the domain of constitutional theory, ideas concerning the concept and purpose of government, the constitution, laws and legislation, rights and obligations, legality and legitimacy, and all other categories that constitute elements of the principle of the rule of law (as it is understood today) – as a very complex notion, have been the subject of consideration since the earliest times, at the very beginnings of the development of the philosophical-legal thought. The purpose of this paper, by its capacity and scope, is not contained in the elaboration of all theoretical models regarding elements that make the content of the rule of law which appeared during the historical development of human civilization – which would otherwise be an impossible task, but in the elaboration of some characteristic theoretical considerations during ancient and medieval period in which the beginnings of the idea of the rule of law can be found as well as the very beginnings of the development of that idea in contemporary sense.

Key Words: Rule of Law; Constitution; Acts of Law; State; Authority; Theory

INTRODUCTION

It is often disregarded in wide public that the origin of contemporary legal institutes of key importance for the organization of the state, society and legal order have its roots back to the earliest known considerations and philosophical endeavors in this field. Moreover, although it is about of completely different historical periods and circumstances of the development of human civilization in general, certain ideas and principles observed in the ancient period have proven to be universal and, in the essential sense, necessary in contemporary circumstances as well. Thus, the ideas and elements that make the content of the rule of law (as it is understood today) have been the subject of consideration since the earliest times, of course in the context of the historical circumstances that were characteristic of that period.

The purpose of this paper is not to include all theoretical models and theorists, even in one period of historical development, nor in the overall history of the development of philosophical-legal thought – which is an impossible task that exceeds the capacity of this paper many times over. The purpose of this paper is to consider some of the characteristic philosophical-legal considerations and understandings at the very beginnings of the development of the ideas that are close to the rule of law. In this regard, in the first part of this paper, some characteristic considerations from the ancient period are pointed out. The second part of the paper is dedicated to the dominant concept of the medieval period. In this part of the paper, certain considerations were elaborated that indicate to the transition from theological dogmas to a concept that is much more closer to the modern understanding of the organization of the state, society, and legal order. It is a period of development of philosophical-legal thought that can be considered as an introduction to the expansion of the critical thought during the Enlightenment period. Within this part of the paper, some characteristic views of Jean Bodin, Thomas Hobbes, and Machiavelli (whose philosophy has caused a special controversy for centuries), are elaborated.

1. TRACES OF THE IDEA OF RULE OF LAW IN THE ANCIENT GREECE PHILOSOPHY: BASIC NOTIONS

The traces of the consideration of the rule of law as a system of universal values by contents embodied in law are encountered even in ancient Greece. Thus, even during this period of development of legal and political philosophy, it is crystallized in the

material sense what is under modern circumstances categorized as the rule of law, which necessarily includes the general interest of a community that is superior to individual interests – especially of those who rule. Also, even in the deliberations of ancient philosophers, the contours of what is part of the formal side of the rule of law can be observed. For example, in Plato's ideal state, Acts of Law are made for the welfare and interest of all members of the community, and the rulers themselves are subordinate to them. It is the rule of one or a few, where their rule is based on laws and subjected to the general interest of the community, which is the definition of a state based on the rule of law which is essentially very little different from the definitions of the rule of law in modern democratic states and societies.

As Koplston states, contrary to the ideal state, oligarchy, democracy and tyranny are undesirable forms of state order because they are class states where Acts of Law are brought in the interests of not all members of the community, but only those who, according to their status, belong to the ruling class. In such a relation, Acts of Law are generally a mere mechanism for achieving the interests of a few. From the unlawful rule, according to Plato, the worst is the unlawful rule of one, or tyranny (see more on that: Koplston 1988: 270-271). Thus, the ideal form of state order Plato sees in the rule of one or a few, where their rule is based on laws and is subjected to the general interest of the community as a whole, as mentioned before (see more: Plato 2002: 237-267).

From the standpoint of what is regarded as the rule of law in contemporary terms, Aristotle's division of state structures into bad and good is also interesting, bad - which is the purpose of the public authority to promote the interests of those who rule and good – state power serve for the promotion of general interest. Thus Aristotle states "that those state orders that take into account the common interest, are right, according to what is just right; those, however, whose only concern is the gain of the rulers interests, are wrong and they are deviations of the right state orders; namely, they are self-forced..." (1988: 87). According to Aristotle "...when one or a minority or a majority rule based on a common interest, such state order is necessarily right..." (1988: 88). In addition, as Posavec emphasized, Aristotle also recognizes in the course of his deliberations the need for the division of power into an – so called – advisory, executive and judicial one and the consistency of the entire state order depends on each other's consistency of these powers (see more on that: Posavec 1988: XXVI-XXIX).

Thus, ancient philosophers have defined the essence of what is meant by the term "rule of law" in the modern sense, which includes Acts of Law that are equally applicable to all as well as limitation of the holders of power that is divided between

different subjects. Later, legal and political philosophy will, in the contemporary sense, determine the fundamentals of this principle in the contemporary sense, including the mechanisms of constitutionality and constitutional justice that serve as an instinctive mechanism and support for the realization of the principle of the rule of law. In fact, Aristotle has explicitly defined the elements constituting a constitution, which he equates with the state order. His doctrine of the constitution has been the basic starting point for political and legal science in general for centuries. As author Posavec points out, "although Aristotle's "paradigm" has lost its importance, its experience is the foundation of every political theory" (1988: XXIX).

One must not lose the sight of all the specificities of the ancient society and of democracy in relation to the contemporary age, especially the slave relations that dominated this period of development of human civilization. Greek philosophers, as Wiedemann emphasized, whose philosophy was based on the idea of the existence of opposing pairs (light-dark, good-evil, etc.), had observed slavery in the context of the necessity of the existence of duality in relations between owners and goods (freedom-slavery). In ancient Greece, the division of free citizens and slaves was considered as completely natural, just as it is for example division of sexual affiliation between women and men (see more on that: Wiedemann 2005: 1-2, 33-40).

Of course, Greek philosophers, including Plato and Aristotle, accepted the existence of slavery as a completely natural and necessary phenomenon, so that the category of slaves is not included in their deliberations of citizenship and political rights of citizens, or what is considered in the modern sense of the concept of the rule of law. As Garnsey notes, Aristotle even introduces the term "natural slavery". According to this philosopher, a human being, who by nature does not belong to himself but to another person, is a slave and a part of his owner's property, that is, the tool that the owner uses. Slaves cannot decide on his own life independently, but the others do it for them. Aristotle specifically points out two characteristics of natural slavery – the natural symbiosis of a master and slave, and the mental disadvantages of the person in the position of slave – which is unacceptable in the modern sense, of course (see more on that: Garnsey 1996: 107-110).

However, if the rule of law is observed and understood solely in the formal sense as a mere mechanism for implementing norms in force that at the historical moment represent a law in force then such an approach could represent absolute negation all of that what the principle rule of law presents in a democratic and modern sense. This is what characterizes the medieval period of theocratic legitimization of public authority as will be seen from the following text.

2. MIDDLE AGES DOMINANT PHILOSOPHY

In the Middle Ages, in Europe there is an era of absolute domination of Christianity and church in all spheres of human life, as well as in the development of philosophical thought, where the theological approach, which clearly neglects the past achievements of the philosophical thought of the ancient period, is prevalent and prefers the theocratic concept of state and justification of public authority. As Deanesly emphasized, when Christianity became the official religion of the Roman Empire, the ministers of the Christian church have deliberately ignored the works of Greek and Roman philosophers. They considered this unnecessary because, in the first place, the Christian church could not accept classical Greek mythology and a polytheistic belief. But at the same time, members of church could not be immune to the beauty of Greek-Roman literature, especially poetry. Thus it is recorded that St Augustine complained that he could not find such beauty of expression and lyrical forms in the Christian gospel as he found in Aeneas's fairy tales (see more on that: Deanesly 2005: 231-232).

A characteristic example of this approach are the philosophical considerations of St. Augustine (Aurelius Augustinus Hipponensis, 354-430), which represented the theoretical foundation for the concept that dominated over the European continent until the late Middle Ages. This concept is based on the dogmatic-theological view of the world, which essentially differed from the approach of ancient philosophers. St. Augustine, as Rosenfeld emphasized, did not relinquish of all the postulates of ancient Greek philosophy. On the contrary, he considered Plato as the most supreme of all other pagan philosophers. Of course, he does not hesitate to criticize certain segments of his philosophy (e.g. polytheism), but he often uses Plato's authority to explain Christian morality. For Augustine, Aristotle is a worthy follower of Plato, though he did not consider him as such a great literate as his teacher was (see more on that: Rosenfeld 2011: 15-16).

However, the philosophy of St. Augustine partly relied on the philosophical achievements of ancient philosophers, especially Plato, to the extent that it was compatible with the Christian-theological approach. In his work *On the Ideas*, as Luscombe states, St Augustine explains Plato's views in the following way: "The reason for everything that will be, and for everything that is created, is contained in God's mind. Nothing besides what is eternal and unchangeable can be contained in God's mind. The main causes of human existence Plato calls ideas. These reasons are not

just ideas, they are also the truth, because they are eternal and unchangeable" (Luscombe 1997: 10-11).

This concept, however, completely denies any possibility of the existence of the real freedom of individuals within the boundaries established by the secular state. According to St. Augustine, as Maurer notes, the sinners do not have the strength to recognize their own good. Man is a slave of one's own passions that dissuade him from spiritual values and God. St Augustine insists that a man in the state of sin holds the freedom of choice, but he does not enjoy it because he does not use it properly. Freedom in the true sense of the word is incompatible with sin, and as the Bible says-whoever does sin is the slave of sin. In fact, according to St Augustine – as Maurer emphasized, a man can enjoy complete freedom only in the next life, under the protection and grace of God, where he will be unable to sin. Only then it can be, in the eternal heavenly kingdom of God, spoken of total freedom that cannot be achieved within the boundaries set by the secular earthly state (see more on that: Maurer 1982: 17).

So, it is the God's state in which power comes from God, and since the will of God cannot be questioned, so it is not allowed to question the actions of the ruler based on the will of God without the severe sanction. This is a concept in which there are no citizens, but subjects, in which there are no human rights and freedoms, there is no rule of law, but only the rule of monarch and its nobles on the basis of the will of God. In such systems there is no division of power either. So, it is a concept of governance that was not based on the rule of law, but rather on negating not only what this principle represents in contemporary sense, but also in the sense of the achievements of ancient philosophy. Europe has for a long time regressed in this regard, bearing in mind the centuries-long domination of theological dogmas over the universal values that were contained in the philosophy of the ancient period, and which will experience their full affirmation during the period of enlightenment and the development of liberalism.

In the period between the 8th and 12th centuries, as Saunders notes, the Arabs conquered countries in which the development of scientific philosophical thought was booming. Within this empire, in addition to the Muslims of Arabia, a large number of Christians, Jews and pagans lived. The Arabian Empire was, therefore, a cosmopolitan society within which the continuing development of philosophical and scientific thought continued. At the same time, the area of Western Europe fell into a hypocrisy that directly affected the development of science in general. This situation

was initiated by the domination of Church and Church dogmas in all spheres of social life (see more on that: Saunders 2002: 187-198).

Under such circumstances where the power of the rulers - the kings nominally made out of the will of God – was in reality trimmed and limited by the ecclesiastical authority and competences of feudal nobles. In fact, it can be concluded that the Middle Ages were marked by the weak position of the rulers – kings in relations with the Church and the feudal nobility in the Europe, which ultimately influenced the scope of the prerogative of authority in the hands of rulers – kings.

However, in time, totally different standpoints appeared in the relation between secular and spiritual authority. Thus, in the XIV century, the Franciscan friar William Ockham (1285-1347) considered that secular power is above to spiritual and pointed to the need to separate these two powers. He explicitly denied any competencies of the Roman Pope with respect to secular power. As Schulze noted, Ockham wrote: "The secular power is older than the spiritual, and it is independent of the Pope. Pope has no right to confirm the election of the princes; not even in accordance with the state law because they have no state; it does not belong to them, even on the basis of ecclesiastical law, because it is valid in the state only if it has been approved by the prince; it does not belong to either custom law because it is invalid if it harms the general good" (see: Wilhelm von Ockham, Traktat gegen Benedikt V, Dialogus III, trac. II / 4, 2/17, cited by Schulze 2002: 28).

3. THEORETICAL VERY BEGINNINGS AND FURTHER DEVELOPMENT OF A DIFFERENT CONCEPT

The need for a strong and centralized state government is followed by the first philosophical reflections that favor the state and its institutional mechanisms in relation to any form of parallelism, including ecclesiastical, in the exercise of prerogatives of authority. The philosophical concept of the state thus gains a new meaning, completely different from the Christian-theological meaning. In this context, the state is dominantly regarded as a secular creation, which has to be rational and, above all, functional in order to ensure its survival and the survival of its population.

One of the first theoreticians of that period who pointed to the need to relativize the role of Christianity in state administration and the practical exercise of authority was Niccolo Machiavelli (1469-1527), an Italian theoretician of the late Middle Ages, whose creative opus is one of the most controversial in the history of development of philosophical-political thought. Thus, for example, as Snyder emphasized, Leo

Strauss and Harvey Mansfield consider Machiavelli as "the teacher of evil". Other scientists see Machiavelli as advocate of imperialism and imperialist conquests. Many well-known German thinkers emphasized Machiavelli's role in establishing nationalism in the XIX century. Others again find that Machiavelli has separated politics from the moral, justifying the concept of using the pure political power and a real-political approach. Some believe that Machiavelli does not advocate a pure power politics, but has simply shown how politics works in reality. It is not uncommon that there are those who believe that Machiavelli was, in fact, a republican by his convictions (see more on that: Snyder 2004: 215).

It is about the author whose works, due to their originality and expressive real-practicalism in the consideration of social and political relations, attracted a significant public attention, both of his contemporaries and in the later phases of the development of philosophical-political thought. Between 1513 and 1525, as Anglo states, Machiavelli wrote a series of papers dealing with political, military and historical issues. One of these works – The Art of War was published in 1521, while the other capital works of this author were published five years after his death (The Prince, Discourses, History of Florence). Enthusiasts of this period translated his works into French, English, Spanish and Latin. It is quite clear that translating a particular piece into a foreign language is not possible without its careful reading and studying. Also, other authors from that period often refer to Machiavelli and his works. All this says that the works of this controversial author, as Anglo emphasized, have attracted the attention of both scientific and public opinion, as well as common readers. Machiavelli's attitudes over time have made his name overgrew his works. His name eventually became even more famous than his works when in 1611 Randle Cotgrave used the word "machiavellism" for the first time in his contemplation, as Anglo emphasized. Many authors believe that Machiavelli was already so well known in that period that he could have continued his public career completely independent of the acts that celebrated him, of course if he could have lived so long (see more on that: Anglo 2005: 2-3).

As Ross King emphasized, because of *The Prince* Machiavelli became known and hated during his life, although this work was only published after his death, as it was available in the manuscript for a certain narrow circle of public. In fact, the Art of War is the only Machiavelli's work that was published during his life. Only four years after his death, The Prince was printed and published. As King noted, in the summer of 1531, Pope Clement VII issued a license to Antonio Blado, the largest publisher in Rome, to print and publish The Prince together with Machiavelli's Discourses and History of Florence. So, these works became accessible to a wider audience. Pope

Paul IV, 25 years after the publication of the Prince, put this work on the so-called the *librorum prohibitorum* list, as one of the most notorious works the Church prohibited. In some circles of this period Machiavelli became almost the mythical manifestation of evil, while his name represented the synonym of hypocrisy and atheism. Even in literary circles, as King emphasized, his name was often used to reveal something that is evil and satanic, and even in the works of famous writers Christopher Marlowe and William Shakespeare, "Machevill" term used as the word game: Evil in English (see more on that: King 2007: 231-232).

As Mikko Lahtinen states, Louis Althusser believes that Machiavelli's work is not just a mere text on the policy of ruling, but that this work alone is a special political act. Although the ruler is a subject of political activism, the criteria for political decisions in this work are established from the standpoint of the people. This is how the idea of an alliance of rulers and people is faced with a few nobles. In this connection, as Lahtinen noted, Althusser warns of the unilateralism of the Prince's interpretation by which this work constitutes an immoral manual to rule in general. However, this is a revolutionary political manifesto, where political practice is defined through the ultimate political goal that comes from the opinion of the people. Democratic interpretations of the Prince, on the other hand, are also unilateral, because according to them, this work represents the realization of republican ideas as it reveals to the public the secrets of the immoral politics of the rulers, which could be of some kind of assistance in their efforts to liberate themselves from the absolutist yoke, as Lahtinen emphasized (see more on that: Lahtinen 2009: 10-11).

His capital work *The Prince*, which has become famous all over the world, shocked the public at the time. In this work Machiavelli as the supreme goal of human activity does not place religion, but a state power as superior to everything. The main task of the state power/ruler is contained in the obligation to preserve the state and power. The Christian reason, in the context of Machiavelli's political philosophy, is essential solely from the point of view of the king's justification. Regarding the way of ruling, Christianity not only that it has no particular importance, but it is not even advisable to adhere to what this religion preaches. In preserving the state and power, which is the ultimate goal, Machiavelli allows and recommends the use of all necessary means, without regard to any moral or religious boundaries.

It was the first stage of theoretical conception of the state as a secular category, the state responsible for the territory and the population, of course under the historical conditions dictated by the attainment of the civilization level of mankind development in the Middle Ages. Subsequently, there were a group of theoreticians who concep-

tualized the model of sovereign state power – from Jean Bodin to Thomas Hobbes as characteristic representatives of the theory of a unified and powerful state authority personalized in the person of an absolutist ruler who should be the bearer of all prerogatives of authority.

The civil war in France, and the anarchy in the country, as Duignan states, led Bodin to consider how to ensure a stable social order and efficient state power. In that sense, Bodin thought that the key to solving this problem in recognizing the sovereignty of the state, whose basic mark is supreme authority. This power is unique and absolute, as Duignan noted, it is not limited by time or any of the competences that could be set above it, and does not depend on the consent of any subject in society and the state (see more on that: Duignan 2011: 66-67).

However, at this stage of the development of the political and legal theory, it is being discussed whether the ruler is or is not constrained by any laws – in addition to the very fact of the existence of responsible and sovereign authorities, is an indispensable substantive of what is considered under the rule of law. In accordance with the Bodin's concept of organization of the state, as Weinert states, the sovereign authority derives from the natural and divine law. Bodin explicitly states that there is no ruler in the world that could be considered sovereign, if sovereignty implies exemption from the law. All rulers are subject to divine and natural laws and even certain human laws common to all peoples. Even the hereditary monarchs, according to Bodin, are bound by the oaths of their ancestors. In this connection, the minimum application of natural laws implies the respect of the agreement and private ownership by the ruler and his obligation to conclude fair and reasonable treaties regarding the individual and collective interests of those over which he governs. In the case of conflict of laws, the ruler should always prefer honorable laws, that is, laws that produce natural and correct consequences, as Weinert emphasized (see more on that: Weinert 2007: 35-36).

Hobbes' political philosophy was largely based on the critique of the concept of divided sovereignty, as Collins emphasized. Leviathan (state/state authority), according to Hobbes, can only exist as unity. The bearer of sovereignty may also be the collective representative body/assembly, but the monarchy, in which the individual will of one individual governs, is a better model of state government organization than the rule of the unity of the group according to Hobbes. This is because sovereignty in the rule of one is almost impossible to divide. Every division of sovereignty, even between the various branches of powers, Hobbes considered illegitimate. In that sense, Hobbes specifically emphasized the essence of the division of sovereignty be-

tween secular and spiritual authority, as Collins noted (see more on that: Collins 2005: 12-13).

Whether the laws of nature impose certain duties on the ruler is one of the key questions that may arise when considering Hobbes's theoretical settings. In this connection, as Lloyd emphasized, considering the Hobbes's philosophy it is possible to find such argumentation by which the laws of nature are not binding for the ruler. These are the early Hobbes's works by which the interpretation of natural laws is considered as the ruler's right, with which he determines their content and meaning. However, as Lloyd states, in his more mature phase Hobbes points out that rulers are bound by natural laws, as is the case with other citizens. Authority is subject to the laws of nature, because these laws of divine nature and cannot be abolished by human or state decisions. Sovereign and sovereignty are divine categories, and sovereign is obliged to respect natural laws. Only children and mentally ill persons, as Hobbes points out, are exempt from liability for violating natural laws. It is also in this regard the obligation of the ruler to refer his subjects to the fundamental rights that constitute the basic natural laws of sovereignty, with the ultimate purpose of preserving peace and prosperity in society, as Lloyd noted (see more on that: Lloyd 2009: 134-136).

Thus, from the earliest times, the sources of power and the basis for the possible limitation of the holders of authority in various forms and with different levels of intensity have been discussed since the ancient Greece, then in the period of domination of theological dogmas and ruler's absolutism in the Middle Ages until the complete conceptualizing a model that corresponds to the contemporary understanding of the rule of law in all its segments.

After the era of the ruler's absolutism, in the Enlightenment era, the theoretical concept of responsible public authority is gradually developed – based on the democratic will of citizens expressed in the procedure of free elections, the power that is constrained by the Constitution and the Acts of Law and divided by the principle of division of power, arising from human rights, respecting its legitimacy and legality, and having effective mechanisms for the exercise of constitutional justice, i.e. the protection of constitutionality and lawfulness, including the protection of human rights and freedoms, the prohibition of discrimination, or equality before the Constitution and the Acts of Law. Of course, this theoretical concept that necessarily implies the rule of law as an indispensable element for its existence and survival gradually evolved – from theoretical considerations of Montesquieu, through John Locke, Jean Jacques Russo, Jeremy Bentham, John Stewart Mill, John Mill, to Rawls, Dworkin, and many other theorists.

For example, Montesquieu's concept of division of power into legislative, executive and judicial constituted the basis for the adoption of modern constitutions. The Founding Fathers in the United States, as Fekete emphasized, explicitly referred to Montesquieu's authority and his views on the division of powers. In addition, for the Third United States President, Tomas Jefferson, Montesquieu's Spirit of the Law represented the most creative work on politics and the organization of state power (see more on that: Fekete 2009: 151). As Dennis C. Mueller notes, it is interesting to note that, according to many important authors, Locke's political philosophy was created under the great influence of Levellers, who in 1647 proposed the first written Constitution based on the overarching principles for that period: 1. No property limitation for the status of citizenship; 2. Political power is in the representative body, not in the hands of the king, and 3. The power of government must be limited (see more on that: Mueller C. Dennis 1996: 346-347).

In their works, these and many other philosophers gradually have theoretically found what constitutes the principle of the rule of law and constitutional justice in the contemporary sense and in its formal and material – essence (see on that: Begić 2021: 73-127).

INSTEAD OF A CONCLUSION: CONTEMPORARY MEANING AND HISTORICAL DEVELOPMENT

As can be seen from the previous text, ideas concerning the concept and purpose of government, constitution, laws and legislation, rights and obligations, legality and legitimacy and all other categories and ideas that constitute elements of the principle of the rule of law (as it is understood today), have been the subject of consideration since the earliest times, at the very beginnings of the development of the philosophical-legal thought. These considerations were determined by historical circumstances and the reached level of development of human civilization and philosophical thought in different historical periods. The history of human civilization could be described, besides the others, as the history of the struggle of ideas, in which some concepts were replaced by other, sometimes more advanced ones, sometimes not.

In this regard, any principle of legal nature (such as rule of law) or a system of legal norms does not arise from nowhere and from nothing, especially it is not a cause, but a consequence of a certain set of ideas and philosophical-theoretical principles shaped into a certain theoretical model, doctrine, ideology, that could be achieved and implemented through positive norms of the legal order. Therefore, the legal norms

in force that give life to theoretical principles are only a consequence, not a cause. The causes of the content of legal norms and legal principles in force as well as it's understanding, and interpretation are contained in the original ideas that are part of a certain philosophical-theoretical model and value system on which that model is based. It should be emphasized that a philosophical approach necessarily precedes a theoretical conceptualization of a certain system of values into a special theoretical model. Legal norms by which a certain system of values of a philosophical-theoretical nature is brought to life and becomes legally protected, therefore, represent only the consequences of causes that should originally be sought in the sphere of philosophy.

The law in force is usually observed and interpreted in the context of dominant doctrine of theoretical nature. The quality of implementation and protection of the adopted values of a theoretical nature often crucially dependent on the spirit and level of enlightenment of the interpreter himself in the role of constitutional maker, legislator, or holder of judicial office in individual proceedings and cases. In this regard, the meaning of the principle of the rule of law can have a different and even wrong meaning if it is taken too narrowly, exclusively in its formal part, in the sense of effective enforcement of law in force. Thus, the quality of the law in force i.e., its content, is very important. In contemporary sense, as properly observed by the author Zvonimir Lauc, the concept of the rule of law has its own formal and material side. Formal – referring to the necessity of having procedures for the effective implementation of what is prescribed by the norms, according to their hierarchy, and the material side that relates to the content of what is written in the norms. Thus, as Lauc correctly states, the formal side of the rule of law highlights its procedural importance in which the rule of law appears to be crucial for the effectiveness of the legal order, without taking into account the content of regulations, while the material aspect of the rule of law is a set of ideals, values, goals based on public morality – where the rule of law exists only if the content of the norms being implemented is fulfilled by those values (see for that: Lauc 2016: 51; for the rule of law see also: Møller, Skaaning 2014; Tamanaha 2004; Bingham 2011).

In a modern democratic society and in the material sense, these values must be based on modern democratic principles. These contemporary democratic principles of an originally theoretical nature have become part of positive law in force over the time, through their codification at the international and internal level. However, as can be seen from the previous text, certain ideas and principles observed during the different historical periods have proven to be universal and, in the essential sense, necessary in contemporary circumstances as well, although it is about of completely

different historical periods and circumstances of the development of human civilization.

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TRAGOVI VLADAVINE PRAVA KAO IDEJE I PRAVNOG PRINCIPA U TEORIJI ANTIČKOG I SREDNJOVJEKOVNOG PERIODA: NEKA OD KARAKTERISTIČNIH TEORIJSKIH RAZMATRANJA I NJIHOV DOPRINOS SAVREMENOM ZNAČENJU

Sažetak:

Kada se govori o vladavini prava kao savremenom ustavnom i teorijskom principu najveći dio javnosti obično se referira na razdoblje nastanka teorijskih modela koji su bliski savremenom shvatanju uređenja države, pravnog poretka i društva, od razdoblja prosvjetiteljstva do modernog doba i njemu svojstvenih različitih teorijskih koncepata. Međutim, kao što je poznato u domenu ustavne teorije, ideje koje se tiču pojma i svrhe vlasti, ustava, zakona i zakonodavstva, prava i obaveza, legaliteta i legitimiteta i svih drugih kategorija koje čine elemente principa vladavine prava (kako se to danas razumije) kao veoma složenog pojma, predmet su razmatranja od najranijih vremena, još od samih početaka razvoja filozofsko-pravne misli. Svrha ovog rada, u skladu sa njegovim kapacitetom i obimom, nije sadržana u razradi svih teorijskih modela u vezi sa elementima koji čine sadržaj vladavine prava, a koji su se javljali tokom historijskog razvoja ljudske civilizacije – što bi, inače, bio nemoguć zadatak – već u elaboraciji nekih karakterističnih teorijskih razmatranja iz antičkog i srednjovjekovnog perioda u kojima se mogu pronaći začeci ideje vladavine prava, kao i samih početaka razvoja te ideje u savremenom smislu.

Ključne riječi: vladavina prava; ustav; zakoni; država; vlast; teorija

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