

States are Governed by Judicial Laws (Written for the centennial of the Estonian Parliament-Riigikogu)

Dr. habil. iur. Ando Leps¹

EuroAcademy, Tallinn, Estonia
andoleps@hotmail.ee

Abstract

In the article, it is emphasised that public relations are governed by legal norms and laws. Human society is interpreted as a market where every individual has its own value, including change. Legislation, not law, is the power of society that ensures the functioning of the political, economic and social environment. Legal laws are made up only of a small part of society. Legal laws must be codified, which at the same time ensures responsibility. International legal acts are not codified, which makes their application more difficult, ensuring national responsibility. Codified legal laws are hampering the degradation of countries. At the same time, legal laws are also a manifestation of a nation's culture.

Keywords: behaviour, governed, human society, judicial laws, state.

Judicial Laws

It would be appropriate to say that human society is ruled by norms of behaviour or predominantly by judicial laws.

Judicial laws are essentially necessary for human society, underlying the state formation or more understandably the state, to be managed or in other words to be ruled. Perhaps such position is a bit novel to many people; however, in reality the processes do not go otherwise, because the state without a human society does not exist.

¹ Member of VIII and IX composition (1995–2003) of Estonian Parliament (Riigikogu). His father August Julius Leps (1896–1972) was the Estonian Parliament (Riigikogu) on the composition of the IV and V, a member of the 1929–1937.

The underlying concept of law is psychology, which explains the interrelations of various phenomena. However, psychology makes it very complicated to rule since no clear difference is made between important and trifling phenomena. The judicial laws are specifically conceived by people, because, according to Protagoras of Abdera, “man is the measure of all things” [2], interpreted to mean that there is no absolute truth but one which individuals deem to be the truth and they are consequently also creators of judicial laws, capable of understanding the needs of actual life, with the help of which it is possible to rule (manage) states (human society).

What is human society? Human society represents in its simplest (most understandable) meaning the *market* where every individual is of a certain value, but in the first place the value for exchange and hence connected to other individuals. Human society is a complicated system, in which it would be impossible to orient without norms of behaviour, which are accepted for instance in the capitalist society by *potentates*, i.e. elite of the human society, not by majority of the population.

Not the *right*, as often claimed also by educated lawyers, judicial laws are the main power of human society, forming and securing political, economic and social environment, and it is the most important guarantor of *social peace* for a human society to exist. The precondition of existence of human society is, in the first place, *judicial laws*, not the *right*, as often erroneously believed, which is not perceived by members of society.

Judicial laws are produced and created by members of society; however, not by all human society but a certain small share of it.

Because we are presently predominantly dealing with the capitalist mode of production of material and spiritual values, judicial laws are made mostly by politicians of the parties at power. The laws are not worded by politicians but lawyers, who politicians have hired to make those laws, because they cannot make them themselves and often worse still, they do not quite understand their content.

But it is the economists and lawyers who must be, in the first place, in the representative bodies of the state of the capitalist production relation. The representatives of other professions should have much less to do with the parliament. It has evolved so during many generations in *classical capitalist states*.

We can talk about judicial laws in cases when those laws are *codified*, meaning that certain norms of behaviour have been placed into codes, for instance, in civil code, criminal code and other codes, which means in its turn that the result of certain behaviour is the responsibility (punishment) for such behaviour. As the so-called international law is not codified, it does not belong to the area of law; however, embraces agreements between states. It is explained by the great powers not being agreed to codify the relations between states, since the “rulers of the world” may be punished on the basis of clauses presented in a code.

Judicial laws are in the true meaning of the word the expression of the *culture* prevailing in one or another state, such as religion or art. It would be more appropriate to say the expression of culture of *human society* of one or another state. The question

arises whether states can be lined up according to their judicial laws, which would mean that in some countries judicial laws are better than others. In a certain sense it is surely possible; however, not fully because the world is dominated by various cultures and religions, making such ranking almost impossible. For instance, whether the states where judicial laws feature capital punishment (USA, China, Saudi Arabia and others) are less cultural when compared to those where capital punishment is abolished.

Such comparison holds little truth. It would be rewarding to see what the famous German philosopher Hegel said on that matter. In case of heinous crimes capital punishment can be used, and not only at the time of martial law. The position that a state (human society) cannot take a man's life, although he is a serial killer, and law-abiding members of society must sustain him also in the future is fallacious. A question arises whether that position is in concord with sound mind. Hence the opinion is raised by some lawyers that the relation between offender and injured party is gravely biased to the benefit of the offender and to the detriment of the injured party.

Judicial laws, which are codified, are the basis of behaviour of members of society, because a human society has adopted the decision which the state has formed (completed) into judicial laws.

It cannot be said that judicial laws are legal rights, because the *right* as a general concept has never existed and does not exist in human societies. Legal rights do not exist. There are various laws, natural laws, laws of physics and mathematics, etc. which, however, differ cardinally from codified judicial laws.

Existence of codified judicial laws stems the decline of the state (society), if it can be controlled at all. Perhaps it is already too late, because nature and natural resources have for long been criminally abused and destroyed; but man is part of nature.

Undoubtedly codified judicial laws have immense preventive meaning, because they preclude enormous amount of new transgressions of judicial laws.

Reflections on Some Generally Known Concepts, Commonly Misunderstood

State Governed by Rule of Law

If the term "law" does not exist as a general concept, how can the concept "state governed by rule of law" exist as a general concept? A justified question arises what "formation" is the so-called state governed by rule of law, and more importantly, what it stands for.

Knowingly, states are ruled by various juridical laws. Therefore, the concept "state governed by rule of law" is also utterly wrong and incomprehensible to population. Such states do not exist at all. It would be inappropriate to say that some states are better and more dignified than others, although it must be remembered that all states are ruled by judicial laws. The problem, however, merits a closer consideration.

If some politicians like a certain state, those states are the “states governed by rule of law”, and if those states are not to their liking, they are not the “states governed by rule of law”. To say the least, such understanding is incompetence. Since conceivably there are no states in the world lacking valid judicial laws, all states are governed by such laws, and there are no privileged “states governed by rule of law”.

Hence there are no states governed by rule of law, like there is no general concept of law. On opinion of a group of certain educated lawyers, law is made applicable by its legality because in their view the “state governed by rule of law” presents the idea that execution of state power must be in compliance with laws which have been created by a legitimate procedure.

Legitimacy here is supposed to mean that juridically the law is equitable, and one rules under valid laws; this is what the “knowledgeable” lawyers say. The previous statement would have to be reworded as follows: “Legitimacy means juridically that governing is effected under valid juridical laws” and that is the end of it.

The institution working under legitimate base, under juridical laws, for instance the Parliament, must proceed in its work, in the first place from judicial laws, in accordance with which it adopts new judicial laws.

The well-known German legist Max Weber (1864–1920) adopted the term “legitimacy” to characterise the popularity and reliability of “power” and “potentates, in a word the statesmen” [5]. M. Weber highlighted three very different types of authority of rulers in the society basing on power arising of judicial laws.

The traditional authority. According to such type of authority, the power is wielded based on habits, customs and traditions legalised in the society. People acquire power thanks to “its having been like that from the times immemorial”. The examples of such power type are *Pope* of Rome, kings and *emperors* etc. Often such authority has been inherited.

Legal-rational authority. The power is legitimised through external rules and rational procedures, defining the rights and obligations of the person holding the position, acquiring the authority together with concomitant rights and obligations.

Charismatic authority. According to such authority type, the power is legalised by judicial laws through certain miraculous and superhuman means, which the subjects attribute to the leader. Charismatic leaders were Jesus Christ (if he existed at all physically), Moses (subject to the same doubt as Jesus Christ), Napoleon, Caesar, and Hitler, Stalin, Churchill and others.

The European Parliamentary Assembly has determined that the state that is in compliance with the law is legal [4]. The “state governed by rule of law” presents an idea that performance of state power must be in compliance with law, created by legitimate procedure. Reference to valid operation of law as the “state governed by rule of law” contains the claim that we must be dealing with a state of equitable and good governing

(for instance in Estonia as the state governed by rule of law there would not occur arbitrariness of officials). In the state governed by rule of law, there should coincide the law and the image of society about the equity.

It is hard to conceive something more complicated and confusing said on that matter. However, how one can measure the representations by members of society about equity remains totally beyond understanding.

Equity

Much confusion and misunderstanding has been created by the social term “equity”. The reportedly best known in the West Estonian legist Professor Ilmar Tammelo (1917–1982) delved in the problem of equity [3]. He composed his works mainly in German. He wrote that “equity is a positive ethical social value, according to which in the normatively bilateral situations everyone gets his fair share”. However, he noted that the idea of equity in the form as presented in the above definition is not directly applicable to theory of law. The signatory does not know how well I. Tammelo knew the dialectical logic of the famous German philosopher Hegel. Nevertheless, the allegation of I. Tammelo that the above definition is not directly applicable to theory of law is incorrect. Quite the contrary, it is applicable in the theory of law and must be used there. However, the value of I. Tammelo’s knowledge is constituted by his rightfully pointing out that *equity* must also have “the second party”.

The signatory asks: why? Everything is correct, but what is the most important “thing”, phenomenon or value, determining or “giving” in bilateral situations the parties their fair share?

Another legist of Estonia Professor Eduard Raska [1] did not deplorably understand the declaration presented by I. Tammelo, and therefore asked what “the normatively bilateral situation” meant, and that the phrase “his fair share” called for interpretation [3].

“Equity” is “visible” or is expressed best, specifically in “codified judicial codes” where social relations are regulated with civil law or penal law (criminal law) in legislative acts of different states; for instance, the substance matter of relation of infraction of civil law and juridical responsibility, and relation between the offence (criminal act) and punishment is “equity both in the sense of social and private persons’ reciprocal relations”.

It has been estimated so on the level of human society by the law maker, doing it on the highest i.e. state level. All infractions of juridical laws display a macho “can do” attitude to equity. “Equity” itself is not a judicial, but by assertion of a social term.

Valstis pārvalda juridiskie likumi

Kopsavilkums

Rakstā autors pievērš uzmanību tam, kā sabiedriskās attiecības regulē juridiskās normas un likumi. Cilvēku sabiedrība tiek interpretēta kā tirgus, kur katram indivīdam ir sava, tai skaitā maiņas, vērtība. Ne tiesības, bet gan juridiskie likumi ir sabiedrības spēks, kas nodrošina politiskās, ekonomiskās un sociālās vides funkcionēšanu. Juridiskos likumus veido tikai neliela sabiedrības daļa. Juridiskajiem likumiem ir jābūt kodificētiem, kas vienlaikus nodrošina arī atbildību. Starptautiskie tiesiskie akti nav kodificēti, kas apgrūtinā to piemērošanu, vienlaikus sekmējot katras valsts nacionālo atbildību. Kodificētie juridiskie likumi bremzē valstu degradāciju. Juridiskie likumi vienlaikus ir arī valstī vadošās kultūras izpausme.

Atslēgvārdi: uzvedība, pārvaldība, cilvēku sabiedrība, juridiskie likumi, valsts.

Literatūra

1. Kaugia, S. (2004). Mis ja milleks on õigus? In Raska, E. *Õiguse apoloogia. Sissejuhatus regulatsiooni sotsioloogiasse* (Eng. Kaugia, S. What is and what is right? In Raska, E. *Law Apology. Introduction to Sociology of Regulation*). Fontes. Available from http://www.horisont.ee/arhiiv_2003_2006/artikkel526_520.html [date of request: 05.02.2019].
2. Mark, J. J. (2012). Protagoras of Abdera: Of All Things Man is the Measure. In *Ancient History Encyclopedia*. Available from <https://www.ancient.eu/article/61/protagoras-of-abdera-of-all-things-man-is-the-meas/>. [date of request: 10.02.2019].
3. Tammelo, I. (1956). Sketch for a symbolic juristic logic. *Journal of Legal Education*, 8, 277–306.
4. The Principle of the Rule of Law. *Parliamentary Assembly* [of the Council of Europe], Doc. 11343, 6 July 2007. Available from <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=11593&lang=EN> [date of request: 05.08.2019].
5. Waters, T., Waters, D. (2015). *Weber's Rationalism and Modern Society*. Palgrave Books, pp. 137–138.