

## The Rule of Law, From Doctrine to Citizen

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### Abstract

*The thesis analyzes the level of interest of citizens, over a period of time, for the concept of "rule of law", approached for various purposes by the scientific literature, having an accentuated visibility in recent years, in the field of mass-media, present in public debates, political magazines, electoral campaigns, journalistic investigations, etc.. Frequently, the invocation of the concept of "rule of law" in the debates associated with public space is determined by the purpose pursued and the interest in highlighting the idea of rule, legality, in relation to the topics addressed, being used as a potential discourse strategy.*

*By using qualitative methods of comparative analysis of the documents presented in the online environment, in order to study the interest of citizens of different countries for the concept of "rule of law", I obtained data and information, validated by the reports generated with the help of search engines, and following a causal correlation, I argue that the interest of citizens is higher in certain periods, specifically in connection with relevant political events.*

**Key words:** rule of law, citizen, law, public power.

**J.E.L. classification:** P10

### 1. Introduction

The doctrinal approaches regarding the definition of the concept of "rule of law" have taken into account the formulation over time of some theories of law and of the state, associating the notion with the law, but also with the process of creating the law. The rule of law takes the form of a construction based on legal foundations. The literature defines the rule of law in close connection with society, respectively with its representative component structures. The state is associated with order, with regulation and legal norm, but, sometimes, it's considered idealistic and difficult to perceive at an individual level. In the contemporary reality, the invocation of the concept of "rule of law" often materializes in debates in the public space, being determined by precise goals and by the interest in highlighting the idea of rule, legality, in relation to the topics addressed. Belonging to the everyday existence, invoking the concept is part of a potential strategy of *discourse*, with well-defined goals, often in the political sphere.

The paper analyzes the level of interest of citizens, over a period of time, for the concept of "rule of law", approached for various purposes by the scientific literature. The concept has benefited from increased attention in recent years in the field of mass-media, in political magazines, electoral campaigns, journalistic investigations, etc. Currently, the concept is seen as a slogan or as a symbol of democracy and respect for human rights.

Using qualitative methods of comparative analysis of documents, respectively of reports presented online, we analyzed the interest of citizens from different countries for the concept of "rule of law", given the fact that power emanates from the people and belongs to, them, and the exercise of power is entrusted to the state.

## 2. Literature review

The literature assigns various meanings to the concept of "rule of law", which is known in German as "Rechtsstaat", in French "État de droit", in Italian "Stato di diritto", in Spanish "Estado de derecho" and in English can be assimilated with the expression "Rule of law", although there are reservations about it being considered a synonym and sometimes the concept's identity is challenged (Lazari, 2014). The French doctrine adopted the term "Rechtsstaat" through the efforts of Léon Duguit, becoming a concept applicable and opposable to French law.

Some authors consider that there are three theories that define the concept of "rule of law", represented by the "state authority" of Maurice Hauriou, the theory of "state service", whose advocate is Léon Duguit, respectively the "rule of law" of Hans Kelsen (Danisor, 2018b).

The doctrinal approaches regarding the definition of the concept "rule of law" are rooted in the structure of the Kelsenian normative system, which is close to the Kantian transcendental idealist philosophy, not being based, in a strict sense, on an empirical approach (Coq, 2021). Hans Kelsen, the most important law theorist of the twentieth century, known for formulating the pure theory of law and the state, associates with the concept, on one hand, the law, and, on the other hand, the process of creating the law, taking the form of a constructions based on legal foundations. The Kelsenian state is a "legal order" and the defining characteristics "make sense in the general theory of law" (Kelsen, 1999). In a broad sense, the state defines "society as such" or a "special form of society" and in a narrow sense, "a nation" (Kelsen, 1999) or entities of society, government and autonomous authorities. Hans Kelsen considers that all the features of the state must be able to be presented as the property of a legal order (Kelsen, 1999).

The contemporary value of the notion of rule of law, as well as its uses, in an analytical, critical and evaluative perspective are aspects that can be properly addressed by jurists and philosophers of law and politics (Costa, 2007).

The rule of law appears in some doctrinal approaches as a means "to achieve a specific goal", with expectations related to the intervention of "law" in "power", embodied in the relationship between power and law, as to ensure the consolidation of the citizens' position (Costa, 2007). The *raison d'être* of the rule of law is interdependent with the relationship between the state and the citizen, strengthened through the introduction of "restrictions on the sovereign power" (Costa, 2007), in the form of laws, for the individual benefits of the person, assimilated to individual rights. granted by the state to citizens.

The concept is often found in doctrinal and political debates, having "the strength and limits of a myth" (DĂNIȘOR, 2018a). Some authors define the rule of law as a doctrinal concept or as a theoretical notions used by specialists to "know and analyze legal phenomena" (DĂNIȘOR, 2018b).

Pietro Costa mentions that the cardinal points of the rule of law, representing essential conditions for its very existence and meaning, can be political power, represented by the sovereignty of the state, the law, with the legal norm and rules, respectively individuals (Costa, 2007). The rule of law itself is seen by Pietro Costa as a special relationship between the state and the law, which is beneficial for individuals (Costa, 2007). The rule of law benefits from a doctrinal approach referencing an ideal of a political regime in which the state is subject to the law and grants rights to citizens, who are equal before the law.

In French law, the state does not appear as a stable and static entity, "a besieged fortress", but rather resembles a moving train or a slippery ground (Heuschling, 2010). The conceptual and institutional transformation of the rule of law is due to the "capacity for self-renewal of its legal and political mindset" (Heuschling, 2010). The science of French comparative law understands the rule of law as an "endogenous" phenomenon, determined by a specific context and spurred on by external influences (Heuschling, 2010) The concept is currently constituted as a slogan, or as an emblematic word, to which some authors dedicate a true "cult" (the cult of the rule of law), seen as a concept of democracy, which marks a reorientation of French law (Heuschling, 2010).

The rule of law, represented by a pyramidal legal system, based on a construction derived from the law, is established to guarantee the functioning of a political landscape for the exercise of power, as well as to respect for the fundamental rights of citizens (Bălan, 1998). European principles, values and fundamental rights such as the rule of law and democracy are proclaimed in Article 2 of the Treaty on European Union (TEU) and are respected by the member states, beyond the legal limits

imposed by the EU's competences. The rule of law is a fundamental value for the European construction (*Tratatul privind Uniunea Europeană (versiune consolidată)*, [*Treaty on European Union (consolidated version)*], 2020).

The exercise of fundamental rights, seen as a rule of law or as a basis for the obligation to protect the rights (von Danwitz, 2008), through fulfilling duties and participating in democratic processes, takes place in a society based on fundamental values, common to each Member State of the European Union. Both the exercise of rights and the obligations to protect them, require clear, explicit and unequivocal regulation, which takes the form of the rule of law, as to ensure the separation of powers, the respect for democratic values and principles, as well as the human rights. The regulation takes into account the totality and complexity of the legal relations in the state activities plan.

In a state of law, power emanates from the people and belongs to them, and the exercise of power is entrusted to the state, as the holder of this power, along with local collectivities and citizens. The organization of the rule of law is based on the separation and balance of powers in order to prevent the abuse of power. The technical dimension of state power is provided by the public administration, which is an activity "closely linked to the executive power" (Bălan, 1998).

Specialized literature, and especially the French doctrine, defines the public administration as the action of the executive power "through the processes of public power" (Bălan, 1998).

### 3. Research methodology

The methodology applied to achieve the objective of the research was based on a qualitative approach, by using the method of analyzing the documents present online, as well as their comparative analysis, in order to study the interest of the citizens of different countries for the concept of rule of law.

The scientific approach took into account the selection of a non-statistical, random sample, which includes a number of 5 European countries, for which the period of the last 5 years was analyzed, from the point of view of the citizens' interest in information related to the concept of rule of law. Using qualitative methods of data collection, we analyzed the reports obtained through the use of computer (*Google Trends*, 2021), platforms, and respectively information that appeared in the media and in the public space.

The conclusions of the study were based on causal correlations, identifying the high level of interest of the citizen in the concept of rule of law, in relation to important national or international events in the reference period.

### 4. Findings

The results of the analysis presented in Figure no.1 highlight an association of the highest interest of citizens for the concept of "rule of law" during the periods when events in the political sphere took place.

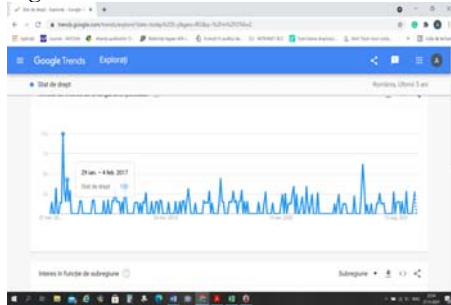
Figure no.1. The results of the analysis

No.	Country	The period of the highest level of interest	Associated event	Related topics
1.	Romania	Jan. 29 - Feb. 4, 2017	Anti-corruption protests	Principle, the European Union
2.	Moldova	Mar. 1-7, 2020	Crisis of the political class, electoral year (presidential elections)	Law, State
3.	Bulgaria	Feb. 12-18, 2017	Parliamentary elections	Principle
4.	Czech Republic	Oct. 8-14, 2017	Parliamentary elections	Constitution, state
5.	France	Sept. 17-23, 2017	Presidential elections	Fundamental rights, Politics, Power

Source: (Google Trends, 2021)

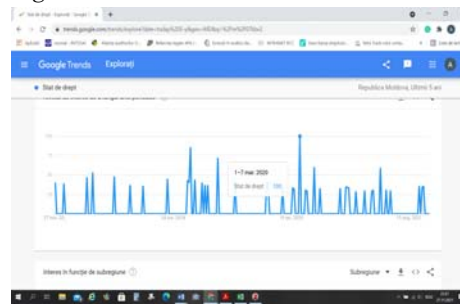
The highest level of interest in Romania can be associated with the events triggered two weeks after the investiture of the Government, in January 2017, in the form of street protests against the government's intentions to amend the Pardon Law and to amend the Criminal Code (Protesteile anticorupție din România din 2017–2019, [Anti-corruption protests in Romania from 2017–2019], 2021). The Republic of Moldova has been in a political crisis and in preparations for the presidential elections since the beginning of 2020 (Welle (www.dw.com), 2020).

Figure no. 2. Romania



Source: (Google Trends, 2021)

Figure no. 3. Moldova



Source: (Google Trends, 2021)

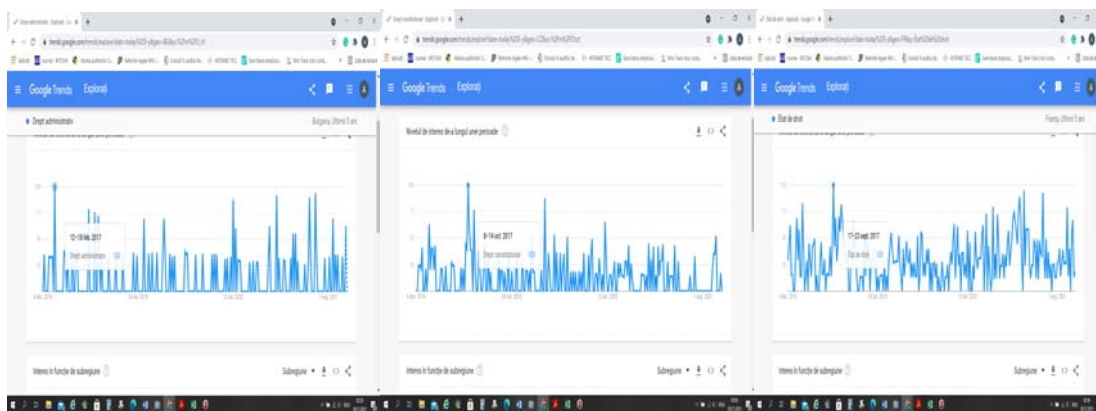
In 2017, when interest in the rule of law was at its highest level in Bulgaria, parliamentary elections were held on March 26, elections which had initially been scheduled for 2018, at the end of the term of the National Assembly. But the political situation in Bulgaria, after the resignation of Prime Minister Bozhko Borisov and the failure of the parties to form a government, required holding new elections (Alegeri Parlamentare În Bulgaria În 2017, [Parliamentary Elections In Bulgaria In 2017], 2017).

In the Czech Republic, the highest level of interest of citizens was reached in October 2017, and was associated with the events held for the parliamentary elections, at which the populist ANO movement of billionaire Andrej Babis, dubbed 'The Trump of the Czech Republic', detachedly won the elections, taking advantage of the Czechs' distrust in the political class in their country and in the directives in Brussels (Alegeri in Cehia, [Elections in the Czech Republic], 2017). France held presidential elections in 2017, and the highest level of interest of citizens was in September of this year (Alegeri prezidențiale în Franța, 2017, [Presidential elections in France, 2017], 2021).

Figure no.4. Bulgaria

Figure no.5. Czech Republic

Figure no.6. France



Source: (Google Trends, 2021)

Source: (Google Trends, 2021)

Source: (Google Trends, 2021)

The concept of rule of law has been associated with related topics, such as the notions: principle, European Union, law, state, fundamental rights, politics, power, etc.

## 5. Conclusions

Following the analysis carried out and by using the correlation of a causal nature, without generalizing, I argue that the results of the research highlight a level of interest of citizens in the concept of rule of law, higher in electoral periods. The scientific approach took into account the selection of a random sample (European countries), for which the period of the last 5 years was analyzed, from the point of view of the interest of citizens for information related to the notion of rule of law. The advantages of the qualitative method, based on the interpretation of the actions taken by citizens, regarding the obtaining of information related to the notion of rule of law, in relation to the specific context, contributed to the understanding of how individuals perceive the rule of law, associated with a principle or power, politics, fundamental rights, etc.

However, the qualitative approach also involves certain limits in the sense that highlighting the ideas and the construction of the meaning are attributed by the one who observes the phenomenon, and the reports generated with the help of computer platforms have a contextual character, exploring the concept in the subject category may have different results from its selection as a search term.

The research contributes to the understanding of a social reality, at a certain moment, although the reasoning is put in the shadow of the reflexive action and the studied problem, and the qualitative limitations imply the position of the researcher, which cannot be independent from the studied phenomenon.

Therefore, the research will help understand and interpret the studied social phenomenon, and I argue that the interest of citizens in the rule of law is higher in certain periods, especially in connection with relevant political events. The scientific approach will be complemented by the comparative analysis for an additional sample, identifying the level of interest of citizens in the concept of rule of law, in relation to the contextual factors that influence the observation.

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