

The Rule of Law and Covid-19 Coronavirus Pandemic

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Abstract

The Rule of Law is one of the most observed, but least understood phenomena. This article argues that the Rule of Law has two conceptions such formal and substantive, considering the experience of the United States. In addition, the article emphasizes the need for reconsideration of the conceptions of the Rule of Law in crisis like COVID-19 Coronavirus Pandemic.

In addition, the article argues that laws with measures limiting the freedom of movement in crisis should be regarded to meet the substantive conception of the Rule of Law if they are adopted based on the constitution and are able to change the condition to the positive side for the benefit of people.

Keywords: The Constitution; Rule of Law; law; Coronavirus Pandemic

Introduction

Since the first days of independence, Uzbekistan has been putting much effort in building a democratic state, which is committed to the Rule of Law. Terms like a democratic state and the Rule of Law are widely used by politicians and legal community. However, for the majority of people, the Rule of Law is a notion sounding unclear. This might be because the Rule of Law finds no exact definition in any laws. This requires scholars to think about this concept and even to rethink or reconsider it.

2020 has become an uncertain year for the world humanity. COVID-19 Pandemic is likely to cost the global economy from \$2 trillion to \$4.1 trillion in 2020 – 2.3% to 4.8% of the global gross domestic product (GDP). Unemployment rate is soaring. People are experiencing more economic and social problems than ever before.

This article will discuss the conceptions of the Rule of Law, considering the experience and legal system of the United States. Moreover, the article will look at the issues of the Rule of Law in COVID-19 crisis before coming to the conclusion that laws with measures limiting the freedom of movement in crisis should be regarded to meet the substantive conception of the Rule of Law if they are adopted based on the constitution and are able to change the condition to the positive side for the benefit of people.

The Concept of Law

Law is perceived in a variety of ways. Perception may affect how the Rule of Law means to policy makers, legislators, practitioner lawyers and decision makers. Thus, differentiating contexts in which the term is used is essential. In the Uzbek language, law has three meanings as follows.

- 1) Combination of all rules, regulating conducts of people, established by the state (central and local government).
- 2) Source of the above mentioned rules, which is only adopted either by the parliament OliyMajlis or via referendum. It is the same as "Statute" in the US.
- 3) Legal discipline taught at educational institutions [1].

The phrase "Supremacy of the Constitution and Law" is spelled out in the title of Chapter III of Uzbekistan's Constitution [2]. The word "Constitution" is specially spelled out along with Law though it is also a law. By stating "Supremacy of the Constitution and Law", the Constitution refers to the second meaning of the term "Law".

More about sources of Law, Article 5 of the Law "On Normative-legal Acts" should be highlighted. According to the article, there is a hierarchy of sources of Law (regulating conducts). The Constitution of the Republic of Uzbekistan and Laws (like the US statutes) are on the top [3]. The Constitution is the Supreme Law of the country then, received subordinate laws. They are Presidential decrees, the resolutions of Cabinet of Ministers (Uzbek government), decisions and orders of executive agencies, decisions of local government (like executive orders in the US), which must comply with the Constitution and Laws.

When the speech goes on about the Rule of Law, the first meaning is implied. Uzbek legal system is civil law, which means legal rules are only established in the laws enlisted in Article 5 of the "On Normative-legal Acts".

II. The Rule of Law: Two Conceptions

This section of the article does not aim to get deep insights into the historical evolution of the conception of the Rule of Law. Instead, it purposes to focus on two conceptions of the Rule of Law.

Based on the analysis of scholarly research, two conceptions of the Rule of Law such as formal and substantive can be highlighted and distinguished [4].

Formal conception of the Rule of Law: According to the formal conception, laws are all enacted rules and they must be applied and enforced regardless of their content. In history, there were many unfair and arbitrary laws, which abused fundamental human rights. Even some constitutional provisions were of the same kind. For instance, the United States Constitution reflected rules permitting slavery, banning the voting right of women.

Besides slavery, some more examples from US history for the formal view of the Rule of Law can be recalled. Women could not vote until 1920. African- Americans could not equally benefit from conditions created for white skinned people as Amendment XIV was interpreted based on the principle "equal, but separate". However, as

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they were laws, they were applied and enforced. And, it was regarded to be consistent with the Rule of Law. Apart from the constitution, history saw many discriminatory laws. However, they were applied and enforced just because they were laws. The formal conception of the Rule of Law implies that if there is a law, it must be applied and enforced whatever its content is.

Irrespective of the content of the law, for formal conceptions, existence of law is invaluable because adequately framed, administered and adjudicated legal rules allow legal outcomes. Hence, the formal conception asserts that the rule of law is satisfied when laws conform to certain formal requirements. They are requirements as follows.

- 1) General
- 2) Clear
- 3) Prospective
- 4) Non-contradictory
- 5) Relatively stable
- 6) Promulgated [5]

These requirements are a matter of form. They are not concerned about the content of laws. The Rule of Law regards law functioning as a stable set of rules accessible as public knowledge. It requires that laws must be public and must be promulgated in advance so that individuals can plan their conduct before being held liable for complying with them.

Substantive conception of the Rule of Law: In contrast, the substantive conception of the Rule of Law implies that the requirements of the formal conception of the Rule of Law are not sufficient. In addition to these requirements, it is demanded that law must be fair and reasonable [6]. Fairness and reasonableness are indispensable for making laws, because these criteria can determine whether a law is moral or immoral. Fairness and justice are interchangeably used. If laws are unfair, they are regarded as immoral. The slavery law can be recalled again here as an example.

In Uzbekistan's legal system there are not the same conceptions of the term "the Rule of Law". However, there are two different terms such as the Rule of Law and Supremacy of Law in Theory of State and Law and Constitution Law.

As said above, there is a chapter in the Constitution of the Republic of Uzbekistan, numbered III and titled "Supremacy of the Constitution and Law". The chapter embraces two articles – Article 15 and 16. Article 15 provides that "the Constitution and laws of the Republic of Uzbekistan shall have absolute supremacy in the Republic of Uzbekistan. The state, its bodies, officials, public associations and citizens shall act in accordance with the Constitution and laws". This constitutional rule refers to the formal conception of the Rule of Law. In other words, supremacy of the Constitution and Law means that the Constitution and Laws are binding on everybody since they are on the top of the hierarchy of the normative-legal acts. Moreover, one might think that it refers to the formal view of the Rule of Law, asking a question, "So, if the Constitution and Laws are supreme, can they have some immoral rules?"

Here, a reader of Article 15 of the Constitution of the Republic of Uzbekistan should perceive it from the perspective of the formal conception of the Rule of Law. Because the article does not deal with the requirement imposed for the content of laws. Rather, it is connected to the form of laws.

It is important for the constitution of the country whose legal system is a civil law to include "supremacy provision" because the supremacy of the Constitution and Laws makes the legal system operate effectively, preventing inconsistency among laws (normative legal acts) of different hierarchy segments.

It is true that the substantive conception of the Rule of Law was ignored in the period of Soviet Union. Immoral legal rules were adopted, applied and enforced as they served for implementation of the ideology of the only party – Communistic Party. After the fall of the Soviet Union, Uzbekistan became committed to change the essence of the Constitution and laws. Therefore, Uzbekistan's Constitution is not restricted to the formal conception of the Rule of Law. Uzbekistan embodied substantive views of the Rule of Law in a number of constitutional provisions.

Apart from the requirements of the formal conception of the Rule of Law (Supremacy of laws), laws must be made based on substantive conception of the Rule of Law. For this, the content of Laws must follow some principles.

If one may have a question: "Where can these principles be derived?" The response would be that these principles of Law is derived from the Preamble and Part One of the Constitution. The Preamble of Uzbekistan's Constitution is much broader than the one of the US Constitution. The overall meaning of the Preamble and Part One of Uzbekistan's Constitution produce the principles such as fairness, justice, equality, adherence to human rights, recognizing priority of the generally accepted rules of international law, commitment to the ideals of democracy.

The Parliament of Uzbekistan – the Oliy Majlis possesses sovereignty to decide what laws it adopts. However, they must enact laws meeting above- mentioned principles with the content.

Lawyers in the US can may include in their arguments, and judges may take into account, principles such as "no one should be the judge in his or her own case", as well as considerations of reasonableness and fairness. Because of these kind of arguments, new precedents came up in historical cases such as Brown vs. Board of Education (1954) [7] Miranda vs. Arizona (1966) [8]. However, in a civil law system judges are not empowered to make laws. Before judges, lawyers do not argue about fairness and reasonableness of laws to seek a judicial rule (precedent).

In Uzbekistan, the primary job of a lawyer in courts is to argue based on the existent laws on behalf of a client to seek a decision made in favor of the client. If the content of laws is not fair or reasonable, it is the job of the legislature to change it. If subordinate laws do not comply with superior laws, lawyers argue, relying on laws (like statutes) in accordance with Supremacy of the Constitution and Laws.

In addition, every law or code starts with particular principles. Lawyers can argue based on a particular principle if it is provided in laws. For example, the principle "no one should be the judge in his or her own case" is found in the main body of the Criminal Procedural Code of the Republic of Uzbekistan. This code also includes other principles from common law system such as Miranda Rule. However, these rules are not made by judges, being persuaded by a lawyer, but the legislature. Another example can be provided. From 1992 – when Uzbekistan's Constitution was adopted – to 2008 there was death penalty in Criminal Code even though Article 24 of the Constitution provided that "the right to life is an inalienable right of every human being". No any lawyer argued about that in court based on some of the principles indicated above (adherence to human rights, recognizing

priority of the generally accepted rules of international law) until the parliament amended the Criminal Code after the abolishment of death penalty.

Uzbekistan joined the Declaration of Human Rights in 1991 and incorporated all human rights guaranteed by the Declaration to its Constitution in 1992. Moreover, the Preamble of the Constitution and its General Principles (Articles 1-17) has ideas for the content of the Constitution itself and other laws.

The Preamble of the Constitution and its General Principles reflect with their ideas how laws should be with regard to its content. We can conclude from the Preamble of the Constitution and its General Principles that laws must be fair. The Preamble of the Constitution and its General Principles and constitutional provisions regarding human rights recognize natural rights. Human beings are born with their rights. This requires laws to be just. Even the legislature must respect and consider these principles while making laws.

This is why laws should be paid more attention in terms of the Rule of Law while they are in the legislative process. However, constitutions and laws are made by humans, not angels. American Founding Fathers once wrote the US Constitution, allowing for slavery, restriction on women's voting rights, segregation even though they exchanged letters with each other (85 Federalist Papers) about human rights issues, relying on the views of great philosophers such as John Lock, Montesquieu. With this Constitution, even strange cases came up such as *Dred Scott vs. Sanford* (1857) [9].

Further, laws are not always ideal and perfect, as the Constitution requires. If laws are not reasonable or fair, it is the job of legislative initiators to submit draft laws to the parliament to amend. The public and non-government organizations play a role to get the government to think more about Rule of Law while laws are being drafted and being in the legislative process. Online platforms such as www.regulation.gov.uz and www.meningfikrim.uz to give citizens an opportunity to make suggestions on laws. The former is for a nation-wide discussion of laws and the latter is for suggesting an idea to have it turned into a law in future by the legislature. Both platforms gave a chance for the public and NGOs to encourage the government to create fair and reasonable laws.

When international organizations evaluate governments on how they are committed to the Rule of Law, they employ a wide range of criteria. This is to say that in practice, more requirements may be observed with regard to the Rule of Law. For instance, World Justice Project publicizes annual Rule of Law Index based on the scores and rankings of the eight factors and 44 sub-factors [10]. The challenge is that some factors are hard to decide whether they belong to the formal or substantive conception of the Rule of Law or neither.

III. The Rule of Law in Covid-19 Crisis

COVID-19 Dashboard by the Center for Systems Science and Engineering at John Hopkins University showed that as of May 9, 2020, there were 3 954 897 total confirmed cases of COVID-19 and 275 179 deaths in the world [11]. As of 16.00 p.m. May 9, 2020, there were 2349 confirmed cases COVID-19 in Uzbekistan [12].

The global economy has started suffering due to the lockdowns. The world societies have been in crisis since the announcement of the pandemic by World Health Organization. Uzbekistan announced a quarantine regime in all educational institutions throughout the country, shut borders, and suspended air flights immediately after the outbreak of the first COVID-19 coronavirus case in March 15, 2020.

On basis of the growth tendency of the disease, the quarantine regime was strengthened. The tendency reached the point, which led the government to put restriction on freedom to go out of home except in need for food and medicine, driving cars, running all businesses with exception of the ones related to food and medicine. The citizens were imposed an obligation to wear a mask. Those who violated the rules were found liable.

The Constitution of the Republic of Uzbekistan empowers the President to declare an emergency in the whole country. However, no emergency has been declared in the period of pandemic. The parliament has not adopted laws related to the pandemic crisis, because it takes long time to make laws. Instead, special republican commission on combating the spread of coronavirus has been formed by the President to quickly respond to the issues of the pandemic crisis. Due to this system, Uzbekistan succeeded in avoiding falling into critical situation like in Europe and the US. Daily coronavirus cases started getting lower.

However, as the republican commission is making decisions affecting fundamental human rights, in social media some people criticized the decisions, claiming that they are not legitimate.

European countries adopted similar measures. However, at the same time, these countries were concerned about the violation of the principles of the Rule of Law because of the measures [13]. The imposed measures limited mainly the right to movement. Other core rights and freedoms are maintained. For example, the right to education is being satisfied by remote teaching. The governments are securing a financial aid for citizens.

It would be unreasonable to allow the people to live in normal since this is very dangerous to the life of every citizen. Moreover, it is unreasonable to let the life go on in the same manner because of the Rule of Law since it is sure to cause thousands of lives to be attacked by an invisible enemy – coronavirus infection.

Suppose that governments have made laws on further encouraging business and activities irrespective of the outbreak of the coronavirus cases. Should this law also be regarded fair? In some nations, mentality shows that the Rule of Law is already thought of as an ideal which means that their fundamental rights are absolute and inalienable in any circumstance. Therefore, in some states of the US people protested against restricting measures [14]. However, would it be fair to follow the will of disagreeing citizens and subsequently, on account of them to sacrifice thousands of lives?

Thus, there is a challenge in observing the Rule of Law in the crisis. The challenge is that it could impossible for governments to follow to the full the requirements of both formal and substantive Rule of Law in a crisis like COVID-19 Coronavirus Pandemic or emergencies.

Measures taken by governments may be unlikely to meet all requirements of the conceptions of the Rule of Law. Hence, I believe that the conceptions of the Rule of Law should be reconsidered since the world is experiencing the pandemic crisis and might face it in future. In this, it is worth thinking that “emergencies require forms of state action that are more peremptory and less procedurally laborious than those required in normal times” [15]. Therefore, while developing the theories of the Rule of Law, it would be useful to take the current situations in the world countries into account. For example, in the time of crisis, laws are promulgated before they come into effect so that people can have a chance to plan their behavior. The formal conception of the Rule of Law also requires a law to be stable. Nevertheless, in the time of the pandemic, laws change much more ever in accordance with

the update of cases.

The laws adopted in times of crisis like COVID-19 Coronavirus Pandemic could naturally restrict the freedom of movement or the like freedoms and simultaneously, authorize discretion on the part of officials to undertake proper action to protect one of the valuable rights of citizens – the right to life, without which other rights are impossible to enjoy.

Uzbekistan is a country whose medical system is not strong enough to combat the spread of the COVID-19 coronavirus. However, Uzbekistan has been using public administration effectively to overcome the coronavirus and crisis. Some developed countries whose medical system had been thought to be powerful were not able to cease the spread of the coronavirus because they did not introduce restricting measures in time, which resulted in serious effects.

The measures taken by the Uzbek government are constitutional. The Constitution of the Republic of Uzbekistan delegates to the President the power to guarantee observance of rights and freedoms of citizens, the Constitution and laws of the Republic of Uzbekistan (Article 93) [16]. This constitutional rule should be interpreted the way that the President of the Republic of Uzbekistan is empowered to take steps to protect citizens' rights in crisis like COVID-19 Coronavirus Pandemic even before the wide spread of the coronavirus. Based on this constitutional rule, the President of Uzbekistan took the primary measure – organized a special republican commission and authorized it to take further measures. All decisions of the commission were publicized in time to give the citizens a chance to plan their behavior [17].

The content of in-time decisions had restricting measures, which resulted in the recovery of 76 % of infected people from the disease. Now, the taken measures are being softened on basis of coronavirus case updates in respective regions and life is going back to normal gradually. Hopefully, Uzbek nation would fully enjoy fundamental rights soon if this crisis management is maintained.

Thus, if laws are constitutionally adopted, but include some measures restricting the freedom of movement, and can guide the nation to the positive change or result by these measures in the crisis time, they should be regarded as laws meeting the requirements of the substantive conceptions of the Rule of Law.

Conclusion

Formal and substantive conceptions of the Rule of Law are two sides of the same coin. In Uzbekistan, the Rule of Law is perceived as the requirement for the content of laws. Laws should be fair and reasonable and thus, substantive conceptions of the Rule of Law in the US correspond to how the Rule of Law is conceived in Uzbekistan.

Supremacy of Law means that the Constitution and laws are binding on every individual with their existent content and other laws must be consistent with the content of the Constitution.

Since the declaration of COVID-19 Coronavirus Pandemic, Uzbekistan has been taking measures, which are constitutional. In-time measures made by the republican commission, authorized by the President of Uzbekistan, resulted in the recovery of the majority of the infected people and the low death rate. The life has started to return to normal. Restricting measures are being lifted gradually.

Based on the experience of the world countries, this uncertain time evidences that the conceptions of the Rule of Law should be reconsidered. In this, laws with measures limiting the freedom of movement in crisis should be regarded as meeting the substantive conception of the Rule of Law if they are adopted based on the constitution and are able to lead the condition to the positive side for the public interest

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