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THE CONSTITUTIONAL COURT OF THE REPUBLIC OF CROATIA IN THE APPLICATION AND PROTECTION OF THE CONSTITUTIONAL VALUE OF THE RULE OF LAW

Summary:

In the Constitution of the Republic of Croatia, the framer of the Constitution defines and prescribes the highest values of the constitutional order of the Republic of Croatia, which also form the basis for the interpretation of the Constitution.

The highest values of the constitutional order are binding for all subjects that implement the Constitution of the Republic of Croatia, from the legislative, executive and judicial branches to the Constitutional Court of the Republic of Croatia.

The rule of law is one of the highest values of the constitutional order of the Republic of Croatia. The Croatian Constitution recognises that all the highest values of the Croatian constitutional order are of equal value. In concrete cases, however, there may be contradictions between individual values, so it is necessary to find the right balance between them. Another characteristic of the highest values of the Croatian constitutional order is the fact that the Constitution does not define their content in detail. Their content is identifiable, but not explicit. All subjects that implement the Constitution are obliged to interpret it on the basis of the highest constitutional values. However, only one of these bodies, the Constitutional Court, enjoys such a constitutional status that enables it to interpret these values, and this interpretation, which is expressed in its decisions, has a generally binding force *erga omnes*.

In its jurisprudence, the Constitutional Court of the Republic of Croatia has in several cases encountered the need to decide what it understands by the rule of law, as one of the highest values of the constitutional order of the Republic of Croatia. On the basis of its constitutional jurisdiction and its constitutional status as the guardian and protector of the Constitution, the Constitutional Court has expressed in several of its decisions what it considers to be the rule of law. These positions of the Constitutional Court are highly important for the implementation and protection of the rule of law as one of the highest values of the constitutional and legal order of the Republic of Croatia.

In this paper, I will examine the concept of the rule of law as the highest value of the constitutional legal order from a theoretical perspective, as well as the case law of the Constitutional Court of the Republic of Croatia, which also includes its activist role in defining the content of this value.

Keywords: *rule of law, values of the constitutional order, Constitutional Court, constitutional judicial activism, interpretation of the values of the constitutional order*

INTRODUCTION

By adopting the Constitution of the Republic of Croatia in 1990, the framer of the Constitution fundamentally changed the system of values¹ on which it is based and which constitute its highest values and those for the entire constitutional order.² These values include the rule of law, which is of particular significance for defining, from a legal perspective, the constitutional identity of the Republic of Croatia.³ However, before I say a few words on that issue, I consider it necessary to briefly address the significance of the highest values of the constitutional order of the Republic of Croatia. First, as I have already mentioned, they entirely and radically transformed the system of values on which the constitutional order of the Socialist Republic of Croatia had previously been based. On the other hand, through this change, the framer of the Croatian Constitution embraced a new value-based foundation for the establishment and legal regulation, in its Constitution, of an entirely new socio-political and overall social system, and thereby fully abandoned the one that had been in force until then. Constitutional legal theory refers to such constitution-making as revolutionary constitution-making.⁴ Second, it is partly mistaken to think that, through revolutionary constitution-making, the framer of the Croatian Constitution in 1990 merely abolished and abandoned the socialist self-management system and replaced it with a civic, capitalist system. Although this is essentially true, it must nevertheless be said that it is neither entirely accurate nor fully correct. Quite simply, it is necessary to answer the question of what kind of capitalist social and state system the framer of the Croatian Constitution adopted and regulated in the 1990 Constitution. In the 1990 Constitution, the framer chose to constitutionalise the Republic of Croatia

1 The Republic of Croatia was among the first states to embrace the value of the rule of law as the foundation of their constitutional order in the new wave of constitutionalisation in 1990. On that path, it was followed by Romania and Bulgaria in 1991, Macedonia in 1992, the Russian Federation in 1993, and Poland in 1996. This model, in terms of the rule of law, was also adopted by the Republic of Serbia in 2006, when Article 3 of its Constitution recognised the rule of law as a fundamental principle. This clearly follows from the content of Article 3, which prescribes: “The rule of law is a fundamental prerequisite of the Constitution and rests on inalienable human rights” (paragraph 1), while paragraph 2 of the same Article which prescribes how the rule of law is realised reads as follows: “The rule of law shall be realised through free and direct elections, constitutional guarantees of human and minority rights, the separation of powers, an independent judicial power and the subordination of the authorities to the Constitution and the law” (Constitution of the Republic of Serbia, 2006, Official Gazette of the Republic of Serbia nos. 98/2006 and 115/2021).

2 Article 3 of the Constitution of the Republic of Croatia (Official Gazette no. 85/10 - consolidated text) reads as follows: “Freedom, equal rights, national and gender equality, peace-making, social justice, respect for human rights, inviolability of ownership, conservation of nature and the environment, the rule of law and a democratic multiparty system are the highest values of the constitutional order of the Republic of Croatia and the basis for interpreting the Constitution”. The underlined parts of the text were added to Article 3 through the constitutional amendments adopted in 2000.

3 The position that the highest values of the constitutional order form an integral part of the constitutional identity of the Republic of Croatia was expressly accepted and stated by the Constitutional Court of the Republic of Croatia in its Decision no. U-VIIR-1159/2015 of 8 April 2015 (Official Gazette no. 43/15), where in point 33.4, paragraph 2, it is stated: “Moreover, when as regards the amendment of the Constitution itself, the Constitutional Court has an obligation based on general supervisory powers not to allow the holding of any referendum ‘when it finds such formal and/or substantial unconstitutionality of the referendum question or such a grave procedural error which threatens to undermine the structural characteristics of the Croatian constitutional state, or its constitutional identity, including the highest values of the constitutional order Republic of Croatia (...)’. In such cases, the Constitutional Court bases its assessment on the Constitution as a whole” (all underlining by the author).

4 For more on revolutionary and state-building constitution-making, see Isensee J., *Država, ustav, demokracija, Politička kultura*, Zagreb, 2004, p. 99.

according to the model of a state governed by the rule of law, thereby taking a significant step forward by moving away from the model of “Rechtsstaat” (legal state) on which most of the old European capitalist states had been constitutionalised. In my view, by embracing the model of the rule of law, the framer of the Croatian Constitution simultaneously incorporated into it all the key elements of the legal state while also enriching them with the most important and essential elements and characteristics of a state governed by the rule of law, thereby achieving a new quality which is reflected, in particular, in the constitutional identity of the Republic of Croatia, as mirrored in its constitutional order.

By the will of its framer, the Constitution of the Republic of Croatia in its Article 3 expressly prescribes the highest values of the constitutional order of the Republic of Croatia. One of these is the rule of law. Among the prescribed highest values of the constitutional order, the Constitution makes no distinction as to which of them is more significant and/or more valuable for the constitutional and legal order. According to the Constitution, they are all equally important and of equal standing. However, the highest values of the constitutional order are by their very nature, first and foremost, ethical concepts, or more precisely, categories of concepts.⁵ As such, in a legally prescribed substantive sense they are not defined, but they are definable. It is self-evident that when we speak of the contemporary, constitutionalised democratic state governed by the rule of law, we refer to a state organised and regulated by law in all forms of its expression and action, regulated by the highest legal act, which is at the same time the supreme law of the land. Naturally, this refers to the Constitution of the given state, which, in its substantive content and from a constitutional and legal perspective, expresses the intention of the framer of the Constitution as to what kind of state it should and must be. Thus, it determines not only that the state should exist, but also what kind of state it should be. In this sense, one should understand Isensee’s conception of the state and the constitution as being mutually connected and interdependent.⁶

When it comes to the constitutional order of a state based on the model of the rule of law as one of the highest values of its constitutional order, the rule of law should be understood not merely as the rule of statutes grounded in the principles of constitutionality and legality, but as rule according to the law.⁷ In this sense, the value of the rule of law is manifested as a value to which even the very principles of constitutionality and legality are subject. More precisely, these principles appear as key instruments for realising the rule of law in the full scope of its content.

5 There is no doubt that the highest values of the constitutional order are above all ethical values. However, in the Constitution, the framer assigned them a *sui generis* regulatory role by defining them as the foundation for interpreting the Constitution. Thereby it obliged the legislator to rely on them when interpreting the Constitution in the process of enacting statutes and other legal acts within its competence, and at the same time enabled the Constitutional Court of the Republic of Croatia to “interpret constitutional provisions progressively and dynamically in the light of these living, conceptually and methodologically complex, value-based concepts” (see p. 2 of the National Report of the Constitutional Court of the Republic of Croatia, Answers to Questionnaire for the XVII Congress of the Conference of European Constitutional Courts, Batumi, 29 June - 1 July 2017, Zagreb 2016 at <https://www.usud.hr>).

6 Isensee J., op. cit., p. 41.

7 See also the decision and ruling of the Constitutional Court of the Republic of Croatia nos. U-I-659/1994, U-I-146/1996, U-I-228/1996, U-I-508/1996 and U-I-589/1999 of 15 March 2000 (Official Gazette no. 31/00), where point 11 of the reasoning states, inter alia: “Therefore, the rule of law, in itself, cannot be law in the same sense as the statutes enacted by the legislator”. The rule of law is not only the rule of statutes, but the rule according to the law which, in addition to the requirement of constitutionality and legality, as the most important principle of any regulated legal order, also contains supplementary requirements concerning the statutes themselves and their content.

The rule of law, understood as one of the highest values of the constitutional order and as a concept of a constitutional order in which everyone acts in accordance with the law, that is, in line with the rights, obligations and responsibilities prescribed and established by law to which they are entitled as addressees within the social and state community. In that sense, the rule of law, both as a value and as a right, is the starting point (basis) for the depersonalisation of power, which we achieve through the rule of law, and not through the rule of people over people.⁸ The rule of law, both as a value and as a principle that everyone has powers, duties and responsibilities established by law and exercises them in accordance with the law, becomes the foundation for the constitutional order: the separation of powers (both horizontal and vertical), the guarantee of free multiparty elections, the limitation of power, the guarantees and protection of human rights and freedoms, the exercise of rights and freedoms in accordance with the law (through procedures prescribed by law), and, in a substantive sense, in line with the rights, obligations and responsibilities as prescribed by the objective constitutional and legal order for every natural and legal person.

However, when it comes to state authorities and other bodies of public authority, including bodies of legal entities vested with public powers, the rule of law requires that the constitutional and legal order be more stringent towards them by prescribing that their actions must be in accordance with the law, in a state governed by the rule of law. Above all, this is to ensure, in a democratic state governed by the rule of law, there is the necessary, democratically required and open space for the exercise of human rights and freedoms based on the principles of equality, equal treatment, proportionality, constitutionality and legality, as well as legal certainty and stability. Therefore, constitutional orders founded on the rule of law start from the principle that all state authorities and other bodies of public authority, as well as bodies of legal entities vested with public powers, may exercise their competences according to the law only within the constitutional and legal framework in which they are expressly authorised to do so by the Constitution, statute, or other law in conformity with the Constitution and the statute. In contrast, the sphere of freedom for natural and legal persons governed by civil law in exercising human rights and freedoms in all segments of social life is broader in scope and more comprehensive in content. This is because in the exercise of their rights and freedoms, starting from the principle of the rule of law, they may do (or refrain from doing) anything that is not prohibited by law (the Constitution, statute, or other legal acts).⁹ In this context, the principle *Non sub homine sed sub lege* (Not under another individual, but under the law) is fully affirmed.

The abovementioned clearly shows how significant the rule of law is in a democratic state governed by the rule of law, both as a value and as a law. Whether directly or indirectly, it connects with and affects the entire constitutional and legal order, and thus also the other values with which it collectively forms the entirety of the highest values of the constitutional order. As already emphasised, the highest values of the constitutional order of the Republic of Croatia (including the rule of law) are, in their substantive content, ethical norms which are definable but are not defined. There should be the highest possible degree of consensus regarding their content, as such consensus is essential on the one hand for the development and coherence of the constitutional and legal order, and on the other for uniformity (in order to avoid any arbitrariness) in the interpretation of the Constitution and the constitutional and legal order based on it. In the Republic of Croatia, this is a constitutional imperative, as Article 3 of its

8 The principle "*Non sub homine sed sub lege*" (not under another individual, but under the law) is also discussed by Stanovčić. See Stanovčić V., "Democracy, Constitutionalism and the Rule of Law", in Podunavac M., (ed.), *State and Democracy*, Official Journal, Belgrade, 2010, p. 152.

9 See Smerdel B. and Sokol S., "Ustavno pravo", Faculty of Law, University of Zagreb, 2006, p. 163.

Constitution prescribes not only what constitutes the highest values of the constitutional order of the Republic of Croatia, but also that they are “the basis for interpreting the Constitution”.¹⁰

Regardless of the processes and substantive forms in which the Constitution of the Republic of Croatia is implemented and/or applied, everyone is obliged to interpret it on the basis of the highest values of the constitutional order enshrined in Article 3 of the Constitution.

However, in the interpretation of the individual highest values, precisely because their content is not expressly defined, it is possible (and indeed it happens) that different understandings arise as to what is meant by a particular highest value in a specific substantive context. In terms of uniform implementation, legal certainty and stability of the constitutional and legal order, such situations are unacceptable. For that reason, the framer of the Croatian Constitution, while retaining the right and obligation of everyone to interpret the Croatian Constitution starting from the highest values, has designated a body with the competence to do so, whose interpretations, that is, the positions it adopts as to the substantive meaning of each highest value of the constitutional order, are generally binding and “must be respected by every natural and legal person”.¹¹

In interpreting the Constitution, and starting from the highest values of the constitutional order in determining what is to be understood as the content of such a value, the competent authority – the Constitutional Court of the Republic of Croatia – expresses its positions on the one hand in its decisions and rulings adopted in the exercise of its powers and on the other in fulfilling its role as the “guardian and protector” of the Constitution of the Republic of Croatia.¹²

This is an opportunity to emphasise that the powers, responsibilities and legal force of the decisions and rulings of the Constitutional Court of the Republic of Croatia are governed by rules which have constitutional force.¹³

Starting from the above, it is no longer disputed in the Republic of Croatia that the decisions and rulings of the Constitutional Court are generally binding and must be respected by every natural and legal person. Such a norm which has constitutional force clearly shows that in the Republic of Croatia the decisions and rulings of the Constitutional Court of the Republic of Croatia (both in the operative part and in the positions taken in its statement of reasons) have the legal force of a statute.

In this sense, it is important to consider and understand the value of the rule of law as one of the highest values of the constitutional order in the Republic of Croatia. The interpretation of the Constitutional Court of what is understood by the value of the rule of law, how its content is realised as law in the objective sense, that is, what

10 The Constitution of the Republic of Croatia (Official Gazette no. 85/10 - consolidated text).

11 See in more detail Article 31.1 of the Constitutional Act on the Constitutional Court of the Republic of Croatia (Official Gazette no. 49/02 - consolidated text).

12 Häberle P., “Uloga i utjecaj ustavnih sudova iz komparativne perspektive”, in Bačić A. and Bačić P., (eds.), *Ustavna demokracija i sudovi*, Split, 2009, p. 353.

13 That is to say, the position, powers, appointment of judges of the Constitutional Court, the procedure before it, as well as other matters relevant to the performance of duties and the work of the Constitutional Court of the Republic of Croatia, are regulated solely by the Constitution of the Republic of Croatia and the Constitutional Act on the Constitutional Court of the Republic of Croatia, which in its entirety has the legal force of a constitutional act, as it is adopted in an identical procedure as prescribed for the “amendment of the Constitution” (see in more detail Article 132.2 of the Constitution of the Republic of Croatia, Official Gazette no. 85/10 – consolidated text).

characteristics legal rules must have and what requirements they must meet in order to satisfy the criteria of the rule of law, as well as how the rule of law as a value connected with a specific human right or freedom is realised in a functional sense, strengthening legal certainty and predictability, will be addressed later in this paper. However, at this point it must also be said that the Constitutional Court interprets other highest values of the constitutional order of the Republic of Croatia as well. Its positions on the substantive meaning of each of these values, just as in the case of the rule of law, are generally binding and must be respected by every natural and legal person. However, the interpreted content of an individual highest value, as expressed through the positions of the Constitutional Court, is thereby transformed from an ethical into a legal concept and acquires its legal definition and meaning. It is no longer merely definable, but is, in the legal sense, defined. To the extent that such a position affects and/or may affect the exercise and/or protection of an individual human right (or another right prescribed by law, e.g. of a procedural nature), it also becomes a right. In this context, the rule of law should be interpreted broadly, both as one of the highest values of the constitutional order and as a requirement that its content be realised according to the law, as well as one of the fundamental principles of a democratic constitutional state governed by the rule of law. After all, a similar context gave rise to Isensee's view of the constitutional state, which, in his opinion, can be nothing other than a state governed by the rule of law.¹⁴

Before turning to examples of the decisions of the Constitutional Court of the Republic of Croatia concerning the interpretation of the rule of law as one of the highest values of the constitutional order of the Republic of Croatia in its application and protection, I will next provide a concise definition of the rule of law and attempt to distinguish between it and the legal state. I will then briefly address the relationship between the rule of law and legal certainty, with the aim of providing a more comprehensive treatment of the rule of law in this paper (within its subject matter and available scope), both as one of the highest values of the Croatian constitutional order and as a principle requiring that everyone acts in accordance with the law in both the formal and material (functional) sense, as required by the Croatian Constitution.

ON THE CONCEPT OF THE RULE OF LAW

Today's understanding of the rule of law is rooted in the definition developed by English constitutional doctrine of the 19th century, taking into account the insights of medieval concepts "according to which even the ruler must submit not only to God but also to the law (*Rex non debet esse sub homine sed sub Deo et lege*)".¹⁵

The rule of law is defined in the Encyclopaedia Britannica as: "the mechanism, process, institution, practice, or norm that supports the equality of all citizens before the law, secures a nonarbitrary form of government, and more generally prevents the arbitrary use of power".¹⁶

In the Republic of Croatia, the most acceptable definition of the rule of law was provided by B. Smerdel. Starting from the fact that the Constitution of the Republic of

14 Isensee J., op. cit., p. 78.

15 Smerdel B. and Sokol S., op. cit. p. 161.

16 Encyclopaedia Britannica, Rule of law/Definition, Implications, Significance, at: www.britannica.com, accessed 30 June 2025.

Croatia recognises it as one of the highest values of the constitutional order, he defined it in two ways: (a) from a political and (b) from a legal perspective, stating: (a) “In the political sense, the concept of the rule of law unites a set of principles of constitutional governance, according to which all holders of public authority are subject to the limitations established by the legal order of the state, under the political supervision of representative bodies, based on a mandate received from the people, which is ensured by the provision of protection through an independent judiciary in appropriate and legally prescribed proceedings in which respect for human rights is guaranteed”; b) “In the legal sense, the rule of law requires strict adherence to the Constitution and the law by all state authorities, individual officials, as well as by the citizens themselves”. However, from the perspective of the requirement of the rule of law, formal adherence to the law is not sufficient. The Constitution and statutes must have certain content, including the separation of powers and guarantees of human rights and freedoms, as well as a system for the protection of those rights from holders of power and state authorities. The rule of law, therefore, as a complex political and legal concept, represents a set of normative requirements that implement the idea of constitutional governance, as described earlier, that is, of a liberal civil state, from which systems of institutions necessary for maintaining and developing a democratic political order are constitutionally derived.¹⁷

In the European Union, the rule of law is recognised as one of the fundamental values on which the Union is founded.¹⁸ For the contemporary understanding of the concept of rule of law, it is important to know (especially for the EU Member States) how this concept is defined, among others, by the European Union. On its official websites, we find the definition which reads: “Under the rule of law, all public powers always act within the constraints set out by law, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial courts”.¹⁹ However, due to the specific nature of the European Union (arising from the diversity of identity among its Member States), the European Union provides a descriptive account of what the rule of law encompasses in terms of its content, stating: “The rule of law is a well-established principle. Despite the differences in national identities and traditions among the Member States, they all share a common understanding of the rule of law, which can be defined on the basis of six principles: legality, which presupposes transparent, accountable, democratic and pluralistic law-making; legal certainty; prohibition of the arbitrary exercise of executive power; effective judicial protection by independent and impartial courts and effective judicial review, including respect for fundamental rights; separation of powers; and equality before the law. These principles are recognised by the Court of Justice of the European Union and the European Court of Human Rights. In addition, the Council of Europe develops standards, and issues opinions and recommendations with clearly defined guidelines for the promotion and respect of the rule of law.”²⁰

By accepting the rule of law as one of the values on which the European Union is founded, and especially in the EU Member States, the use of concepts of the constitutionalisation of society and a state based on the model of the legal state (Rechtsstaat) is increasingly coming to an end in Europe. The doctrinal concept of the

17 Smerdel B. and Sokol S., op. cit. p. 161.

18 See in more detail Article 2 of the Treaty on European Union [2010] OJ C83/1 – consolidated versions, where the rule of law is expressly stated, among other things, as a value on which the European Union is founded.

19 Official website of the European Union: <https://commission.europa.eu>, accessed 30 June 2025.

20 Official website of the European Union, op. cit.

legal state (Rechtsstaat) originated in German legal theory in the 19th century. This theory was less concerned with political elements and placed emphasis on the supra-legal force of constitutional norms and the hierarchy of legal sources derived therefrom. The legal system is thereby understood as a gradationally derived whole, in which legal norms are deduced from higher legal norms, and the entire system is internally harmonised through the obligation to adhere to constitutional principles. The focus is on establishing and maintaining the unity of the legal system through the hierarchy of legislation and a system of oversight that ensures the coherence of the system.²¹

In its essence, the doctrine of the rule of law “mainly retained its meaning in administrative law and evolved into a simple principle of legality. More precisely, the Rechtsstaat principle was understood more narrowly as the need for judicial review of administrative acts, mostly on procedural grounds, rather than as a constitutional review of legislative acts. Its main purpose was to provide protection against unlawful or arbitrary administrative decisions, rather than to enable the exercise of fundamental human rights”.²² However, it was precisely the demand and the need of citizens to ensure, in conformity with the Constitution and the law, the effective protection of human rights and freedoms, on the one hand, and, on the other, to prevent wilfulness and arbitrariness on the part of the authorities, that were the main motives behind the pursuit to establish a state based on the doctrinal foundations of the rule of law. Perhaps this need, and indeed this demand, was best articulated by G. Radbruch in his work *Philosophy of Law*, where he wrote: “We must seek justice, but at the same time attend to legal certainty, for it is itself a component of justice. And we must rebuild a Rechtsstaat, a government of law that serves as well as possible the ideas of both justice and legal certainty. Democracy is indeed laudable, but a government of law is like our daily bread, like water to drink and air to breathe, and the best thing about democracy is precisely that it alone is capable of securing for us such a government.”²³

The definitions of the rule of law and the legal state cited above, as well as the goals to be achieved through the application of each of these models, show both their similarities and their differences. In addressing possible differences, L. Basta points out that the rule of law is, in its essence, “antipositivist in its foundations; therefore, it is very difficult within it to clearly distinguish between positive-legal, moral, and natural-law normativity”.²⁴ In my opinion, however, the most comprehensive distinction between the rule of law and the legal state was presented by F. von Hayek in his book “*The Political Ideal of the Rule of Law*”. In that work, he defines the rule of law by drawing a clear distinction between it and the legal state, claiming that “the rule of law is not the rule of statutes (which is the essential characteristic of the legal state – comment by the author), but the rule according to the law, a meta-legal doctrine or a political ideal”.²⁵ However, over time, with the development of the democratic constitutional state founded on the ideals and values of liberty, human rights and freedoms, the separation of powers, and the limitation of power by law and the obligation that the state itself must exercise all its competences in accordance with the law, these differences have gradually diminished, which has led to such a convergence between the rule of law and the legal state that today it can be said, in a substantial sense, that they are almost identical, or that the differences between them have become almost negligible.

21 Smerdel B. and Sokol S., op. cit. p. 161.

22 Avramović D., “Vladavina prava i pravna država – istost ili različitost”, *Collected Papers of the Faculty of Law of Novi Sad*, no. 3/2010, p. 430.

23 Radbruch G., “*Filozofija prava*”, Belgrade, 1998, p. 186.

24 Basta L., “*Politika u granicama prava*”, Belgrade, 1984, p. 118.

25 Von Hayek F., “*Politički ideal vladavine prava*”, Zagreb, 1994, p. 47.

One of the important reasons for this lies in the fact that, at the turn of the 21st century, the doctrine of the legal state “was supplemented with substantial requirements regarding the guarantee of human rights and freedoms and the assurance of their protection, as a result of which the fundamental difference was almost entirely suppressed”.²⁶ The position presented by B. Smerdel regarding the reasons for the suppressed distinction between the rule of law and the legal state is, from that perspective, largely acceptable to me. However, I find it necessary to emphasise once again that this has not, in substantive terms, led to the abandonment (or abolition) of the concept of state organisation based on the doctrine of the legal state (Rechtsstaat). In the approximation and equating of these two doctrines, one must also take into account that a large number of the principles on which the legal state is, by definition, based are identical to (and/or accepted within) the doctrine of the rule of law. In that sense, as I have previously pointed out, the contemporary understanding of the rule of law, in its substantive sense, encompasses all the essential elements on which the legal state is based. Naturally, these elements are adapted and placed at the service of achieving the ideals and objectives of today’s democratic constitutional state, the rule of law, guaranteed and protected human rights and freedoms, democratic elections, the division of powers and power limited by law, an independent and effective judiciary, and constitutional adjudication by a Constitutional Court entrusted with the task of safeguarding and protecting the Constitution.

Precisely because of such functions of the rule of law, it seems to me that Duquitt had already taken his well-known position as an expression of his deep conviction when he wrote: “We firmly believe that there exists a rule of law above individuals and the state, above rulers and those who are ruled, a rule that is binding on all, and we consider that what is referred to as state sovereignty is legally limited by the rule of law”.²⁷ His admiration for the rule of law and its significance in the practice of democratic constitutionalism was clearly expressed in the book written by the renowned Croatian constitutional scholar and Member of the Academy, A. Bačić, as follows: “The rule of law, as an amalgam of standards, expectations and aspirations, encompasses both traditional ideas of the requirements of justice and fairness in the relationship between the rulers and the ruled. Thus understood, the rule of law is necessarily linked to certain fundamental institutional arrangements, which are, in turn, central to both the theory and practice of democratic constitutionalism”.²⁸

In writing about the rule of law as an amalgam, Bačić pointed to one of its most important characteristics, namely that it includes within its substance a whole set of constitutional standards, as well as principles, guarantees and freedoms, whose observance and implementation within the constitutional system ensure both the rule of law itself and the constitutional order, in accordance with its requirements as the highest value of the constitutional system and, as such, a particularly important and essential good on which that system is founded and which, at the same time, protects it.

Following this line of thought, this paper will briefly point to the amalgam of the rule of law as both a value and a principle, which, practically understood, constitutes its essential elements, and how the rule of law is realised and protected in the full scope of its meaning through several examples based on the decisions and rulings of the Constitutional Court of the Republic of Croatia.

26 Smerdel B. and Sokol S., op. cit., p. 162.

27 Duquitt L., “Theory of Objective Law Anterior to the State”, in *Modern French Legal Philosophy*, p. 237, cited according to Bačić A. and Bačić P., “Ustavna demokracija i sudovi”, Split, 2009, p. 228.

28 Bačić A., “Hrvatska i izazovi konstitucionalizma”, *Književni krug*, Split, 2001, p. 88.

**ON THE UNITY AND FUNCTIONAL INTERCONNECTION
OF THE RULE OF LAW AND THE PRINCIPLES OF
THE CONSTITUTIONAL ORDER**

The rule of law is understood both as the highest value of the constitutional order and simultaneously as the highest principle requiring that all persons and everyone individually must submit to and act in accordance with the law. The rule of law is a conceptual category that includes within its substance a whole range of legal principles, the realisation of which gives effect to it both as the highest value of the constitutional order and as the highest requirement of law itself, since it, in and of itself, is inconceivable in a society and a state where the constitutional order does not function in a way that ensures that everyone acts, exercises their powers, and fulfils their duties in accordance with the law. The aforementioned unity and mutual interconnection of the rule of law as one of the highest values of the constitutional order and its principles reflect, on the one hand, its complexity, but at the same time also the coherence necessary for its understanding and implementation as a practical concept.

Considering the rule of law precisely from the perspective of a practical concept, the European Commission for Democracy through Law (hereinafter: the Venice Commission), as the advisory body of the Council of Europe, examined this issue, reached a consensus and identified “the necessary elements of the rule of law... which are not only formal but also substantive or material... for which there appears to be a consensus”,²⁹ as noted by J. Omejec, a long-standing member of the Venice Commission and former President of the Constitutional Court of the Republic of Croatia.

The elements of the rule of law that define it in both its formal and substantive sense are listed by Omejec, as follows:

- “(1) Legality, including a transparent, accountable and democratic process for enacting law;
- (2) Legal certainty;
- (3) Prohibition of arbitrariness;
- (4) Access to justice before independent and impartial courts, including judicial review of administrative acts;
- (5) Respect for human rights;
- (6) Non-discrimination and equality before the law”.³⁰

Starting from Tom Bingham’s short definition of the rule of law that “all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts”,³¹ the rule of law is further expanded by 8 “ingredients”. These include:

29 Venice Commission, Report on the Rule of Law, adopted by the Venice Commission at its 86th plenary session (Venice, 25-26 March 2011), cited by Omejec, J., “Konvencija za zaštitu ljudskih prava i temeljnih sloboda u praksi Europskog suda za ljudska prava – Strasbourgški *acquis*”, Novi informator, Zagreb, p. 1087.

30 Omejec J., op. cit. p. 1087.

31 Omejec J., op. cit. p. 1087.

- “(1) Accessibility of the law (that it be intelligible, clear and predictable);
- (2) Questions of legal right should be normally decided by law and not discretion;
- (3) Equality before the law;
- (4) Power must be exercised lawfully, fairly and reasonably;
- (5) Human rights must be protected;
- (6) Means must be provided to resolve disputes without undue cost or delay;
- (7) Trials must be fair, and
- (8) Compliance by the state with its obligations in international law as well as in national law”³²

On the mutual functional interconnection between the rule of law as the highest value of the constitutional order and the requirement that every person acts in accordance with the law and the principles of the constitutional order, similar positions to those of the Venice Commission can be found both among legal theorists³³ and constitutional courts.³⁴ In fact, the views of the Venice Commission, as cited by Omejec, are indispensable in interpreting, from a legal perspective, what is considered in the substantive sense to constitute the rule of law, on the one hand, when we talk about it as the highest value of the constitutional order, and on the other as an imperative requirement that every person acts in accordance with the law and in conformity with the law and within the legal framework governing their rights, obligations and responsibilities.

Why are they indispensable both for the interpretation of the rule of law as the highest value of the constitutional order, on the one hand, and for its implementation by all competent authorities with a view to fulfilling its requirement that the constitutional order be established according to the law, but also that it be implemented in accordance with the law on the other hand? The answers to the questions raised are of exceptional importance. They provide an answer both to the extent to which the concrete constitutional order based on the value of the rule of law has been achieved in the actual functional³⁵ order, and the extent to which the given state is founded on the rule of law as one of the highest values of the constitutional order and functionally realises that value by ensuring its implementation in concrete social relations as a requirement that everyone acts, fulfils their duties, and exercises their rights and responsibilities according to the law.

To what extent the Constitutional Court of the Republic of Croatia has interpreted the rule of law in its decisions and ensured its protection both as the highest value and

32 Omejec J., *op. cit.* p. 1088.

33 Among legal theorists, see, for example, Smerdel B. and Sokol S., *Ustavno pravo*, Faculty of Law, University of Zagreb, 2006, p. 161 et seq., and Bačić A., “Ustav Republike Hrvatske i najviše vrednote ustavnog poretka,” *Collected Papers of the Faculty of Law in Split*, vol. 49, no. 1/2012.

34 For instance, the Constitutional Court of the Republic of Croatia, as evidenced by its constitutional case law, which is illustrated through several examples of its decisions and rulings presented below in this paper.

35 The understanding of the constitution and the constitutional order from a functional perspective has been adopted and is used in that sense as presented by MacCormick, N., “*Institutions of Law: An Essay in Legal Theory*,” *Naklada Breza*, Zagreb, 2014, p. 75.

as the supreme law, on the basis of its constituent elements as previously set out, will be presented below through several examples from its established case law.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF CROATIA – INTERPRETATION AND PROTECTION OF THE VALUE OF THE RULE OF LAW (EXAMPLES)

The role and significance of the decisions of the Constitutional Court of the Republic of Croatia in the interpretation and protection of the value of the rule of law (and other values set out in Article 3 of the Constitution) stem from its position, jurisdiction and tasks assigned to it and prescribed by the framer of the Croatian Constitution through acts of constitutional force.³⁶ The Constitutional Court of the Republic of Croatia is, first and foremost, obliged, like any other natural and/or legal person in interpreting the Constitution, to interpret it on the basis of the highest values of the constitutional order, including the rule of law as one of those values.³⁷ However, unlike all others, the decisions of the Constitutional Court of the Republic of Croatia in which the rule of law is interpreted and protected as one of the highest values of the constitutional order have general binding force and “must be respected by every natural and legal person”,³⁸ on the one hand, and, on the other, derive from the Court’s constitutional position³⁹ assigned to it by the framer of the Constitution as the “guardian and protector”⁴⁰ of the Constitution of the Republic of Croatia.

As the framer of the Croatian Constitution has, by norms of constitutional force, prescribed that “the Constitutional Court shall guarantee compliance with and application of the Constitution of the Republic of Croatia”, and further that “the decisions and the rulings of the Constitutional Court are obligatory” and that “every individual or legal person shall obey them”,⁴¹ it follows that, from the aspect of legal force, both the operative part and the statements of reasons carry the force of law.

Such a constitutional position of the decisions and rulings of the Constitutional Court in Croatia is necessary, required, and justified. It is precisely in these acts (case law) that the Constitutional Court has provided official, consistent, and binding interpretations for all as to what is to be understood, in a substantive sense, by the rule of law as the highest

36 The constitutional-law fact that confirms the presented position that the status, jurisdiction, and tasks of the Constitutional Court of the Republic of Croatia are regulated exclusively by legal acts of constitutional force derives from the fact that they are solely legal norms contained in the Articles of the Constitution of the Republic of Croatia (Official Gazette no. 85/10) – consolidated text) and the Constitutional Act on the Constitutional Court of the Republic of Croatia (Official Gazette no. 49/02), which, pursuant to Article 132.2 of the Constitution, “shall be enacted under the procedure prescribed for amending the Constitution”, and therefore the Constitution itself conferred upon it the same (constitutional) legal force it possesses.

37 See in more detail Article 3 of the Constitution of the Republic of Croatia (Official Gazette no. 85/10 – consolidated text).

38 Article 31.1 of the Constitutional Act on the Constitutional Court of the Republic of Croatia (Official Gazette no. 49/02 – consolidated text).

39 See in more detail Article 2.1 of the Constitutional Act on the Constitutional Court of the Republic of Croatia (Official Gazette no. 49/02 – consolidated text).

40 Häberle P., “The Role and Influence of Constitutional Courts from a Comparative Perspective”, in Bačić A. and Bačić P. (eds.), *Ustavna demokracija i sudovi*, Split, 2009, p. 353.

41 Article 31.1 of the Constitutional Act on the Constitutional Court of the Republic of Croatia (Official Gazette no. 49/02 – consolidated text).

value of the constitutional order, since this has been determined by the competent body designated by the Constitution.

In addition, in specific cases of abstract review of the constitutionality of laws or the review of the constitutionality and legality of other regulations, or in decisions or rulings of the Constitutional Court adopted in proceedings conducted upon constitutional complaints submitted for the protection of human rights and freedoms guaranteed by the Constitution and the Convention,⁴² the Constitutional Court interprets the rule of law as a right that has been violated and as a right in itself, not merely as one of the highest values of the constitutional order. In this context, it should be borne in mind that, unlike in proceedings of abstract review, in proceedings upon constitutional complaints, the rule of law as one of the highest values of the constitutional order is “considered and interpreted only” if it is “linked, in specific, individual cases, to a violation of a specific human right guaranteed by the Constitution”.⁴³ In other words, the rule of law appears in a specific case also as a right, and not only as one of the highest values of the constitutional order.

In several examples of decisions and rulings of the Constitutional Court of the Republic of Croatia, I will present cases in which, in proceedings of abstract review, the Court applied the interpretative method to determine, in a substantive sense, what constitutes the rule of law as one of the highest values of the Croatian constitutional order. I will then provide an example of proceedings upon a constitutional complaint, in which the Constitutional Court established a connection between the violated human right and the rule of law, both as one of the highest values of the constitutional order and as a right, and therefore upheld the constitutional complaint and quashed the contested decision.

Example I

In its decision and ruling nos. U-I-659/1994, U-I-146/1996, U-I-228/1996, U-I-508/1996, and U-I-589/1999 of 15 March 2000 (Official Gazette no. 31/00), the Constitutional Court of the Republic of Croatia reviewed the conformity with the Constitution of the Republic of Croatia of several provisions contained in the articles of the Act on the State Judicial Council (Official Gazette no. 49/99). Following the conducted proceedings, the Constitutional Court issued the aforementioned decision and ruling by which it repealed several articles of the Act on the State Judicial Council, because they were not in conformity with the Constitution, or, more specifically, with the rule of law as one of the highest values of the constitutional order, as prescribed in Article 3 of the Constitution. This decision and ruling clearly illustrate the case law of the Constitutional Court of the Republic of Croatia in which it both interprets and protects the rule of law as one of the highest values of the Croatian constitutional order. This is particularly evident in point 11 of the statement of reasons of the following decision and ruling, which reads:

“11. Although it presumes full constitutionality and legality, in terms of Article 5 of the Constitution, the rule of law is more than the mere requirement for acting in keeping with the law. It also embraces the requirements that concern the contents

42 See the Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette – International Treaties nos. 18/97, 6/99, 14/02, 13/03, 9/05, 1/06, 2/10 and 13/17 – consolidated text).

43 Such an approach in proceedings upon constitutional complaints in which the applicant also invokes a violation of the rule of law as one of the highest values of the constitutional order under Article 3 of the Constitution of the Republic of Croatia was adopted by the Constitutional Court of the Republic of Croatia in its decision and ruling no. U-III-6559/2010 of 13 November 2014 (Official Gazette no. 142/14).

of the law. Hence, the rule of law in itself may not be the law in the same sense as the laws that are passed by the legislator. The rule of law is not just the rule of laws, but also the rule by rights which – in addition to the requirements regarding the constitutionality and legality, as the most important principles of every regulated legal order – also contains additional requirements, which are relative to the very laws and their contents.

11.1. In that sense, the Court particularly points out that within the legal order founded on the rule of law, laws must be general and equal for all, and legal consequences must be unambiguous for all those to whom the law is applied. The Court also points out that legal consequences must be adequate for the legitimate expectations of the parties in every specific case where the law is applied directly to them”.

Example II

In reviewing the constitutionality of several provisions of the Free Legal Aid Act (Official Gazette no. 62/08), the Constitutional Court rendered decision no. U-I-722/2009 of 6 April 2011 and repealed those provisions, declaring their non-conformity with the Constitution of the Republic of Croatia. The decisive reasons on which the Constitutional Court based its decision were related to the lack of conformity of the contested provisions with the rule of law. In the reasoning of its decision, the Constitutional Court presented its views on what it understands by the rule of law and legal certainty, as well as the requirements of legal certainty. These views were presented by the Constitutional Court in points 5, 5.1, and 5.2 of the statement of reasons of the decision. They read as follows:

“5. ... the requirements of legal certainty and the rule of law in Article 3 of the Constitution demand that the legal norm should be accessible to and predictable for those it applies to, i.e. such that they can know their real and specific rights and obligations so that they can act accordingly (...).

5.1. The Constitutional Court deems that the addressees of a legal norm can certainly not know their rights and obligations really and specifically and foresee the consequences of their conduct if the legal norm is not sufficiently definite and precise. The requirement for a definite and precise legal norm is ‘one of the basic elements of the principle of the rule of law’ ... and is crucial for the creation and preservation of the legitimacy of the legal order. It ensures that the democratically legitimate legislator can independently elaborate the basic rights and freedoms in laws, that the executive and administrative powers can draw on clear statutory and regulatory standards for their decisions and that the judicial powers and courts can control the legality of the legal order (...). When this requirement is not met, indefinite and imprecise laws delegate some of the powers of legislation to subjective administrative and judicial decision-making, which is impermissible in constitutional law.

5.2. The requirement for the definiteness and precision of the legal norm has both a positive and a negative meaning. In the positive meaning, the definiteness and precision of the legal norm means that its wording must allow citizens to know their real and specific rights and obligations so that they can behave accordingly (...).

The negative meaning of the requirement for the definiteness and precision of the legal norm, with reference to a governmental body, means that its wording must

bind the body and not allow it to act outside the purpose its content determines. This is important both for the conduct of governmental and public administration bodies and for the conduct of the judicial authorities (...).

Examples III A and B

This example illustrates how the Constitutional Court of the Republic of Croatia proceeds in cases initiated for the protection of constitutionally guaranteed rights, submitted by applicants who consider that an individual act of a state authority, a body of local or regional self-government, or a legal person vested with public authority had violated the human rights and freedoms guaranteed by the Constitution of the Republic of Croatia. The example presented under A illustrates a case in which the applicants, in their constitutional complaint, claimed that the rule of law as one of the highest values of the constitutional order had been violated, without at the same time placing it in the context of a violation of their specific human rights and freedoms guaranteed by the Constitution, the protection of which they were seeking. Due to this “omission” by the applicant, the Constitutional Court of the Republic of Croatia was not able to assess a violation of the rule of law in the specific case. The reasons for this position were concisely stated by the Constitutional Court of the Republic of Croatia in its decision no. U-III-1125/1999 of 13 March 1999 (Official Gazette no. 38/00). The relevant part of this position was presented by the Constitutional Court of the Republic of Croatia in points 17, 17.1, and 17.3 of the reasoning of the decision. They read as follows:

“17. Finally, the applicants point in the constitutional complaint to a violation of the principles of the constitutional order of the Republic of Croatia enshrined in Article 3 of the Constitution, as well as a violation of Article 5.2 of the Constitution.

17.1. However, Article 3 of the Constitution does not establish the freedoms and rights of individuals and citizens (constitutional rights). Namely, Article 3 sets out the highest values of the constitutional order, which are elaborated and defined in other provisions of the Constitution, in particular those that guarantee the freedoms and rights of individuals and citizens. The provision of Article 3 of the Constitution serves as a basis for the interpretation of the Constitution and as a guideline for the legislator in elaborating the constitutional rights of citizens, and it is addressed to state authorities rather than directly to citizens.

(...)

17.3. Accordingly, the provisions of Article 3 and Article 5.2 of the Constitution contain the highest values, that is, the fundamental principles on which the constitutional order of the Republic of Croatia is founded, and they are general in their content and do not provide constitutional guarantees to the individual (subject)”.

Under point B of this example, we present a case in which the Constitutional Court of the Republic of Croatia, acting upon a submitted constitutional complaint, conducted proceedings by assessing the violation of the applicant’s human rights and freedoms, also taking into account the violation of the rule of law as one of the highest values of the Croatian constitutional order. The Constitutional Court was able and obliged to proceed in this manner because, in the specific case, the applicant linked the violation of his constitutionally guaranteed human rights and freedoms to the violation of the rule of law as one of the highest values of the constitutional order. Specifically, this refers to decision and ruling no. U-III-6559/2010 of 13 November 2014, Official Gazette no. 142/14. In the

statement of reasons of that decision and ruling, among other things, the Constitutional Court stated the following in points 124 and 124.1:

“124. The applicant invokes in the constitutional complaints the rights guaranteed in the following articles of the Constitution: Article 14 (guarantee of equality before the law), Article 18.1 (guarantee of the right to appeal against individual legal acts adopted in first-instance proceedings by courts or other authorised bodies), and Article 26 (guarantee of equality of aliens with Croatian citizens before courts and governmental agencies and other bodies vested with public authority).

He mentioned Article 3 of the Constitution laying down the fundamental values of the constitutional order of the Republic of Croatia, Article 5.2 of the Constitution stating that ‘All persons shall be obliged to abide by the Constitution and law and respect the legal order of the Republic of Croatia’ and Article 116.1 of the Constitution laying down that the Supreme Court, as the highest court, ensures the unified application of laws and the equality of all in their application.

124.1. The Constitutional Court stresses that the assessment of all alleged violations of the constitutional rights examined in these Constitutional Court proceedings were based on equality, freedom, respect for human rights and the rule of law, as the highest values of the Constitutional order of the Republic of Croatia laid down in Article 3 of the Constitution. These are values present in the entire text of the Constitution and used for its interpretation. Since Article 5, Article 14 and Article 26 of the Constitution are only special normative aspects of these values, the Constitutional Court took them into account in the assessment of the alleged violations of the constitutional rights of the applicant”.

Although the above examples already demonstrate the approach taken by the Constitutional Court of the Republic of Croatia in interpreting and protecting the rule of law as one of the highest values of the constitutional order of Croatia, for the reader's better understanding, I would add that, particularly since 2008, the Constitutional Court has rendered a number of decisions and rulings in which it assessed (primarily in cases of abstract review of the constitutionality of laws and the constitutionality and legality of other regulations) whether the rule of law as one of the highest values of the constitutional order had been violated.

CONCLUSION

The constitutionalisation of states, particularly at the turn of the 21st century, has largely been based on the doctrine of a state governed by the rule of law. In the wake of major social changes at the end of the 20th century, which led to the collapse of socialist and communist systems in Central and South East Europe and the USSR, as well as the dissolution of complex states and their new re-constitutionalisation, the majority of these states adopted new social values as the foundation of their constitutions, with the rule of law being among the most prominent. The Republic of Croatia was among the first to do so. However, the Republic of Croatia has adopted and prescribed the rule of law (alongside other values) as one of the highest values on which its constitutional order is founded and which serve as the basis for the interpretation of the Constitution. By taking this approach, the framer of the Croatian Constitution accepted and established the highest values of its constitutional order as a fundamental element defining the constitutional identity of the

Republic of Croatia. At the same time, by prescribing that these values also serve as the basis for the interpretation of the Constitution, they have become a binding foundation for everyone who interprets the Constitution for the purposes of its implementation, elaboration, application, or protection. In this way, the framer of the Croatian Constitution assigned to the highest values of the constitutional order, along with other functions, the role of binding guidelines that must be taken as a starting point by everyone when interpreting the Croatian Constitution. As much as such a constitutional determination of the position of the highest values has its positive aspects, it also entails certain difficulties. Namely, constitutional values are, first and foremost, ethical values in society. By prescribing them in the Constitution as the foundation of the constitutional order, the framer of the Constitution granted them constitutional status, which, by that very fact, also grants them legal status. However, the Constitution does not prescribe or define the specific content of the highest values of the constitutional order on the basis of which it could be said that each of them, individually, is legally determined or defined in a substantive sense. For that reason, from a constitutional and legal perspective, the highest values of the constitutional order of the Republic of Croatia are not defined but are definable. Anyone interpreting the Constitution of the Republic of Croatia, starting from the highest values (or any one of them), is, *volens nolens*, required to engage in interpreting their content. That very fact entails the inherent possibility of different interpretations of the content of the same value by its individual interpreters, which may lead to inconsistencies, and even complete contradictions in the understanding of its content as regards that issue, resulting in unacceptable consequences for the coherence and consistency of the constitutional and legal order. In order to avoid such situations and to achieve the highest possible level of acceptability, uniformity, and consistency in the understanding of the substantive content of each of the highest values of the constitutional order, the framer of the Constitution designated, through the Constitution, the competent body whose interpretation is generally binding on all and must be respected by all natural and legal persons. That is the Constitutional Court of the Republic of Croatia.

The existence of a body designated by the Constitution whose interpretation of the content of each of the values is generally binding is important for each of those values individually, and particularly so for the rule of law and, ultimately, for the entire concept of a state governed by the rule of law. This importance arises from the very fact that a state governed by the rule of law, founded upon it as one of the highest values of the constitutional order, in fact reflects a constitutional state governed by the rule of law which, in both the formal and substantive (functional) constitutional legal aspect, is implemented across all segments of legal and actual reality, not only as a state founded on the value of the rule of law, but also as a society and a state in which all individuals exercise their rights, duties, and responsibilities according to the law, that is, in conformity with the law. Precisely because of the position of the rule of law as one of the highest values underpinning the constitutional order of the Croatian state, and as a requirement that everyone must act and operate in accordance with the law, it is of particular importance that we all understand what the rule of law entails in terms of its content, namely in the constitutional law sense as interpreted by the Constitutional Court of the Republic of Croatia. This is true simply because the very operative part and the positions arising from the statement of reasons adopted by the Constitutional Court of the Republic of Croatia, when it is interpreting the rule of law as one of the highest values of the Croatian constitutional order, upon the entry into force of its decision and/or ruling in such cases, themselves become law, namely law which has the legal force of law prescribed by statute within the constitutional legal order. This assertion, too, founded on constitutional grounds in the Republic of Croatia, affirms the rule of law not only as one of the highest values of the Croatian constitutional order, but also as an

overarching (imperative) requirement that the rule of law is not merely the rule of statutes, but rule in accordance with the law.

Precisely such a position of the rule of law within the Constitution of the Republic of Croatia and in the overall constitutionalisation of Croatia as a modern state governed by the rule of law requires systematic protection of the rule of law, both as a legal right and as one of the highest values of the constitutional order of the Republic of Croatia, on the basis of the Constitution. The interpretation and protection of the rule of law as one of the highest values of the constitutional order and as a right has been entrusted, by a constitutional norm, to the Constitutional Court of the Republic of Croatia. In this paper, I have presented several examples illustrating how the Constitutional Court interprets the rule of law as one of the highest values of the constitutional order and as a requirement of governing and acting in accordance with the law, thereby providing insight into its established case law in this area.



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USTAVNI SUD REPUBLIKE HRVATSKE U PRIMJENI I ZAŠTITI USTAVNE VREDNOTE VLADAVINE PRAVA

Sažetak:

Hrvatski ustavotvorac je Ustavom Republike Hrvatske utvrdio i propisao najviše vrednote ustavnog poretka Republike Hrvatske koje su, istovremeno, temelj za tumačenje Ustava. Najviše vrednote ustavnog poretka obvezuju sve subjekte koji provode Ustav Republike Hrvatske od zakonodavne, izvršne i sudbene vlasti do Ustavnog suda Republike Hrvatske.

Jedna od najviših vrednota ustavnog poretka Republike Hrvatske je i vladavina prava. Sve najviše vrednote ustavnog poretka Republike Hrvatske po Ustavu su međusobno jednake. No, u konkretnim slučajevima može doći do proturječja između pojedinih vrednota, pa je potrebno pronaći pravu mjeru između njih. Druga osobina najviših vrednota ustavnog poretka Republike Hrvatske proizlazi iz činjenice da ih Ustav u sadržajnom smislu konkretnije ne definira. One su u sadržajnom smislu odredive, ali nisu određeni. Svi subjekti koji provode Ustav Republike Hrvatske dužni su ga tumačiti na temelju najviših ustavnih vrednota. Međutim, samo jedan od njih, a to je Ustavni sud, ima takav ustavni položaj da zauzeta stajališta u njihovom tumačenju izražena u njegovim odlukama imaju općeobvezujuću snagu (*erga omnes*).

U svojoj dosadašnjoj ustavnosudskoj praksi, Ustavni sud Republike Hrvatske se u više predmeta susreo s potrebom da odluči što on smatra pod vladavinom prava kao jednoj od najviših vrednota ustavnog poretka Republike Hrvatske. Polazeći od svoje ustavne nadležnosti, i ustavnog položaja kao čuvara i zaštitnika Ustava Ustavni sud je u nekoliko

svojih odluka zauzeo stajalište što on smatra pod vladavinom prava kao jednoj od najviših vrednota hrvatskog ustavnopravnog poretka. Zauzeta stajališta izražena u odlukama Ustavnog suda su od velikog značaja za provedbu i zaštitu vladavine prava kao jedne od najviših vrednota ustavnopravnog poretka Republike Hrvatske.

U radu ću s teorijskog aspekta obraditi pojam vladavine prava kao najviše vrednote ustavnopravnog poretka, te ustavnosudsku praksu Ustavnog suda Republike Hrvatske koja će uključivati i njegovu aktivističku ulogu u definiranju sadržaja ove vrednote.

Ključne riječi: *vladavina prava, vrednote ustavnosudskog poretka, Ustavni sud, ustavnosudski aktivizam, interpretacija vrednota ustavnosudskog poretka.*

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