Chapter 3 The Rule of Law and Human Rights with Special Reference to the Jurisprudence of the European Court of Human Rights (ECHR)

1. Introduction

The Rule of Law or its equivalent French principle of *pre-eminence de droit* has been established in its original form as a principle aiming primarily at the protection of individuals from an arbitrary exercise of power by the State. The principle dictated that no state power could be exercised without authority of the Law.

Since the days of Greek philosophers there has been recourse to the notion of “law” as a primary means of subjecting governmental power to control. Aristotle emphatically maintained that “government by laws was superior to any government by men”.

According to him justice exists only as between men whose relations to one another are governed by a system of law: “… he who commands that law should rule” he said “may thus be regarded as commanding that God and reason alone should rule; he who commands that a man should rule adds the character of the beast”.

In the same context, Aristotle also pointed out that “laws when good should be supreme” and “personal rule, whether it be exercised by a single person or a body of persons, should be sovereign only in those matters on which law is unable, owing to the difficulty of framing general rules for all contingencies, to make an exact pronouncement”.

Regarding the question of what a good law is Aristotle stated that “laws must be constituted in accordance with constitutions; and if this is the case it follows that laws which are in accordance with right constitutions must necessarily be just, and laws which are in accordance with wrong or perverted constitutions must be unjust”.

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2. Ibid., p. 146.
3. Ibid., p. 127.
4. Ibid., p. 127.
philosopher spoke also about equality and “justice”, the latter consisting, according to him, in what tends to promote the common interest.\footnote{Ibid., p. 129.}

Solon provided Athens with laws so that they would have “the certainty of being governed legally in accordance with known rules”. His laws were equal laws for the noble and the base.

The necessity that the State should be based on the law was further developed by Roman lawyers. The roots of the modern concept of the rule of law can be found in the British Legal System. Magna Carta in 1215 expressed the principle that justice must be administered according to law and that it should neither be denied nor delayed. The English Petition of Grievances of 1610 emphasised the basic notion of a government subordinate to law and the Bill of Rights in 1689 affirmed that the monarchy was subject to the law.

\section*{2. Dicey’s Views}

The concept of the rule of law was given particular prominence by the British jurist Dicey in his work “Introduction to the Study of the Law of the Constitution” first published in 1885. Dicey gave the rule of law three meanings:\footnote{Dicey, Introduction, op. cit., 107-122; Bradley and Ewin, Constitutional and Administrative Law 12th ed, pp. 102-103.}

\begin{itemize}
  \item[a)] absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, excluding the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the government …;
  \item[b)] equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts; and
  \item[c)] individual rights and freedoms should be formulated and safeguarded by the common law which according to him is the preeminent means of creating the rule of law rather than by abstract constitutional declarations.
\end{itemize}

However Dicey’s views regarding the principle of the Rule of Law have, with the passage of time, been qualified and adjusted in the light of legal developments. Today the principle of Rule of Law in the British legal