

1. PREFACE

The question “who rules” is of great importance not only for academic purposes, although an answer helps to classify political systems. Yet, people wish to know about their role in a society, i.e. whether they are endowed with guarded statutory political rights in order to participate actively in public matters as citizen and sovereign or whether they are ruled subjects without any protection of civil rights.

Political writings which underlined the rule of law instead the unrestricted rule of individuals were at some times highly dangerous or even deadly for the authors. In fact the idea of rule of law has been a quantum leap in political thinking and practice, because it challenged the tradition of individual rule at the bases of divine legitimacy or heritage.

For the founders of modern political thinking, for example the French Barons de Montesquieu and de Tocqueville, the idea that political rule has to be based on laws, and that these laws have to be given by an assembly of free citizens, was crucial for a just and stable political order. Montesquieu emphasized that a constitutional state under the rule of law is only possible by an effective division between legislative, executive and juridical power. Only this division, e.g. mutual checks and balances of state institutions and responsibility of power holders and representatives before independent courts, guarantees the exercise of state power without arbitrariness and misuse.

His compatriot Alexis de Tocqueville pointed into a slightly different direction when he noticed some eighty years later the implicit dangers of political and individual freedom after his visit to the young United States of America. Given the universal character of the democratic principles of freedom and equal rights de Tocqueville pointed to the necessity of *legal binding* of democratic rule. In order to assign the universal rights of democracy to every citizen regardless of his or her social status, liberal democracy and democratic rule need binding rules for two reasons: Firstly to lay down all legal principles and civil rights

all citizens are entitled for (positive freedom), and secondly to make sure that one's civil rights cannot be violated by other members of the society, be it a neighbor or a state authority (negative freedom).

Especially the latter principle is important for the concept of the rule of law. It means that not only citizens have to respect laws as binding for their action but also the state and all its authorities. Political action is both embedded in and restricted by legislation. A juridical system, that is strictly independent of political advice and control, monitors the compliance of laws by all societal and political actors and can be called by anyone in case of violation of principle political rights. This is at the core of the concept of the rule of law. Without such a legal and *binding* framework a political system is no liberal democracy but anarchy or dictatorship.

This second volume of the KAF Democracy Report is devoted to the analysis of the rule of law in fifteen countries around the globe. The promotion of human rights, liberal democracy and rule of law stands at the centre of all our activities. Our presence in the countries under study and established networks to partners in the academic, political and broader societal spheres of the respective countries enable us to conduct in-depth empirical studies like this. Since we are also active in countries which have for political or geographic reasons attracted less public and scientific attention, we can also provide first insights, so that some chapters have the character of pioneering work.

The aim of the KAF Democracy Report is twofold. Firstly, with profound research, which is conducted by country experts, we wish to contribute to the comparative analysis of selected fields, in case of this volume to the state of rule of law. But our approach is not exclusively scientific. With the country studies we wish also to provide information for political consulting, further political and economic cooperation and development for all institutions and individuals who are active in these domains, secondly. I am grateful to all authors for adding some comments on how the KAF can improve its local work in order to promote democracy, democratic values, and the rule of law.

I wish to express my honest gratitude to all contributors to this volume. Especially I thank Professor Karl-Rudolf Korte and his team at the University Duisburg-Essen for their valuable scientific advice to this Democracy Report. Finally, I thank the colleagues at the Konrad Adenauer Foundation who contributed with great passion to this project, be it as representative abroad or at the head office.

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