Administrative Law as an Instrument of Power: The Transformation of Rule-of-Law Constraints in Dual-State Dynamics

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Abstract: This paper examines how administrative law functions not only as a constraint on executive power but increasingly as an instrument through which executive dominance is consolidated under conditions of political and legal uncertainty. Building on Ernst Fraenkel's concept of the "dual state," the study analyses how contemporary governments operate simultaneously within a normative legal framework and through prerogative-like administrative mechanisms that expand discretionary power. The research question is whether and how administrative law, traditionally perceived as a guardian of the rule of law (RoL), becomes structurally embedded in processes that weaken RoL guarantees while formally maintaining legal continuity.

Methodologically, the paper combines doctrinal legal analysis with comparative institutional examination of selected Central and Eastern European cases. It focuses on executive law-making (decrees, secondary legislation), administrative adjudication, and procedural modifications that alter the balance between legality, discretion, and judicial review. Particular attention is paid to how uncertainty – regulatory, geopolitical, and crisis-driven – is framed as justification for expanding executive instruments.

Preliminary findings suggest that contemporary "dual-state dynamics" do not necessarily dismantle administrative law; rather, they reconfigure it. The normative layer of legality remains formally intact, while the operational layer shifts toward increased executive steering through procedural acceleration, regulatory opacity, and selective enforcement. This transformation challenges classical understandings of Montesquieu's separation of powers and raises questions about the adaptive resilience of the rule of law in multilevel governance systems.

The paper aims to contribute to theoretical debates on the rule of law by repositioning administrative law from a purely protective mechanism to a structurally ambivalent instrument of governance.