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THE PRINCIPLE OF THE RULE OF LAW IN CONSTITUTIONAL LAW

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Abstract. The principle of the rule of law is a fundamental element of constitutional law that ensures stability and justice in the legal system. This article explores the historical development of the rule of law, from its origins in classical legal systems to modern interpretations and implementations. Particular attention is paid to the analysis of key aspects of the rule of law, such as its importance for the protection of human rights and freedoms and the role of constitutions in ensuring it.

Taking into account the content of Article 8 of the Constitution of Ukraine and the practice of the Constitutional Court of Ukraine, the rule of law should be understood, in particular, as a mechanism for ensuring control over the use of power by the state and protection of individuals from arbitrary actions of the state authorities.

The rule of law is seen as a normative ideal that every system of law should strive for. And as an integral and universal principle of law, it should be considered, in particular, in the context of the following fundamental components: the principle of separation of state power, the principle of democracy, the principle of legality, the principle of popular sovereignty, the principle of fair trial, and the principle of legal certainty.

The article discusses the current challenges facing the implementation of the rule of law in different countries. In particular, the problems of corruption, political pressure and crisis of justice, which may hinder the effective implementation of this principle, are analyzed. Specific

examples of violations of the rule of law and their consequences for society are studied, allowing for a better understanding of the importance of adhering to this principle.

The article also contains a comparative analysis of the implementation of the rule of law in different legal systems, highlighting successful models and practices. The role of international organizations such as the United Nations, the Council of Europe, and the European Union in maintaining and promoting the rule of law at the global level is explored. This allows us to draw conclusions about the impact of international law on national constitutional systems and emphasizes the importance of international cooperation in this area.

Keywords: rule of law; constitutional law; protection of rights and freedoms; international organizations; justice; legal system.

Formulation of the problem. The problem statement in this study is to analyze the current challenges facing the implementation of the rule of law in different legal systems, to identify the main obstacles to its effective implementation and to assess the role of international organizations in supporting this principle.

Analysis of the study of the problem. The topic of historical development of the rule of law principle has been covered by such scholars as B. V. Malyshev, V. S. Shylingov, S. Pogrebnyak, M. Baratasiuk and others. Nevertheless, the topic of the article requires a more detailed study.

The purpose of the article. The purpose of the article is to conduct a detailed analysis of the historical development of the rule of law principle, to highlight its origins and evolution in different legal systems, to study the importance of the rule of law for modern constitutional systems and its role in the protection of human rights and freedoms.

Presenting main material. The rule of law is the foundation of any democratic state and the basis of the constitutional order. Its origins can be found in ancient legal systems, where the idea that the law should be above any person or institution first emerged. In the Middle Ages, the concept of the rule of law continued to develop in the writings of legal theorists such as Thomas Aquinas, who emphasized the importance of morality and justice in law. The Enlightenment added new elements to this concept, emphasizing the need for separation of powers and independence of the judiciary.

In today's world, the rule of law remains a key principle in the constitutional systems of various countries. The constitutions of many countries enshrine this principle as fundamental, stipulating that all authorities and citizens must act within the law. The rule of law is also an important tool for protecting human rights and freedoms, ensuring equality before the law and impartiality of the judicial process. However, the implementation of this principle faces numerous challenges, including corruption, political pressure on the judiciary, and imperfect legal norms.

The analysis of current challenges shows that effective implementation of the rule of law requires not only the existence of relevant legislation, but also its proper implementation. In some countries, there is a crisis of justice when courts cannot perform their functions independently and fairly due to the influence of political or economic factors. This leads to violations of the rights and freedoms of citizens, undermining trust in the legal system. At the same time, successful models of the rule of law, such as those in Western Europe, can serve as an example for other countries, demonstrating the importance of an independent judiciary, effective anti-corruption measures, and continuous monitoring of the rule of law.

International organizations play an important role in upholding the rule of law at the global level. The United Nations, the Council of Europe, the European Union and other international institutions monitor, provide recommendations and assist countries in implementing the rule of law. An important

aspect of their activities is also the dissemination of successful practices and the promotion of cooperation between states to solve common legal problems. Thanks to international support, countries can adapt their legal systems to modern challenges, ensuring that the rights and freedoms of their citizens are protected at a high level.

The rule of law principle was formed in the seventeenth and nineteenth centuries in the context of the European cultural and legal space, in the bosom of the natural law doctrine. By its historical origin, it is undoubtedly an English concept and characterizes the constitutional system of Great Britain after the end of royal absolutism and the defeat of the Cromwellian Revolution in the seventeenth century. The term “rule of law” itself, according to a fairly common version, was introduced into scientific circulation by the English scholar and politician J. Harrington in 1656. Characterizing a republic as a form of government, he believes that it is “an empire of law, not of men” [1].

The rule of law is the highest democratic value. It is often enshrined in national constitutions and legislation, and is an important part of international legal instruments.

For example, the principle of the rule of law is enshrined in Article 8 of the Constitution of Ukraine, which states that the rule of law is recognised and applied in Ukraine.

On 26 March 2011, the Rule of Law Report adopted by the Venice Commission was published. The report is based on the analysis of approaches to understanding the Rule of Law in international legal documents, constitutions, legislation and scientific literature.

The rule of law is a certain set of strongly intertwined principles that together form the basis of the doctrine of constitutionalism and are essential for any democratic society.

Among the international legal acts related to the rule of law are the following:

- Resolution of the Parliamentary Assembly of the Council of Europe ‘On the Principle of the Rule of Law’;
- Decision of the Helsinki Ministerial Council Group ‘Further Strengthening the Rule of Law in the OSCE Area’;
- Decision of the OECD Development Assistance Committee ‘Equal Access to Justice and the Rule of Law’;
- General Report on the Rule of Law and its Applications

Components of the rule of law:

1. Respect for human rights and freedoms. Inalienable, inalienable human rights and freedoms form the basis of ‘checks and balances’ to state power, which is always prone to get out of control of society. They cannot be overcome at the discretion of either the legislative, executive or judicial branches of government. They constitute the primary source of law.

2. The supremacy of the constitution. As the Fundamental Law, the Constitution is the core of the national legal system and the basis for its progressive development. The Constitution is the embodiment of universal and national values, including the rule of law and its components. It provides the legal system with certainty and stability, which is one of the key conditions for the rule of law. All regulations must comply with the constitution. The rule of law means, first and foremost, the implementation of primacy (priority).

3. The principle of separation of powers. The philosophers J. Locke and S. Montesquieu are considered to be the creators of the concept of separation of powers. This principle envisages the existence of relatively independent and autonomous branches of power – legislative, executive and judicial – and the establishment of such relations between them that would make it impossible to usurp all state power. The Constitution of Ukraine, like the constitutions of other states, does not implement the principle of separation of powers in its pure form. In addition to these three branches of power, there is also the President of the state, law enforcement agencies, control and supervisory bodies, etc. All these authorities constantly and actively interact with each other. That is why it is important to balance them and to control them. No branch of government should have advantages over other branches of government. No branch of government should be deprived of the authority to perform the functions defined by the Constitution.

4. Legality. The rule of law implies legality based on the recognition and unconditional acceptance of the highest value of a person, his/her protection from arbitrariness of the authorities and their officials. The European Court of Human Rights uses the phrase 'in accordance with the law' in its judgments, which means 'so that the law does not contradict the rule of law'. The rule of law applies primarily to the activities of public authorities and their officials, and not to all subjects of law, as is commonly believed in domestic jurisprudence. The Constitution of Ukraine contains provisions that demonstrate that it firmly establishes the leading role of law in the system of normative acts (of course, after the Constitution itself as the act of the highest legal force). This is confirmed by Article 92 of the Basic Law.

5. Limitation of discretionary powers. Restrictions on decision-making by state bodies and officials. A. Dicey wrote: 'where there is discretion, there is also room for arbitrariness, discretionary powers on the part of the authorities, and necessarily mean the absence of legal freedom for its subjects'. In other words, the activities of both the state and its bodies must be subordinated to the establishment and maintenance of human rights and freedoms. State authorities and local self-government bodies are obliged to act only on the basis and in the manner provided for by the Constitution and laws of Ukraine (Article 19 of the Constitution of Ukraine), according to the principle of 'the prohibited is prohibited'.

6. The principle of equality of rights (equality). According to Article 24(1) of the Basic Law, citizens of Ukraine have equal constitutional rights and freedoms and are equal before the law. They are equal in their rights and freedoms regardless of their place of birth and residence, skin colour, political or religious beliefs, gender, ethnic origin, property status, etc. The law must be applied equally to all persons. The principle of equality of rights and equality before the law also implies equal access to court and equal rights in the administration of justice.

7. The principle of legal certainty. It means, first of all, the requirement of clarity of the grounds, purposes and content of normative prescriptions, especially those addressed directly to citizens. A norm cannot be considered 'law' if it is not formulated with sufficient clarity so that a citizen can independently foresee, with a degree of probability that can be considered reasonable, the consequences that may result from specific actions. Requirements: consistent and impartial application of the law, consistency of judicial practice, binding nature of court decisions, strict enforcement, respect for the principle of finality of court decisions.

8. The principle of protection of trust. It is generally considered as one of the important elements of the more general principle of legal certainty or legal certainty. This principle should be considered separately from the principle of legal certainty, as it ensures: citizens' confidence in the legal situation, publicity of the state's activities, stability of legislation, and the state's obligations to citizens. The irreversibility of the law in time is important. The goal is to put a barrier to the infringement of human rights and freedoms by the authorities. This makes this principle an important guarantee of human security and trust in the state (enshrined in Article 58 of the Constitution of Ukraine).

9. The principle of proportionality regulates the correlation between the goal and the means and ways of achieving it. This principle is based on the idea of: 'the general interest of the state cannot be such that it suppresses the freedom of an individual'. No attempts to limit its actions, let alone to completely disregard the freedom of the individual, referring to the need to combat the economic crisis or other social dangers in a democratic state governed by the rule of law, can be justified. The requirements of the European Court of Human Rights regarding the principle of proportionality: restrictions on freedoms and rights are possible only on the basis of law, and these restrictions must be applied in the absence of less burdensome means. The consequences must not be excessive.

10. Independence of the court and judges. The higher the authority of the court and justice in a country, the more reliably people's rights and freedoms are protected from possible encroachments. The principle of independence of courts and judges is the most important and decisive among them in a modern state. It reflects the idea of independence of the judiciary in the system of separation of powers. The independence of the judiciary has several aspects: institutional (sometimes called organisational or institutional-organisational), functional and personal (independence of judges themselves).

The institutional independence of the judiciary is primarily based on the fact that it is entrusted to judges, who are the holders of this power and exercise it independently of the legislative and executive branches of government. No one may interfere with the activities of the court and judges in the performance of their judicial functions. The legislature may not adopt laws that annul court decisions or otherwise interfere with the exercise of the judicial function. Means of institutional independence include: irremovability of judges, certainty of grounds for their removal, and the state's obligation to ensure adequate funding for judges.

Functional independence of the court and judges is determined by their impartiality, i.e. the right and duty of the court and judges to make decisions independently, impartially, on the basis of the constitution and law, guided by the rule of law. Judges are prohibited from: membership of political parties, associations with political aims; participation in demonstrations; being a member of parliament or engaging in other paid activities (except for scientific, teaching, creative work).

The personal independence of a judge is determined not only by the Constitution and the law, but also by the personality of the judge – the level of his/her competence and moral qualities. It is manifested in the administration of justice by a judge regardless of his/her own political views and beliefs; the judge's obedience to the law; the judge must give reasons for his/her decision.

After the above general remarks, let us turn to the private law sphere, in which the main act of its regulation – the new Civil Code of Ukraine – operates. It should be specifically emphasized that the Civil Code was conceptually developed on the basis of natural law theories, according to which the laws of the state do not regulate relations, but only mostly seek to approach (coincide) with the configuration of legal relations originating directly from “Cosmos”, “God”, Reason or “Logos”. That is why the ideas of the rule of law are most fully embodied in the Civil Code of Ukraine. In this respect, among its many relevant provisions, the most valuable is Article Z of the Civil Code of Ukraine, which states that the general principles of civil law are: inadmissibility of arbitrary interference in the sphere of personal life of a person; inadmissibility of deprivation of property rights except in cases established by the Constitution of Ukraine and laws; freedom of contract; freedom of entrepreneurial activity not prohibited by law; judicial protection of civil rights and interests; justice, good faith and reasonableness [2].

Thus, for the first time in the history of national codification, Art. 3 of the Civil Code of Ukraine enshrines important components of the rule of law in the private law sphere and the principles of construction and operation of positive private law. These principles (general principles) do not constitute an exhaustive list and cover a variety of private relations [2].

The rule of law is a fundamental principle on which modern constitutional systems are based. It ensures the stability and predictability of the legal order, which are necessary conditions for the development of democracy and the protection of human rights. The rule of law ensures that all state bodies and officials act within the law and not at their own discretion. This helps to increase public trust in state institutions, as they are confident that their rights will be protected and any violations by the authorities will be corrected.

In accordance with part one of Article 8 of the Constitution of Ukraine, the principle of the rule of law is recognized and applied in Ukraine. According to the Decision of the Constitutional Court of Ukraine, the rule of law is the rule of law in society. The rule of law requires the state to implement it in lawmaking and law enforcement activities, in particular in laws, which should be primarily imbued with the ideas of social justice, freedom, equality, etc. One of the manifestations of the rule of law is that law is not limited to legislation as one of its forms, but also includes other social regulators, including moral norms, traditions, customs, etc. that are legitimized by society and are conditioned by the historically achieved cultural level of society. All these elements of law are united by a quality that corresponds to the ideology of justice, the idea of law, which is largely reflected in the Constitution of Ukraine [3].

Taking into account the content of Article 8 of the Constitution of Ukraine and the practice of the Constitutional Court of Ukraine, the rule of law should be understood, in particular, as a mechanism for

ensuring control over the use of power by the state and protecting individuals from arbitrary actions of the state authorities [3].

The rule of law as a normative ideal to which every system of law should aspire and as a universal and integral principle of law should be considered, in particular, in the context of the following fundamental components: the principle of legality, the principle of separation of state power, the principle of people's sovereignty, the principle of democracy, the principle of legal certainty, the principle of fair trial.

The main goal of the rule of law is, first of all, to limit the power of the state over a person, to ensure that the state and its bodies do not arbitrarily interfere in certain areas of human activity [4].

In this context, the rule of law means that public authorities cannot act arbitrarily and are obliged to follow rules that will allow them to predict the measures that will be applied in specific legal relations. Based on the above, a person can anticipate and plan his or her actions and rely on the expected result.

One of the key functions of the rule of law is to ensure equality before the law. In modern constitutional systems, this means that all citizens, regardless of their social status, wealth, or political connections, have equal rights and responsibilities before the law. This guarantees fairness and non-discrimination, creating conditions for equal access to justice. Through the rule of law, citizens can protect their rights through independent courts that act without political or economic pressure.

The rule of law also plays an important role in preventing abuse of power and corruption. In constitutional systems where this principle is properly implemented, there are effective mechanisms to control the activities of state bodies and officials. This includes a system of checks and balances, transparency in decision-making, and independent anti-corruption bodies. In such an environment, officials know that any illegal actions will be exposed and they will be held accountable, which significantly reduces the level of corruption.

The importance of the rule of law is also manifested in the creation of a favorable environment for economic development. A stable and predictable legal system is a key factor in attracting investment, business development and economic growth. Investors and entrepreneurs have guarantees that their property rights will be protected and contracts will be enforced in accordance with the law. This creates the conditions for long-term planning and development, which is essential for the country's economic stability and prosperity.

Conclusions. The rule of law is the cornerstone of modern constitutional systems, ensuring stability, predictability and fairness in the legal order. Its significance lies in creating conditions for the protection of human rights and freedoms, guaranteeing equality before the law and preventing abuse of power. The historical development of this principle demonstrates its key role in the formation of democratic states and legal systems based on the principles of justice and legal certainty.

Current challenges, such as corruption, political pressure and the crisis of justice, require constant attention and effective solutions to ensure the real implementation of the rule of law. International organizations play an important role in upholding this principle at the global level by promoting cooperation between states and disseminating good practices. The implementation of the rule of law is a prerequisite for ensuring the rights and freedoms of citizens, economic development and strengthening democratic institutions, making it one of the most important goals of modern constitutional law.

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ПРИНЦИП ВЕРХОВЕНСТВА ПРАВА В КОНСТИТУЦІЙНОМУ ПРАВІ

Анотація. Принцип верховенства права є фундаментальним принципом конституційного права, який забезпечує стабільність і справедливість у правовій системі. Дана стаття досліджує історичний розвиток верховенства права, починаючи від його витоків у класичних правових системах до сучасних інтерпретацій та реалізацій. Особлива увага приділяється аналізу ключових аспектів верховенства права, таких як його значення для захисту прав і свобод людини та ролі конституцій у його забезпеченні.

Враховуючи зміст статті 8 Конституції України та практику Конституційного Суду України, верховенство права слід розуміти, зокрема, як механізм забезпечення контролю над використанням влади державою та захисту людини від свавільних дій державної влади. Верховенство права розглядається як нормативний ідеал, до якого має прагнути кожна система права. І як інтегральний та універсальний принцип права необхідно розглядати, зокрема, в контексті таких основоположних його складових: принцип поділу державної влади, принцип демократії, принцип законності, принцип народного суверенітету, принцип справедливого суду, принцип юридичної визначеності.

У статті розглядаються сучасні виклики, що постають перед реалізацією принципу верховенства права у різних країнах. Зокрема, аналізуються проблеми корупції, політичного тиску та кризи правосуддя, які можуть заважати ефективному впровадженню цього принципу. Вивчаються конкретні приклади порушень верховенства права та їх наслідки для суспільства, що дозволяє краще зрозуміти важливість дотримання цього принципу.

Також стаття містить порівняльний аналіз реалізації верховенства права у різних правових системах, висвітлюючи успішні моделі та практики. Вказується на роль міжнародних організацій, таких як Організація об'єднаних націй, Рада Європи та Європейський Союз, у підтримці та просуванні верховенства права на глобальному рівні. Це дозволяє зробити висновки щодо впливу міжнародного права на національні конституційні системи і підкреслює важливість міжнародної співпраці у цій сфері.

Ключові слова: верховенство права; конституційне право; захист прав і свобод; міжнародні організації; справедливість; правова система.