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PRINCIPLE OF THE RULE OF LAW IN JUDICIAL PRACTICE

The formation of such a state model, which would function based on the rule of law – is a complex and long-term phenomenon that requires systematic, consistent, meaningful political and legal, socio-economic, spiritual and cultural modernisation. In this context, the rule of law should, above all, be seen as a way of interaction between man, civil society and the state. The rule of law is a dynamic phenomenon; filled with ideas of justice, virtue, reasonableness, and equality before the law. In the system of general principles of law, the principle of the rule of law has a leading, integral, system-forming significance for the development of the rule of law and civil society. The use of the rule of law in the practice of international and national courts aims to promote human rights and freedoms, which also plays a vital role in ensuring public confidence in the courts.

Let's talk about the democratic vector of development of the Ukrainian state. Implementing the rule of law in public authorities and cooperation with a civil society based on the rule of law is now of paramount importance. It, therefore, requires further comprehensive consideration, including applying the rule of rights in the practice of national and international judges. The principle of the rule of law in judicial practice was studied by V. Averyanov, Y. Baulin, T. Bingham, L. Bogachova, I. Galashin, V. Gorodovenko, A. Grubinko, V. Klyuchkovich, M. Kozyubra, A. Korshun, V. Lemak, K. Lisetska, O. Makarenkov, J. Melnyk-Tomenko, I. Novitsky, O. Petryshyn, N. Pisarenko, P. Rabinovych and others. Given the leading role of the judiciary in ensuring human rights, the study of this area is especially relevant at the present stage of the development of the Ukrainian state.

Ensuring the rule of law The Constitution is one of the fundamental components of the rule of law and its effective integration into all spheres of state functioning. Having passed a long historical path of origin and development, the formation of a modern understanding of the principle of the rule of law in the legal science of Ukraine began after the adoption of the Basic Law of 1996 and the regulation of Art. 8, which states: the principle of the rule of law is recognised and operates in Ukraine.

For the national legal system of Ukraine, the principle of the rule of law is inseparable from the Constitution of Ukraine. This explains why the specification of the principle of the rule of law in Art. 8 of the Constitution is

to proclaim the supreme legal force of the Constitution and to characterise its norms as having direct effect. Given the above, the verification of any norms or actions on their compliance with human rights is carried out by their comparative analysis with the provisions of the Constitution, and the direct effect of constitutional norms is the basis of the most accessible to citizens judicial protection of their violated rights [1]. Today, courts at various levels actively apply the rule of law in practice. In this regard, it is important to refer to the European Court of Human Rights (ECtHR) case law and national case law.

The analysis of the CAS of Ukraine shows that the principle of the rule of law is a set of guidelines and requirements for administrative proceedings. The European Court of Human Rights formulated these rules and requirements, including the principle of access to justice, legality, legal certainty, prohibition of arbitrariness, respect for human rights, non-discrimination and equality before the law and the courts etc. As J. Melnyk-Tomenko rightly points out, the principle of the rule of law is not limited to the above requirements and characteristics the European Court of Human Rights in resolving specific cases (including is Ukraine) systematically enriches its importance with new permanent features and conditions of compliance [2, c. 88; 3, c. 238].

Thus, in the decision of the European Court of Human Rights in *Shchokin v. Ukraine* on 3 October 2013, the principle of the rule of law was considered in the context of the quality of legislation that proportionally affects the state of human and civil rights and freedoms. The decision states that the rule of law, one of the fundamental principles of a democratic society, is inherent in all articles of the Convention (art. 50); how national legislation is interpreted and applied must correspond to the «quality of the law», requiring it to be accessible to interested parties, clear and predictable in its application (paragraph 51); the lack of the necessary clarity and precision in national law, which provided for different interpretations..., violates the “quality of law” requirement of the Convention and does not provide adequate protection against arbitrary interference by public authorities with the applicant’s property rights (para. 56) [4].

Paragraph 55 of the judgment of the European Court of Human Rights in *Class and Others v. Germany* of 6 September 1978 states that the rule of law implies, among other things, that interference by the executive in human rights must be subject to effective supervision which the judiciary should provide. At the very least, judicial oversight should best ensure independence, impartiality and due process. The Court considers that in an area that provides, in some cases, such great opportunities for abuse that could have detrimental consequences for a democratic society as a whole, in principle, it is appropriate to entrust the supervisory function to judges (paragraph 56 § 2). The same thesis is stated in the decision in the case of *Volokh v. Ukraine*. In *Brown and Others v. The United Kingdom* and *Altai v. Turkey*, the Court noted that, by the rule of law, judicial review of the government is one of the fundamental principles of a democratic society [5]. Thus, the European Court of Human Rights, considering cases and applying

the principle of the rule of law, pays significant attention to control to express the principle under study. The rule of law, democracy and human rights are the elements that laid the foundation for the Council of Europe and are now effectively defended, including the rights and freedoms of many people, through the European Court of Human Rights.

It should be noted that the principle of the rule of law is one of the most frequently mentioned legal phenomena in the practice of the Constitutional Court of Ukraine. Thus, in the decision of November 2 № 15 – rp / 2004 in the case of a milder sentence imposed by the court, it was emphasised that the rule of law is the rule of law in society. The rule of law requires the state to implement it in law-making and law enforcement activities, in particular in laws, which in their content should be permeated primarily by the ideas of social justice, freedom, equality, etc. [6]. In the decision of March 2, 2015 № 213 – VIII, it is determined that, given the content of Art. 8 of the Constitution of Ukraine, developing the practice of the Constitutional Court of Ukraine, the rule of law should be understood, in particular, as a mechanism to ensure control over the use of state power and protect people from arbitrary actions of state power. The rule of law as a normative ideal and as a universal and integral principle of law must be considered, including in the context of its fundamental components, such as the principle of legality, the principle of separation of powers, the principle of people's sovereignty, the principle of democracy, the principle of legal certainty [7]. Therefore, the principle of the rule of law is the primary system-forming phenomenon that unites the fundamental principles according to which the modern rule of law must function.

As for the activities of the Supreme Court and other courts of the judiciary in Ukraine, the following example should be given. The Supreme Court ruling of May 16, 2018, contains a legal position on the protection of bona fide mortgagees: "Good faith (paragraph 6 of Article 3 of the Civil Code) is a certain standard of conduct characterised by honesty, openness and respect for the interests of the other party. The bank, as a bona fide mortgagee, who relied on the data of the register of real estate rights, that PERSON_9 was the sole owner of a residential building, and therefore entered into a mortgage agreement. In such a situation, the refusal to satisfy the claim for foreclosure on the mortgage is contrary to the protection of the interests of a bona fide mortgagee" [8; 9]. Therefore, in the given legal position of the court, good faith is considered an element of the principle of the rule of law.

The rule of law is a dynamic phenomenon modified under the influence of new social ideas. At the same time, legal standards in human rights and freedoms are being updated. International and national courts significantly contribute in this direction, applying the rule of law. The rule of law is an interaction model between society and the state.

Thus, summing up, it should be noted the following. The principle of the rule of law is the fundamental basis of the legal (in particular, judicial) process in any democratic state, according to which the courts assume that law is «above» the law and thus the state is «bound» by law, state power is limited exclusively by law; man is the highest social value. According to the

analysis of the decisions of the European Court of Human Rights, the Constitutional Court of Ukraine and the Supreme Court, judges are currently actively applying the principle of the rule of law in practice. It is essential that more and more often in national practice, it is not just a formal reference to this principle but a detailed analysis of the case due to its various requirements. Promising areas for theory and practice in ensuring the rule of law are developing mechanisms to improve the quality of laws, raising the level of professional and public legal awareness, further active development of civil society in Ukraine, etc. Since the rule of law contains cultural, ethical, political, and legal aspects, a separate complex area to ensure the quality of the rule of law in the judiciary is the further implementation of judicial reform, one of the fundamental principles which should be the formation of the judiciary exclusively from professional, independent, highly moral in the field of law.

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Ключові слова: принцип верховенства права, справедливість, Європейський суд з прав людини, Конституційний Суд України, Верховний Суд.

Key words: the principle rule of law, legality, European Court of Human Rights, Constitutional Court of Ukraine, Supreme Court.

БАЛЬЖИК ІРЕНА АНАТОЛІЙВНА

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ХРИСТИЯНСЬКЕ СТАВЛЕННЯ ДО ВІЙНИ

Церква століттями була провісником миру. І в цьому її величезна заслуга. В соціокультурній матриці сучасних війн та військових конфліктів важливе місце посідає релігійна складова. Необхідно знати генезу поглядів на війну, бо досить часто вилучені з історичного контексту релігійні вірування та уявлення використовуються як підстава для сучасних політичних і військових доктрин, тобто інтерпретуються в найбільш вигідному смислі з точки зору ідеологічних цілей певних рухів [1].

У Святому Письмі тема війни найчастіше зустрічається у Старому Заповіті, і є слова які ясно вказують, що Бог підтримує тих, хто виходить на боротьбу з ворогом. «Коли ти вийдеш на війну проти твого ворога та побачиш коней та колісниці, і більше народу ніж в тебе, не бийся їх, бо Господь із тобою, твій Бог який вивів тебе з землі Єгипетської...Господь, Бог ваш, йде з вами, щоб битися за вас з ворогами вашими та врятувати вас» (Втор. 20, 1–4).

Біблія запевняє, що Бог «розв'яже проблеми, що торкаються могутніх далеких народів. Вони перекують мечі на лемеші, а списи на серпи. Не підійме меча народ на народ, і більше не будуть учитися воювати» (Михея 4:3). У Біблії говориться, що під правлінням Божого Царства не буде держав, які змагаються за власні інтереси, не буде несправедливості, проти якої повстають люди, та упереджень, які призводять до етнічних поділень. Тому війни припиняться» (Ісаї 11:9).

Православна та католицька церкви підтримують ідеї справедливої війни яку можна розпочати тільки для захисту своєї батьківщини від нападників, частина протестантських церков не підтримує такої ідеї і стоять на засадах пацифізму та антимілітаризму.

Ідеї християнської доктрини справедливої війни є в міжнародному праві та лягли в основу наукової теорії. Християнство намагається