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ABOUT MODERN DEFINITIONS OF THE RULE OF LAW

Social transformations have led to the need to meet the growing needs of man, which highlights the need to understand the definition of the rule of law, according to which human is not above the law and no one can be punished by the state except for violations of law, and no one can be prosecuted for an offense other than in the manner prescribed by law.

The main components of the rule of law are legality, including a transparent, accountable and democratic procedure for enforcing the rule of law; legal certainty; prohibition of arbitrariness; access to justice in independent and impartial courts – including judicial review of administrative acts; respect for human rights; non-discrimination and equality before the law [1, p.39].

In Ukraine, the principle of the rule of law (rule of law) is established by the first part of Art. 8 of the Constitution.

Based on the principle of social naturalism, Kostenko OM considers the principle of «rule of law» as the principle of «rule of law», thus denying the positivist approach, which recognizes the rule of law, formulated in accordance with the will and consciousness of the people [2, p.177].

Understanding the law does not justify its identification with the law, which can sometimes be unfair, including restricting the freedom and equality of individuals. Briefly, the relationship between the concepts of «law» and «law» can be expressed through the relationship between content and form.

On June 27, 2016, in Kyiv, with the participation of the President of the Venice Commission Gianni Buquicchio, the National Presentation of the Rule of Law Checklist was translated into Ukrainian as the “Rule of Law”. Document of the Venice Commission Report on the Rule of Law «(CDL-AD (2011) 003rev in Ukrainian translation is presented as» Report on the Rule of Law «).

The reasons for the transition from the two-word «rule of law» to the one-word «rule of law» as the equivalent of the English «the rule of Law» were several factors.

Following the adoption of the Constitution of Ukraine, domestic scholars have resorted to explaining the essence of the concept of «rule of law» by

«elemental analysis» of the content of each component of a two-word expression, rather than by clarifying the essence of the concept as a whole, ie indecomposable.

The phrase «Rule of Law» is lexically close to one of the basic elements of the positivist doctrine of law in the form of the concept of «rule of law», which, in turn, led to the identification of both concepts. As an example, the thesis that «the principle of the rule of law has the expression of the rule of law.»

Another common way of interpreting the essence of the concept of «rule of law» in domestic science was the approach by which it was recognized either as a «necessary feature», or as a «fundamental principle», or as «part of the characteristics» of another concept of «rule of law». There has been a crossroads of two completely independent legal concepts, while the «rule of law» and the «rule of law» have historically never been and are not structurally interconnected.

Given that the erroneous interpretation of domestic scholars of the two-word concept of «rule of law» as a counterpart to the English concept of «the rule of law» as a result significantly distorted its essence as indestructible, in the monograph «Rule of Law» it was proposed to use Ukrainian one-word counterpart: as a categorical and unequivocal denial of any manifestation of arbitrary and selfish human power.

The following is a one-word term of power:

eliminates the temptation of «element-by-element» analysis, which arises from the use of two-word expression,

fits organically into the Ukrainian legal terminology system: it is built in accordance with the existing in the modern Ukrainian language word-forming model (cf. also: democracy, dual power, powerlessness, autocracy, etc.).

The term «rule of law» makes it possible to preserve the two substantive components of its English-language prototype, where rule – power, law – law.

The proposal to replace the Ukrainian two-word phrase «rule of law» with a one-word term «rule of law» is also based on the practice of constitutional text-making in such emerging democracies that have declared their independence in the former communist Yugoslavia. Their constitutions contain phrases that are literal translations of the English of the rule of law into the relevant official (state) languages, which as Slavic languages are close to Ukrainian: rule of law (constitutions of Serbia, as well as Bosnia and Herzegovina), vladavina prava (constitutions) Croatia, Montenegro), possession of the right (Constitution of Macedonia).

At the same time, a number of well-known Ukrainian scholars (P. Rabinovych, O. Lutsiv) believe that the translation into English of the English expression «the rule of law» by S. Holovaty using the one-word term «rule of law» is not accurate and removes the problem of universal understanding of the rule of law. After all, even in this case, without clarifying the meaning of the concept of law, it still remains unclear what phenomenon should «rule» [3, p. 341].

Since in Ukraine the Constitution and laws, as well as official translations of international treaties, including the Convention for the Protection of Human Rights

and Fundamental Freedoms, decisions of the European Court of Human Rights, use the phrase «rule of law» in Ukrainian, instead of the term «rule of law», the retired judge of the Constitutional Court of Ukraine MI Kozyubra also initially considered it confusing in the application of concepts in science and practice [4, p. 19] However, recently he changed his mind. and agreed that in Ukrainian «rule of law» can be a substitute for the phrase «rule of law».

The method of etymological interpretation of the category «rule of law» very close to the idea of «element-by-element» analysis was proposed in the domestic scientific doctrine, based on the fact that such a category is, so to speak, nothing more than «a combination of two independent words». namely, «supremacy» and «law», and therefore, they say, the meaning of each of them should be clarified in order to reach an integrated result.

From the scientific doctrine to the official legal doctrine became a thesis based on the methodology of legal positivism and the decomposition of the two-word concept: «the rule of law – is the rule of law in society.» According to K. Trichlib, the principle of the rule of law is a fundamental principle of the modern democratic, legal state [5, 159].

In our opinion, summarizing all the above, the implementation of human rights requires compliance with the main principle of the Constitution of Ukraine – the rule of law. Among scholars, the question of which definition is most appropriate is either the rule of law or the rule of law. Considering all the above, we believe that the implementation of human rights requires adherence to the main principle of the rule of law and a deeper study of foreign experience and analysis of best practices for implementation in Ukraine.

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