Larysa NALYVAIKO
Vice-Rector of the Dnipropetrovsk State
University of Internal Affairs,
Doctor of Law, Professor,
Honored Lawyer of Ukraine

Olha CHEPIK-TREHUBENKO
Associate Professor of the Department
of General Legal Disciplines
of Dnipropetrovsk State University of Internal Affairs,
Candidate of Law

THE PRINCIPLE OF THE RULE OF LAW IN THE DECISIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS AND THE CONSTITUTIONAL COURT OF UKRAINE

The priority component of legal transformations is to ensure the activities of public authorities and local governments are in accordance with the rule of law. After all, the high level of its integration into state activities affects the state of ensuring human rights, freedoms and legitimate interests, fair justice, overcoming corruption and so on. All these and many other indicators, in general, determine the state of development of democracy in the state. However, forming such a state model is a complex and long-term phenomenon that requires systematic, gradual, meaningful modernisation of political, legal, socio-economic, and cultural nature. A significant problem in this area is the periodic imitation by government institutions of applying this principle and its functioning in accordance with its requirements. Therefore, the study of the rule of law, which underlies the concept of the rule of law in Ukraine and, among other things, is provided by the judiciary, remains one of the most relevant topics for researchers in philosophy, sociology, and law and more.

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.

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; 2]. 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 as 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 [3, c. 88; 4, 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) [5].

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 [6]. 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 [7]. 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 [8]. 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.

In another judgment in its constitutional complaint of 18 June 2020 № 213-VIII, the Court emphasised that the rule of law (law) as an integral part of the value system underlying modern European law is one of the triad of principles of the common heritage of European nations. nations along with its components such as true democracy and human rights. <…> The Ukrainian formula of rule of law as the basis of the national constitutional order is twofold: according to the first component «the rule of law in Ukraine is recognized», according to the second – «the rule of law in Ukraine acts» [9]. It is worth noting that this is one of the first decisions of the Constitutional Court of Ukraine, where, along with the concept of the rule of law, the term «the rule of law» is used as its analogue. This innovation was introduced as a legal term by S. Holovaty (now a judge of the CCU) in his fundamental monographic study «The Rule of Law: in 3 books» (2006). And if the need for the term « the rule of law» was first debated, its use in judicial practice is now evidence of the adoption of this term by the scientific community and the authorities.

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 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.

1. Хаустова М. Г. Верховенство права – як основоположний принцип правової системи України в умовах модернізації. *Вісник Харківського національного університету імені В. Н. Каразіна. Серія: Право*. 2013. № 1062, Вип. 14. С. 22-26.

2. Ivanii O., Kuchuk A., Orlova O. Biotechnology as Factor for The Fourth Generation of Human Rights Formation. *Journal of History Culture and Art Research*. 2020. Vol. 9. № 1. P. 115-121.

3. Мельник-Томенко Ж. М. Принцип верховенства права як універсальна засада адміністративного судочинства. *Актуальні проблеми вітчизняної юриспруденції*. 2019. № 6. С. 84-89.

4. Козинець І. Г., Мишаста К. Б. Принцип верховенства права в адміністративному судочинстві. *Науковий вісник Ужгородського національного університету. Серія : Право.* 2021. Вип. 64. С. 235-239.

5. Рішення Європейського суду з прав людини у справі «Щокін проти України» від 3 жовтня 2013 р. URL: https://zakon.rada.gov.ua/laws/show/974_858#Text

6. Ухвала у справі № 757/1631/22-к від 02 лютого 2022 р. URL: https://reyestr.court.gov.ua/Review/103047198

7. Рішення Конституційного Суду України у справі за конституційним поданням Верховного Суду України щодо відповідності Конституції України (конституційності) положень статті 69 Кримінального кодексу України (справа про призначення судом більш м'якого покарання від 2 листопада 2004 року № 15-рп/2004. *Голос України*. 2005. № 3.

8. Рішення Конституційного Суду України (Велика палата) у справі за конституційним поданням 49 народних депутатів України щодо відповідності Конституції України (конституційності) окремих положень розділу I, пункту 2 розділу III «Прикінцеві положення» Закону України «Про внесення змін до деяких законодавчих актів України щодо пенсійного забезпечення» від 2 березня 2015 року № 213–VIII від 23 січня 2020 року № 1-р/2020. *Вісник Конституційного Суду України.* 2020. № 1-2. Стор. 135

9. Рішення Конституційного Суду України (Другий сенат) у справі за конституційною скаргою громадянки України Левченко Ольги Миколаївни щодо відповідності Конституції України (конституційності) припису пункту 5 розділу III «Прикінцеві положення» Закону України «Про внесення змін до деяких законодавчих актів України щодо пенсійного забезпечення» від 2 березня 2015 року № 213–VIII від 18 червня 2020 року № 5-р(II)/2020. *Вісник Конституційного Суду України*. 2020. № 4. С. 62.

Василь КОСТИЦЬКИЙ
Президент ВГО «Асоціація Українських Правників»,
професор кафедри теорії та історії права та держави
Київського національного університету
імені Тараса Шевченка,
доктор юридичних наук, професор,
академік НАПрН України,
Заслужений юрист України

ВЛАСТИВОСТІ ДЕРЖАВИ ЯК ВИРАЖЕННЯ ЇЇ СУТНОСТІ І ПРИЗНАЧЕННЯ В СУСПІЛЬСТВІ: РЕТРОСПЕКТИВА ТА СУЧАСНІСТЬ

Поняття держави залишається складним для розуміння й тлумачення й нині. Поняття і сутність держави по-різному відображалося дослідниками галузей науки, в тому числі філософії, соціальної філософії та філософії права, політології, соціології та соціології права, правознавстві та державознавстві. Так, Аристотель акцентував на управлінській та комунікативній сутності держави, яка для нього була об'єднання вільних громадян, що дозволяє реалізувати природну потребу людей у комунікації. У розумінні І. Канта сутністю держави як об'єднання багатьох людей, підпорядкованих правовим законам, якраз і є підпорядкування її праву, яке досягається відповідністю державного устрою і режиму принципам права. Г. Гегель розглядав державу як втілення ідей розуму, свободи і