

**RULE OF LAW PROMOTION AS THE RESULT
OF INTERACTION BETWEEN MULTILEVELED LEGAL SYSTEMS
(SOME DOCTRINAL REFLECTIONS?)**

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INTRODUCTION

A quite sensitive geopolitical context generally contemplates affirmative actions that should be made by regional international institutions. Naturally, these actions are aimed to create the environment, where all domestic legal systems are integrated within the common vision on what basic social values should mean. Definitely, among such values is the principle of the Rule of Law – pretty “fragile” concept in the sense that threats against its violation cannot be foreseen by any legislative frameworks. Nevertheless, by its very nature, Rule of Law issue is quite fascinating for contemporary legal theorists, thus representing a high level of complexity for those, who try to implement into the practice these doctrinal reflections.

Setting a scene for its external policy actions, such regional organizations as EU are the most interested in development of international instruments. Therefore, in the era of globalization, legal instruments that are designed within global law-making are necessary for the Rule of Law strengthening in municipal legal systems. And this is cemented to a trend, according to which methodological attempts to define the comprehensive notion of the Rule of Law are considered to be as what one might call “wasteful”. Instead, it is more fruitful to develop its crucial standards at the international level and further disseminate them into the national governmental practices. In a broader context, this is intermediated by the process of promotion.

In the light of the foregoing considerations, the central hypothesis of the present research can be built as follows. Convergence in the application and interpretation of the agreed Rule of Law standards is vital for the national legal systems that placed amongst those which are based on the democratic principles of governing. In order to prove outlined hypothesis, all author’s arguments by which it could be supported, will be based on the following methodological approaches.

The first one is the approach known as the “elementary”. Its foundations were set out by the well-known legal philosophers L. Fuller¹ and J. Raz². Their ideas,

¹ Fuller L. *The Morality of Law*. Yale University Press; Revised edition, 1969. P. 39

² Raz J. *The Rule of Law and Its Virtue*. Readings in the Philosophy of Law (ed. by K. Culver). Broadview Press, 1999. P. 16–19.

regarding the Rule of Law structural nature, inspired considerably contemporaries which resulted in the development of the Rule of Law as a meta-principle comprising in its content some elements. To support this methodology, A. Bedner had rightfully pointed out: “instead of talking about the rule of law as a monomorphous concept for analytical purposes we should dissect it into elements”³. Accordingly, the very thought of this argument is to perceive the Rule of Law as a set of interrelated sub-principles and not as the purely theoretic category with a rather limited functionality.

The second one is the methodology which allows the legal thinker to consider the Rule of Law as the category which although was “[...] coined in the ancient domain of domestic law”, but “nowadays being revived also due to the flourishing interconnections among concurring or conflicting legalities: [...]”⁴. In this context, Rule of Law should not be seen solely as only exclusive prerogative of particular State, but rather as a dynamic normative construction aiming to: 1) rebuild the ruined or dysfunctional municipal legal systems through the implementation of international legal standards; 2) deal with the substantial changes in the State’s reformation process. Thus, for the purposes of the present research, I will elaborate the Rule of Law as the principle of national legal system, but in the sense of its international manifestation.

Against this backdrop, the question “What is the Rule of Law?”, although considered to be a cornerstone of almost every legal “academic struggle”, largely embodies several more serious questions that need to be answered in order to understand what we mean by “Rule of Law strengthening”: 1) What does the international community do to underpin the Rule of Law stability? 2) How does it work? 3) What measures should be taken to make domestic versions of the Rule of law more effective and harmonized?

The first two questions necessarily deal with the need to find appropriate well-balanced theoretical background for the application of complex measures aimed at the Rule of Law assistance (and in some cases, even its rehabilitation). The third question definitely oriented on the increasing role of international actors’ interplay in the designing a common framework for States in their Rule of Law programming.

Thereby, to answer these questions, current research paper is organized in two major Paragraphs. Paragraph I provides an overview of the existing doctrinal approaches on the Rule of Law promotion with the special regard on foreign Academe. Built on this theoretical methodology, Paragraph II is focused on more pragmatic aspect of Rule of Law promotion – the EU activity towards the implementation of the Rule of Law standards into the European municipal legal

³ Bedner A. An Elementary Approach to the Rule of Law. *Hague Journal on the Rule of Law*. 2010. Vol. 2/01. P. 54.

⁴ Palombella G. The Rule of Law at Home and Abroad. *Hague Journal on the Rule of Law*. 2016, Vol. 8. Issue 1. P. 1–2.

orders. In its turn, this covers more sophisticated issue related to the globalization impact on the national legal systems in their extensive convergence. In Concluding Remarks I try to finalize my findings and prove that the Rule of Law complexity is mainly attributable to its dynamic nature reflected via the instruments of promotional activities.

1. Rule of Law Promotion as the Pragmatic Way for the Reformation of National Legal Systems

As a preliminary note to the current Paragraph, among the premises of this research is the understanding that the Rule of Law promotion activities can be materialized through the acts of international law-making related to both hard and soft international law sources. Accordingly, the main idea of this part of the research is to show that such sources can also indirectly affect the reformation of the national legal system in the Rule of Law area. For instance, what is considered to be a binding legal act to one State in its obligation to ratify a certain Rule of Law standards, can serve as a “soft” legal instrument for another one. In other words, national legal system can “extract” some practices and lessons of the Rule of Law modification from other States for their further governmental policy programming.

In what follows, within the framework of suggested topic, I shall avoid rigorous doctrinal discussions about the Rule of Law controversial nature. Instead, I shall directly begin with the theoretical aspects of the Rule of Law promotion as the new scene for investigation of its normative structure.

From the very beginning, it should be emphasized that in a specifically-oriented literature the process aimed at the reception of Rule of Law standards from the higher international level to the level of particular domestic legal system, is marked as follows: 1) Rule of Law promotion⁵; 2) Rule of Law strengthening⁶.

In order not to create philological discussion about the substantial difference of these two terms, we will further elaborate them both in the context of the realization of the Rule of Law international standards in the functioning of municipal legal orders.

It is interestingly enough, but an overwhelming majority of authors try to avoid comprehensive definition of the researched phenomenon. As

⁵ Particularly, in due time various concepts of the target determination of the Rule of Law promotion were suggested. In this vein, see Carothers T. *Promoting the Rule of Law Abroad: In Search of Knowledge*. Washington, USA: Carnegie Endowment for International Peace. 2006. 262 p. Grenfell L. *Promoting the Rule of Law in Post-Conflict States* (Rev. ed.). Cambridge, United Kingdom: Cambridge University Press. 2016. 332 p.

⁶ The formulation “Rule of Law strengthening” appears in the scientific literature pages, where majority of authors viewed the Rule of Law challenges in particular countries through the prism of different social, economic and political realities. See, for example, Schroeder W. *Strengthening the Rule of Law in Europe: From a Common Concept to Mechanisms of Implementation*. Bloomsbury Publishing, 2016. 320 p. or Farral J., Charlesworth H. *Strengthening the Rule of Law through the UN Security Council. Challenges of Globalization*. Routledge, 2016. 304 p.

S. Humphreys argues: “The notion that ‘the rule of law’ captures a particular quality of law or of a legal system, a quality that may be more or less present or absent in a given legal system and that thus provides a basis for evaluating such a system, imbues most accounts of the rule of law”⁷. In terms of promotion, such an assumption seems to be logical enough, as it helps to identify both the strength and the limitations of the governmental policy towards the Rule of Law implementation.

In light of this, it does not come as a surprise that the most Rule of Law scientists argue that the promotion of this principle has a complex nature since it evokes joint efforts of international law actors both multilaterally and through international initiatives in the context of inter-State coordinated programs. As one of the first authors, Michael Zürn, Andre Nollkaemper and Randall Peerenboom observed that the Rule of Law promotion should be seen from the perspective of internationalization. This process presupposes, firstly, that the Rule of Law principles are infiltrated the international law in order to design a model of common standards essential for the States in their governmental policy building. Secondly, the internationalization of the Rule of Law promotion is buttressed by the increasing globalization processes, within which there is a growing demand for international institutions to advance regional community interests. Thus, by conceptualizing the Rule of Law via its dynamics, they emphasized the need to revise the certain promotional activity in the context of international and transnational governance. Accordingly, the attribute “dynamic” is used primarily to illustrate the synergies between international and national law systems. By so doing, Rule of Law promotion is represented as a “binary relationship”. Particularly, legal thinkers claim that the Rule of Law national versions are affected significantly by the transformations taking place within the international law. And it is in international law system we can find the “missing piece of the whole puzzle”⁸. Such an approach, in our assessment, is reasonable whether one important clarification is born in mind. Actions towards the Rule of Law promotion by themselves are the forms of interaction between two or more legal systems. In our case, from the one side, it would be the European legal system as an integrated stratum of inter-legality and, from the other, municipal legal systems as the temporary custodians of the welfare of their own citizens. Thus, demands for such activities are articulated clearly by the national legal orders.

Stephen Humphreys, referring to the Rule of Law promotion as “the drive to shape laws and institutions that pervades international development and post-conflict policy today”, argues that this activity should be characterized not as

⁷ Humphreys S. *Theatre of the Rule of Law: Transnational Legal Intervention in Theory and Practice*. Cambridge University Press (Cambridge Studies in International and Comparative Law. V.73). 2010. P. 6.

⁸ Zürn M., Nollkaemper A., Peerenboom R. *Rule of Law Dynamics in an Era of International and Transnational Governance*. Cambridge University Press. 2012. P. 1–2.

international, but transnational. On this background, the distinctive aspects of the Rule of Law promotion are as follows:

(1) linked with the basic directions of international political and economic development, thus being a common denominator in the “articulation and justification of overarching public policy orientations”;

(2) the relationship by itself is rather non-obligatory than universally binding and unidirectional, since it presupposes only recipients to whom it addressed;

(3) the interaction between the subjects (donors and hosts) is characterized as the assistance and do not presupposes any conditions and incentives;

(4) does not involve relations between States and entails intrastate content of sovereignty;

(5) mostly oriented on private agents over the state actors as the promoters of core legal standards⁹.

Another aspect of the Rule of Law promotion is its conceptualization as a flexible process of interaction between international legal system and its national versions. Abovementioned authors in their Introduction to the collaborative research have coined a term “Rule of Law dynamics” in order to capture the complex and multidimensional nature of the Rule of Law promotion. However, by its substantial content, Rule of Law dynamics is much broader than the Rule of Law promotion, as the latter has been a part of it. Within such a framework, Rule of Law dynamics encompasses following “building blocks”¹⁰:

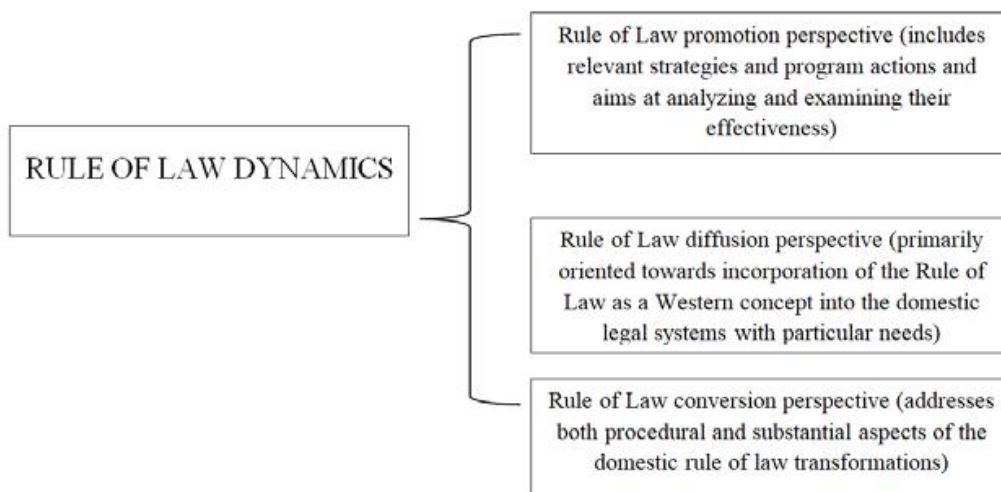


Fig. 1.1. Rule of Law dynamics and its elements

⁹ Humphreys S. Theatre of the Rule of Law: Transnational Legal Intervention in Theory and Practice. *Cambridge Studies in International and Comparative Law*. 2010. V. 73. P. 2, 7, 10–11.

¹⁰ The authors by herself made the Figure, trying to generalize scientific information suggested in Zürn M., Nollkaemper A., Peerenboom R *Rule of Law Dynamics in an Era of International and Transnational Governance*. Cambridge University Press. 2012. P. 1–2.

While majority of academic approaches originate in different Rule of Law theories, some authors consider its promotion in more complex context. This complexity reflects Rule of Law promotion in its nexus with global strategy for the enhancing economic development in whole regions, vital for young democracies consolidation. Therefore, two versions of the Rule of Law promotions are developed. The first one “minimalist” which presupposes its results in reasonable market institutions reformations and formalization of property rights via special investment laws. In contrast, another, “maximalist” version covers the issues of social justice and wealth distribution¹¹.

Alternatively, for some authors Rule of Law promotion reflects itself as the “Europeanization” of the municipal legal systems by implementing its core legal standards into the domestic legal frameworks. Within this context, the essence of Europeanization phenomenon revealed through the effect from the EU governmental system “in which member states are both contributors to and product of EU integration”¹².

As could be seen from the approaches analyzed above, the Rule of Law promotion has a number of dimensions that are typically covered in Western legal textbooks but largely unconnected to one another. Our conception of the Rule of Law promotion clearly overlaps with some prior formulations indicated above, but is different in some methodological ways. Primarily, this phenomenon should be examined through the concept of norm-translation activity with special regard on localization context within particular domestic legal system. This issue is echoed in a wide range of EU assistance guidelines, questioning whether States are capable to extract Rule of Law standards and implement them into the domestic legal systems. Answering in positive, L. Zimmermann stated that in terms of domestic context, Rule of Law promotion activities should be performed within a norm-socialization approach, which is “generally seen as an independent variable influencing a dependent norm-diffusion outcome, with domestic factors, hindering this process”¹³. Thus, our conception of the Rule of Law promotion is more substantial since it elaborates the effect of the Rule of Law standards on the reformation process within the particular State with a full complexity of its historical, political, economic and legal traditions. The Rule of Law promotion is not necessarily issue-specific but is ontologically oriented on the particular aspect of human rights protection as well as support for the constitutional democracy inside the State, namely in its relations with the civic society institutions. It characterizes

¹¹ Zimmermann L. *Global Norms with a Local Face. Cambridge Studies in International Relations*. 2017. Vol. 143. P. 8–9.

¹² Kmezić M. *Rule of Law PromotionL Judiciary Reform in the Western Balkans. Southeast European Studies*. Routledge, 2016. P. 21.

¹³ Zimmermann L. *Global Norms with a Local Face. Cambridge Studies in International Relations*. 2017. Vol. 143. P.4.

both the level of stability of international law system and the level of adaptability of national legal systems.

And the final point of this Paragraph raises the issue about the instruments accompanying the Rule of Law promotion. Specifically, among such instruments is the international law-making oriented at the development of certain Rule of Law standards. In this, the diversification of international law-making into formal and informal plays a crucial role¹⁴. In most cases, international institutions in their promotion actions are aimed to build on a set of Rule of Law standards which further formalized in different assistance programs, recommendations, and organizational frameworks, etc. In fact, they can be regarded as the soft-law instruments which have clear advantages before traditional international law sources. In comparison with the latter, the outputs of informal international law-making are more flexible in their implementation, although they do not have officially binding effect. While conventional law-making impose an avalanche of obligations in the area of ratification, informal law-making in itself has been used in the context of legal systems interaction in order to facilitate the follow-up mechanism for the Rule of Law reception. It is against this backdrop that the consultative opinions provided by the international institution on the Rule of Law improvements regarding one legal system can be extracted by another as a substantial basis for the national legislator's activity.

2. Rule of Law Promotion Practices in EU: How Could They Influence and Shape National Law-Making Activity

In EU's official discourse the Rule of Law principle remains common denominator in the building of European community, based on its own civilizational heritage. Thus, a key but also intriguing aspect of the current research is the question of transformation of national legal systems in the context of legal globalization, specifically when affected by the transitional integration processes. Against this background, the EU's actions on the promotion of the Rule of Law standards are certainly the most advanced example of such "legal system alterations".

Today it is widely recognized that the EU Rule of Law does not only have a constituent but also dimensional character in the sense that its concept greatly affects the traditional views of how the Rule of Law is operationalized in the context of relationships between State, its officials and citizens. However, instead of discussing the Rule of Law backsliding processes occurred in EU some time ago, we may centered on the issues predominantly connected with its re-location as the common denominator in European legal systems.

While Ukrainian legal theorists have traditionally conceptualize the Rule of Law in its relations to the Rule by Law principle, European scholarship have

¹⁴ On this point see collaborative research directly dedicated to the specifics of this phenomenon: Pauwelyn J., Wessel R., Wouters J. *Informal International Lawmaking*. OUP Oxford, 2012. P. 252–254.

increasingly focused in its axiological traits, in particular in the context of “social values export” from the level of European community to the certain domestic politico-legal practices.

Against this background, one of the basic functions of the EU on the international scene is to “consolidate and support democracy, the rule of law, human rights and the principles of international law”¹⁵. This treaty provision was nicely developed by some scholars of EU law. Particularly, L. Pech suggested a clear description of the EU promotion actions. Consequently, having analyzed EU treaties, he marked out two dimensions within which the Rule of Law enshrined in Union’s legal documents. The dimensions are as follows:

1) Internal dimension of the Rule of Law, where it reflects itself as a common foundational value of the Union thus being materialized as the EU constitutional principle that provides guidelines for the political framework inside the organization.

2) External dimension of the Rule of Law, where it serves as an ultimate objective for the EU promotion actions. Thus, it is a social value, which has no borders but needs to be improved in order to achieve success in upholding fundamental human rights as well democratic processes of globalization currently occurring in the world¹⁶.

While supporting this idea, T. Konstadinides had rightly pointed out that: “Instead of establishing its own rule of law conception, the EU aspires to uphold and improve the rule of law as it is commonly understood in the Member States and charges them with its promotion”¹⁷. Thereby, second dimension of the Rule of Law perfectly fits to the rubric outlined in this Paragraph as this idea is seen not only as the governing principle of the institutional union, but also as the axiological concept encompassing symbolic and socio-normative resources. Obviously, this means the Rule of Law promotion is primarily focused on the third States (namely EU Associated Members) with an aim to motivate them to modernize their governmental policy through the country assistance strategies.

For this reason, doctrinal analysis of EU promotional activities in the Rule of Law sector necessarily requires the reflections on how this principle is understood in the regional context. European law scholars have developed a range of arguments that examine how the Rule of Law concept is understood within its ontological and axiological traits. In most cases, the literature on the EU Rule of Law agenda setting focuses on the “multilayered” understanding of

¹⁵ Consolidated version of the Treaty on European Union. Official Journal C 326, 26/10/2012 p. 0001-0390. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTXT> (дата звернення: 05.02.2019).

¹⁶ Pech L. Rule of Law as a guiding principle of the European Union’s external action. Centre for the law of EU external relations. T.M.C. Asser Instituut inter-university research centre. Cleer Working Papers 2012/3. P. 10-14.

¹⁷ Konstadinides T. The Rule of Law in the European Union: The Internal Dimension. *Modern Studies in European Law*. Bloomsbury Publishing, 2017. P. 1–2.

this phenomenon. In other words, to conceptualize the Rule of Law requires from the legal thinker to choose a set of axiological variables that will underpin the Rule of Law as the normative construction. For instance, W. Schroeder reflects on the functional approach to the Rule of Law and argues this principle should be understood through the functions it performs in the European socio-political space, namely: a) as an ideal which means the respect for the law; b) as a maxim for the court system operating; c) as a part of the constitutionalization strategy; d) as a part of the Union's legal order. Within more cohesive vision on the Rule of Law parameters, Schroeder highlights the ontological nature of this idea, which lies in its conceptualization both as the value and principle. In short, as a common value, Rule of Law has manifested itself as a meta-legal norm with moral connotations. This means it serves as the inner ethos for the EU decision-makers in their legitimacy-creating activity. Indeed, as the legal principle, it materialized in a legal norm without any specific rights and duties, "but which is of general nature and is in need of being concretized by the legislative, the executive"¹⁸.

Although these assumptions clearly shape overall understanding of the Rule of Law concept, its formalization as the principle should be clarified more accurately. In particular, Rule of Law principle provides necessary for the government authorities directions for the maintaining faithful action programs in the human rights field, or imposes on the municipal legal systems concrete requirements on how certain domestic law sources shall be designed in order to reflect both substantial and formal Rule of Law elements. This is done via the development of such elements at the level of global law-making and their further "textualization" in certain law-making acts. Thus, encompassing new legal standards, the EU law-making act is the materialized legal instrument used by its institutions to promote the Rule of Law principle in whole or in its certain components. But such legal instruments are not sufficient if they are not accompanied by the faithful processes of their "legal assimilation" with the existing specificities of domestic legal environment.

Admittedly, only in 2014 it was time for the EU to usher in a new era in the Rule of Law question. Having established "A new EU Framework to strengthen the Rule of Law", it was expected that EU not only will have instruments to strengthen domestic concepts of the Rule of Law, but also to prevent backsliding processes which may occur within its Member States. Accordingly, this framework set up three interrelated stages which form the whole vision of how EU should protect European fundamental values¹⁹. Although this normative infrastructure was directly addressed to the internal Union's actions towards

¹⁸ Werner Schroeder, *Strengthening the Rule of Law in Europe: From a Common Concept to Mechanisms of Implementation*. Bloomsbury Publishing, 2016. P. 8–9.

¹⁹ A new EU Framework to strengthen the Rule of Law: Communication from the Commission to the European Parliament and the Council (COM/2014/0158). URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52014DC0158> (дата звернення: 10.02.2019).

strengthening the conventional procedure of the Rule of Law application, it has set up “reversing mechanism” for the EU’s external Rule of Law promotion models. Clearly, this makes sense for us to elaborate further this assumption and conceptualize the Rule of Law promotion as the EU’s foreign policy objective, which is primarily focused on its associated non-member States.

Explicit remarks on the doctrinal interpretation of the Rule of Law promotion can also be found in the Union’s external policy-making literature. On the one hand these findings clarify the parameters on which such policies are built, and on the other – explain what legal instruments shall be used in order to make such policies robust²⁰. In both cases, the Rule of Law promotion activities are seen as the part of a larger external dimension of EU politics – the concept of European Neighborhood Policy²¹, where the doctrine of “share values” is a centerpiece of any external policies. As O. Burlyuk points out that within an increasingly multi-polarized international power structure, the internal properties of EU’s legal system do not require slavishly mimicking of the Union’s concept of the Rule of Law. Instead, abovementioned concept should be seen from the perspective of coherence, thus creating the “variation of the Rule of Law conceptions”. Thus, when we are talking about promotional aspect, the “context-sensitive conceptualization of the rule of law” plays an inevitable role²².

In this context, special emphasis should be placed on the geographic split of the Rule of Law promotion policies, which primarily involves the projection of EU values on the specific municipal legal system. In such ways, Rule of Law promotion may pose on targeted municipal system both procedural and material obligations of coordination. As a general rule, within EU foreign policy, actions aimed at the promotion of the Rule of Law standards are based on the principles of voluntariness and optionality. Thus, the key theoretical challenges are to identify the scope and limits of the Rule of Law promotion not only in the EU Member-States, but primarily in Associated Members.

Despite it, though, one should bear in mind that, relations, occurring within the Rule of Law promotion activities are not legally binding for their addressees. Instead, they are colored with the moral component and the expected outcome from such assistance completely depends on the acceptance of the State-

²⁰ Baracani E. EU democratic rule of law promotion. *International Actors, Democratization and the Rule of Law: Anchoring Democracy? UACES Contemporary European Studies*. 2008. P. 53–86, Wichmann N. Rule of Law Promotion in the European Neighborhood Policy: Normative or Strategic Power Europe? Nomos Verlagsgesellschaft. *Studies on the European Union*. 2010. Volume 4. 243 p., etc.

²¹ It is noteworthy that the doctrine of European Neighborhood Policy almost always refers to the development of mechanisms aimed at the promotion of EU values and principles adherence to which will an opportunity for States to lay the foundation for economic and political regional integration. To address this issue, see: Poli S. *European Neighbourhood Policy – Values and Principles*. Routledge, 2016. 196 p. or Ghazaryan N. *The European Neighborhood Policy and the Democratic Values of the EU: A Legal Analysis. Modern Studies in European Law*. Bloomsbury Publishing, 2014. 230 p.

²² Burlyuk O. Variation in EU External Policies as a Virtue: EU Rule of Law Promotion in the Neighborhood. *Journal of Common Market Studies*. 53 (3). P. 510.

recipient a suggested initiative. Moreover, although the responsibility to accept certain promotional strategies is not of legal effect, the necessity to comply with suggested Rule of Law standards is underpinned by the internal aims of the national legal systems aspiring to comply with *acquis*-related conditions for the EU accession.

At the same time, the Rule of Law promotion should not be perceived as something elusive and abstract. Indeed, when it comes to the strengthening strategies, there is a wide range of flexible legal instrument within which new Rule of Law standards become “pragmatized” and could be received by the States-addressees. Nonetheless, the list of addressees cannot be limited, but rather be oriented on particular socio-political situation, or outline general trends of the development of certain Rule of Law standards. Based on the empirical analysis of the various Union’s Rule of Law promotion documents, we are interested in determining whether they can be classified into special clusters. Evidently, they might be sub-divided into following groups:

- EU Rule of Law missions – programs which aimed at providing unified and coherent strategy on renewal of certain violated Rule of Law elements. In most cases, such programs are bilateral and country– or-regional specific. They address concrete socio-political issues arisen within particular geographical context. Outlining general challenges, they reveal common-based complexities in the Rule of Law adherence and tend to correct them²³.

- Rule of Law evaluation documents primarily identify pitfalls which exist in certain type of legal systems. These documents are based on the analytics and contain data from legal statistics. Obviously, they do not suggest any action plans for the improving of situation, but allow for national law-making to outline areas for improvement municipal legislative politics²⁴.

- Rule of Law initiatives – one of the promotional mechanisms which realized predominantly in the regional context. They are long-termed and aimed on the cooperation in the sphere of legal approximation between domestic legal systems and the Union’s legal order. Being framed with specific social, political

²³ It is recognized that via Rule of Law promotion EU project’s its normative power not only to its Member-States, but also to the sensitive and (post)conflict States with an aim to avoid the relegation of the international human rights treaties to the archives of inactive international legal instruments. Such Missions has quite lasting and deep effect on political, economic and legal system of the State, where political conflicts has had seriously threatened public social environment. In this regard, see, for example, EU documents devoted to the Rule of Law mission in Kosovo: for instance, Special Report No 18/2012 “European Union assistance to Kosovo related to the rule of law”. Document 52012SA0018. URL: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:52012SA0018> (дата звернення: 06.02.2019).

²⁴ Thematic Evaluation of the Rule of Law, Judicial Reform and Fight against Corruption and Organised Crime in the Western Balkans. Lot 3. Service Contract Ref. No 2010/256 638. Final Main Report. The European Union’s IPA Program For Western Balkans. 326 p. URL: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/financial_assistance/phare/evaluation/2013_final_main_report_lot_3.pdf (дата звернення: 06.02.2019).

and economic connotations, usually such initiatives linked with the institutional transformation inside the target country²⁵.

- Rule of Law assistance programs on particular Rule of Law component. Usually, they cover issues associated with the reformation of certain socio-politic and civic domain. Among them, particularly, support programs centered on the reformation of judicial sector or public administration service²⁶.

Without a doubt, suggested subdivision does not pretend to be exhaustive and should be extended with a special reference to the EU's external policy towards Rule of Law strengthening. Nevertheless, now, theoretical paradigm to promote the Rule of Law had been built, which allows both legal thinkers and practitioners to design methodologies on multiple policy-making, thus facilitating integration processes across the present-day Europe. The Figure below offers conceptual framework on which patterns the integration of the Rule of Law standards is based on²⁷:

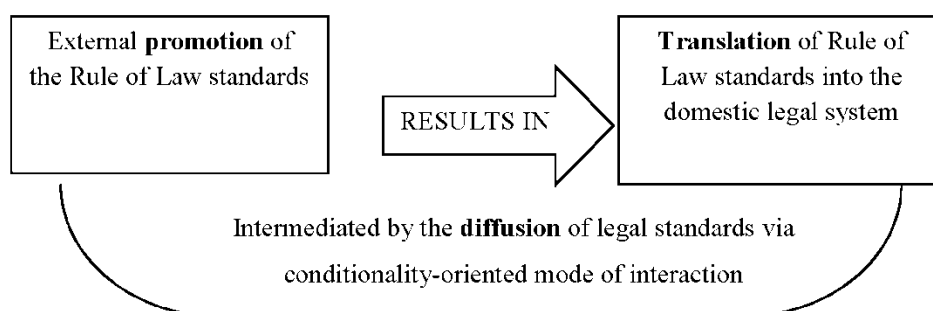


Fig. 1.2. Rule of Law promotion through the prism of integration

CONCLUSIONS

Rule of Law promotional process can be characterized as the system of a dual character. In the context of the increased interaction between international legal order and municipal legal systems, it offers both an operating system and a

²⁵ This way of the Rule of Law promotions considers being more pragmatic as provides for the recipients sources necessary for the development of expert programs specifically oriented on the mapping of the Rule of Law programs based on the collaborative approach. See, for example: Joint Communiqué, 2nd Conference of Ministers of Justice of the EU and Central Asia, Dushanbe 14-15 June 2010; European Commission External Relations, Concept Paper, EU Rule of Law Initiative for Central Asia, presented at EU-Central Asia ministerial Troika in Ashgabat, Brussels 9-10 April 2008 (Concept RLI). URL: https://eeas.europa.eu/delegations/uzbekistan/54354/node/54354_tr (дата звернення: 06.02.2019).

²⁶ Against this background, to this category of the Rule of Law promotion activities one should include practical tools and various reference guides which provide for retroactive analysis of previously conducted municipal reforms and suggest to the officials a mechanism for the application of the practical tools for the enhancing certain Rule of Law aspect (both formal and substantial). In this regard, please, investigate EU professional publications: Support to Justice and the Rule of Law. Review of past experience and guidance for future EU development cooperation programmes. Tools and Methods Series. Reference Document № 15, 2012. 65 p. URL: <https://publications.europa.eu/en/publication-detail/-/publication/4fa41259-0f86-45b0-b199-06319f17078f> (дата звернення: 06.02.2019).

²⁷ Source: Author's elaboration

normative system for the multi-level socio-political cooperation. Conceptualizing Rule of Law promotion as the operative system considers, in a broad sense, that it actualizes institutional aspect for the global cooperation in the legal standards' development. It outlines the parameters of such interaction and provides the procedures (implementation, reception, and harmonization) essential for approximation of relevant legal practices. In contrast, as a normative system, Rule of Law promotion provides with regulatory scheme by identifying all values and goals needed to be achieved within such-like interaction. In their unity, such goals and social values are materialized in a legal act via international law-making. As a result, it provides a framework for the international legal order to operate effectively in the approximation of national legal systems with each other, thus establishing a normative consensus on international behavior.

The Rule of Law promotion is what the legal scholars like to write about "form of tandem", within which international cooperation has not purely political motives, but also reveals itself as of legally-communicative nature. In particular, the latter is connected with the ability of international law actors to find a necessary consensus in programming the global reformation politics. In fact, by its very nature, the activities on the Rule of Law promotion activities explicitly reflect not only the diffusion of legal norms, but primarily global diffusion of western rationality.

This makes it possible to claim that the Rule of Law promotion should be seen not only from the perspective of chaotic attempts towards enriching national versions of this principle by the international institutions. First and foremost, it should be addressed in terms of conceptualization the Rule of Law as a continuum which comprises a set of interrelated legal standards and requirements to the municipal legal systems. What is more, the concept of the Rule of Law continuum can be useful in the international law-making activities as it presupposes textualization of its core legal standards both in traditional international law sources as well as in the informal soft law instruments.

Nevertheless, Rule of Law promotion activities by their selves may be successful in case they resulted not in merely legal outcomes, but also a social. There are still quite limited effects in the EU actions targeted at strengthening of the Rule of Law cooperation and verification mechanisms between the organization itself and its Associate Members. Thus, Ukrainian scholarship should deal with the effect of EU policies not only in the sector of relationships "Ukraine-European Union", but also place great attention to the successful practices in the Rule of Law perception by countries which also had challenges pretty close with the challenges encountered with regard to Ukrainian post-Soviet heritage. Yet in relation to the central issue of the EU-Ukraine integration program, some of the theoretical approaches should be centered not only around the approximation of commercial or intellectual property

legislation, but also on issues related with the weak Rule of Law mechanism inside the political and legal environment. Nevertheless, both foreign and domestic scholarship does not pay enough attention to the pragmatic dimension of the EU's role as a "value exporter".

In line with those remarks, the paper aimed to accept a more pragmatic approach to the problems of the Rule of Law functioning. Thus, a concept of the Rule of Law promotion, as a one of the way to facilitate norm-socialization processes, possesses following characteristic features²⁸:

- 1) is conducted mainly in countries which refer to the so-called "developing", "post-conflict", "transitional";
- 2) is a type of coordination donor-policy;
- 3) reveals both international and transnational dimensions of the governance concept;
- 4) multileveled activity aimed to influence Rule of Law national practices;
- 5) may be accompanied by technical assistance in legal norm engineering, direct support for governmental and non-governmental institutions, etc.;
- 6) long-stand development policy of complex legal system restructuring;
- 7) provides national governments with the overarching public-policy orientations;
- 8) the reception of the results considered to be effective if there is a flexible national mechanism of implementation of the international Rule of Law standards.

SUMMARY

It is widely recognized that a quite sensitive geopolitical context requires from regional international institutions to create the environment where all domestic legal systems are integrated within common vision about basic social values. Obviously, from the axiological point of view, the idea of the Rule of Law is among the principles designed to facilitate continental identity-building. Against this backdrop, current part of joint monograph is devoted to the dynamic aspect of the Rule of Law, namely – its promotion. In my investigation, I rely on the following thesis: domestic Rule of Law doctrines can no longer be in isolation from the transnational legal order, since the extensive processes of globalization and regional integration exercise considerable influence on national legal systems. Within this framework, the author goes over the Western discussion concerning the definition of the Rule of Law promotion. Consequently, comparative analysis of the presented approaches illustrates the

²⁸ It is fair to say that the presented list of the parameters inherent for the Rule of Law promotion activity, is not intended to be exhaustive. In fact, such peculiarities can be developed with different frameworks and contexts.

ways in which foreign legal thinkers construct the meanings of the investigated phenomenon. In contrast to the first Paragraph, the second section of the paper is more empirical and reflects the Rule of Law promotion using the example of EU foreign policy. Namely, it is argued that, although the Rule of Law doctrine has a quite context-sensitive nature, the EU continues to be a major “value exporter” that substantially influences the municipal legal systems of third countries. In this regard, EU’s documents on the Rule of Law promotion were classified into the special clusters. Offered taxonomy, I hope, will ensure a necessary methodological basis for future discussions on the EU’s law-making acts in the Rule of Law field. The author concludes with the discussion of the theoretical implications of the foregoing analysis that shall be made also within Ukrainian legal science. In addition, major theoretical characteristics of the Rule of Law promotion are outlined.

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