

DEMOCRACY, HUMAN RIGHTS AND THE RULE OF LAW AS EUROPEAN VALUES

Dobrobob L. M.

INTRODUCTION

In 1991, after gaining independence, the Ukrainian state faced the choice of the vector of its development involving at least two paths. First, it is a continuation of the soviet statehood traditions, based on such values as: the priority of the state's interests over the person's interests; strict methods of regulating social relations; determination of society's interests not by the society itself, but purely by public authorities (a human being as a "screw" of the social system). This path would mean the preservation of the authoritarian regime and restriction of human freedom. It would lead to the state power and its bureaucracy strengthening, as well as to a decrease in the standard of living of the population.

Secondly, it is a rejection of the soviet statehood traditions and attachment to the values of the Western legal culture that were reflected in the founding documents of a number of international organizations, including the Commonwealth of Nations at that time.

These values include: the priority of human rights over the state's interests; democratic methods of regulating social relations; determination of society's interests by society itself through its representative institutions (a person as a subject of law).

This path would mean building of a democratic state that would guarantee human rights and freedom of speech. It would lead to civil society strengthening and an increase in the standard of population's living.

These two paths were the subject of a significant choice, as they determined the future of Ukraine; they stipulated the main principles of the political system, economic development and social and cultural values of the country. Choosing one of these paths conditioned the further course of Ukraine's history and its formation as an independent state.

In 1991, Ukraine chose the second path. This choice was stipulated by a number of factors, namely:

- the desire of the Ukrainian people for freedom and democratization;
- the influence of democratic ideas that spread in Europe and the world;
- the support of Western states that sought to expand their sphere of influence.

However, the choice of a democratic path was not simple and unequivocal. It was accompanied by a number of difficulties, in particular: lack of experience in democratic construction; economic crisis; and external pressure from Russia.

Despite these challenges, Ukraine continues to move along the path of democracy and human rights. This path is arduous and thorny, but it is the only possible way for Ukraine if it strives to build a happy and successful future.

To date, Ukraine has achieved certain successes in building a democratic state. In particular, democratic elections were held, the Constitution guaranteeing human rights was adopted, and democratic institutions were formed. However, much still should be done in order for Ukraine to become a full-fledged democratic state. At the same time, in our opinion, it is important to understand the essence and content of the values that underlie the Western legal culture indicating the relevance of researching the problems of axiological aspects of European integration.

1. Genuine democracy as an European value

Democracy is one of the key values in modern European culture. Democracy is a system of government based on people's power, where the people have the right to freely choose their representatives and influence on decision-making. It is based on such values as: the rule of law, equality of all before the law, freedom of speech, freedom of assembly, freedom of association and political pluralism. These values are the basis of European identity and underpin the European Union.

The European Union seeks to promote democracy and human rights throughout the world. Democracy is not a perfect system, but it is the best system of government among the known systems of government. It guarantees people the opportunity to participate in political life and influence on their future. Democracy also promotes economic development and social justice.

The European Union provides assistance to Ukraine in its aspiration for democracy. Ukraine has great potential for the development of democracy, but it faces many challenges. It is crucial that the Ukrainian people continue to fight for democracy and human rights. Therefore, it is advisable to consider the issue of democracy as a value in more detail.

Usually, democracy is perceived as a political regime where power belongs to the people, and all citizens have the right to participate in decision-making. It is one of the most common forms of governance in the modern world, but it is also a subject of debate regarding its advantages and disadvantages.

Regarding the advantages of democracy, in our opinion, the following should be singled out. First of all, it is under a democratic regime that the rights and freedoms of citizens, such as freedom of speech, freedom of assembly, and the right to equal access to education, as well as the right to free personal development, are possible. Democratic systems contribute to the development of civil society, in which citizens actively participate in solving important issues of public life and control the public authorities' activities.

In addition, democracy promotes stability and peaceful resolution of conflicts. By virtue of the democratic government control mechanisms, conflict situations can be resolved through dialogue and compromises contributing to strengthening social unity and reducing the possibility of violence.

However, it is also worth emphasizing that democracy is not an ideal state and law regime; therefore, it has its own shortcomings. One of the most substantial arguments against democracy is its potential to turn into a "tyranny of the majority," where the rights of minorities are effectively disregarded by the

majority. This is especially relevant in the case of the absence of effective mechanisms for the legal protection of minorities.

In addition, democracy can lead to protracted and inefficient decision-making processes. In particular, the necessity to reach a consensus can delay reforms and rapid response to crisis situations. Thus, for the Ukrainian society, the given situation is understandable because of the armed aggression launched by the neighboring state. And in the conditions of martial law, human rights, including political rights, are largely restricted. And this is right, because excessive delay in making decisions vital to society can have significant negative consequences for the society itself.

In this regard, we recall that according to the provisions of the Constitution of Ukraine, “the Constitution of Ukraine cannot be changed in the conditions of a state of war or emergency”¹.

According to Art. 19 of the Law on the Legal Regime of Martial Law “During martial law, the following are prohibited: elections to the President of Ukraine, as well as elections to the Verkhovna Rada of Ukraine, the Verkhovna Rada of the Autonomous Republic of Crimea, and local self-government authorities; conducting all-Ukrainian and local referenda; conducting strikes, mass meetings and actions.”²

At the same time, we cannot but recall the words of the national scientist M. Kornienko that “extraordinary conditions of society’s functioning are a factor in granting public authorities with extraordinary powers to limit human rights; however, it is not a condition for refusing to ensure a number of such rights. Herewith, no goal that the public authority seeks to achieve allows arbitrarily limiting human rights”³.

Although, when considering the issue of democracy, it is also worth emphasizing that there are different types of democracy and each of them has its own advantages and disadvantages.

Let’s also remember that the ancient Greek philosophers spoke quite negatively about democracy, calling it the worst form of government. Quite rightly, V. Nikolenko notes that “Aristotle saw certain threats in democracy that prevent the interests of the majority from actually being realized.”⁴ Plato also negatively perceived democracy, characterizing this form of government as “madness of the majority.”

In his description of democracy as “the tyranny of the majority”, Alexis de Tocqueville pointed to the risk of transforming a democratic regime into a form

¹ Конституція України від 28 червня 1996 року. *Відомості Верховної Ради України*. 1996. № 30. Ст. 141.

² Про правовий режим воєнного стану. Закон України від 12 травня 2015 року. *Відомості Верховної Ради*. 2015. № 28. Ст. 250.

³ Корнієнко М.В. Концепт забезпечення людських прав у надзвичайних умовах. *Південноукраїнський правничий часопис*. 2022. № 3. С. 6.

⁴ Ніколенко В.В. Афіньська держава та демократія у науковій спадщині Аристотеля. *Філософія та політологія в контексті сучасної культури*. 2020. Т.12. Вип. 1 (25). С. 87–94.

of government in which the majority can oppress the minority that can threaten the rights and liberties of citizens⁵.

However, it is important to distinguish between different types of democracy, as some of them may be more acceptable and provide more effective protection of human rights and freedoms. For example, genuine democracy, based on the principles of the rule of law, the distribution of power and the protection of minority rights, can be a more positive phenomenon. This type of democracy promotes equal rights and opportunities for all citizens, regardless of their number or status.

“The rule of law is one of the elements of the triad of values on which Western civilization was formed: it is genuine democracy, human rights, and the rule of law”,⁶ emphasizes domestic lawyer S. Holovaty.

Genuine democracy is a concept that goes beyond the formal features of elections and representative government. This is a system of governance that is truly based on the will of the people, where all citizens have an equal right to vote in decision-making and can fully participate in public life.

Consequential characteristics of genuine democracy include the following:

- Popular sovereignty: The ultimate source of power lies with the people exercising this power through elections and other forms of participation.

- Equality: All citizens are equal before the law and have the same rights and opportunities, regardless of their race, gender, religion, social status, or any other factor.

- Participation: Citizens have the opportunity to participate in decision-making at all levels of government, from local to national.

- Transparency: Government is open and transparent, and citizens have access to information about how it operates.

- Accountability: Government officials are held accountable for their actions to the people they serve.

- Rule of law: law is supreme and everyone is subject to it, including those in power.

- Human rights: The fundamental rights and freedoms of all citizens are respected and protected.

Let's note that the rule of law and human rights will be covered below, so we do not focus on them in this part of the study. However, let's emphasize that democracy, human rights, and the rule of law are interconnected. One of them cannot exist by itself. They are either present at the same time, or they are absent.

Genuine democracy is not a static concept, but rather an ongoing process striving to achieve these ideals. It requires the active participation of all citizens to build and maintain a truly democratic society.

The concept of genuine democracy and its fundamental ideas are not associated with a specific author or theorist. They have evolved throughout

⁵ Токвіль Алексіс де. Про демократію в Америці / Пер. з франц. Григорія Філіпчука та Михайла Москаленка. Київ: Видавничий дім «Всесвіт», 1999. 590 с.

⁶ Головатий С. Декомунізувати право. URL <https://zbruc.eu/node/73468>

history based on the experiences of different countries and the philosophical theories of various thinkers. However, plenty of ideas related to genuine democracy were formulated in ancient times by ancient philosophers in Greece.

In the XVII–XX centuries, democratic ideas were actively developed and elaborated upon by major political thinkers such as John Stuart Mill, John Locke, Jean-Jacques Rousseau, and others. These philosophers and political theorists made significant contributions to understanding the essence of democracy, human rights, and the role of authority in society. Their ideas became the basis for many democratic movements and constitutions around the world.

It is worth noting that in 2013, the Conference of International Non-Governmental Organisations (INGOs) of the Council of Europe adopted the Declaration on Genuine Democracy⁷.

The genuine democracy's concept implementation entails achieving the following:

1. *Decentralization of power*: Giving more power to local communities and individuals to make decisions that affect their lives.

2. *Direct democracy*: Allowing citizens to vote directly on important issues, such as laws and budgets.

3. *Participatory budgeting*: Allowing citizens to have a say in how government spending is allocated.

4. *Freedom of information*: Ensuring that citizens have access to information about government activities.

5. *Independent media*: Protecting the freedom of the press and ensuring that there is a diversity of voices in the media.

6. *Strong civil society*: Supporting the development of a strong civil society, where citizens can organize and advocate for their interests.

Genuine democracy is not easy to achieve, but it is worth striving for. It is the best way to ensure that all citizens have a voice in their government and that their rights are protected.

Thus, understanding the differences between various types of democracy and the social consequences of implementing a particular type of democracy helps us conclude that not all types of democracy can be equally effective or positive. Ensuring human rights and freedoms, protecting minority rights, and responsibility of the authority before the people are the key principles that should underlie any democratic regime. Therefore, it is important to pay attention to the specific features and mechanisms of democratic systems to ensure maximum benefit for society.

Despite some drawbacks, democracy remains the most popular and progressive political regime in most countries worldwide. Its advantages outweigh the disadvantages, and it is precisely because of its openness, freedom, and participation that authority becomes closer and more legitimate to the

⁷ The Conference of International Non-Governmental Organisations (INGOs) of the Council of Europe. Declaration on genuine democracy adopted on 24 January 2013. URL <https://rm.coe.int/16802f042c>

people. Therefore, despite limitations and challenges, democracy remains the best option for modern society seeking freedom, justice, and progress.

Let's consider **specific features of a democratic regime** more deeply (with a separate focus on the rule of law and human rights).

First, let's mention free and fair elections. Free and fair elections are one of the most crucial hallmarks of democracy. It means that all citizens have the right to elect their representatives in free and fair elections. Ye. Morshynin uses the term "democratic elections" noting that "democratic elections are elections that have not been falsified, which have been conducted in compliance with the requirement for the secrecy of the vote or through other means allowing the exercise of freedom in the electoral process"⁸. In general, the concepts of democratic elections and free elections can be equated (within the scope of this study).

Free and fair elections provide for the following features. 1) Universal suffrage (All citizens who have reached a certain age have the right to vote, regardless of their race, gender, religion, social status, or any other factor); 2) Secret ballot (Citizens have the right to vote in secret to ensure that their choice is not influenced or coerced); 3) Freedom of speech and assembly (Citizens have the right to freely express their political views and gather to discuss political issues); 4) Equal conditions for all candidates (All candidates have the right to access the media and to campaign); 5) Independent electoral commission (The elections must be conducted by an independent electoral commission that guarantees the honesty and transparency of the electoral process).

We will also point out the democratic practices of the European Union. The European Union takes a number of measures to ensure free and fair elections in its member states. In our opinion, the following practices, formed within this international entity, confirm this thesis. First, let's note Election observation (The EU sends election observers to member states to monitor the conduct of elections and ensure their fairness). Secondly, let's point out to Political party funding (The EU has rules on political party funding to ensure that no party has an unfair advantage). Thirdly, let's mention Combating disinformation (The EU is taking steps to combat disinformation and fake news that could influence the outcome of elections).

It is important to note that free and fair elections are not just about election day. It is also about ensuring that all citizens have the opportunity to participate in political life and have a voice in decision-making. The words of a domestic scientist about the fact that "violations of rights during elections can be avoided if citizens are more conscious and actively participate in the electoral process" are quite relevant in this aspect. The exercise of one's right to vote depends solely on each individual, so we all must defend the fundamental constitutional right to free expression of will"⁹.

⁸ Моршинін Є. Практика Європейського суду з прав людини у вирішенні виборчих спорів. *Law. State. Technology*. 2021. № 4. С. 69.

⁹ Сидорчук Ю. Аналіз механізмів захисту права на вільні вибори. *Підприємництво, господарство і право*. 2019. № 12. С. 375.

Let's emphasize that covering the issue of free and fair election will be incomplete without mentioning specific menaces. We consider that the following three threats deserve special attention concerning free elections, namely:

- *Government interference*: Governments may try to influence the outcome of elections using methods such as censorship, intimidation, and vote rigging.
- *The influence of money*: Wealthy individuals and groups may try to buy influence in elections by making large donations to political parties or candidates.
- *Disinformation*: Disinformation and fake news can be spread online and on social media to mislead voters.

In this context it should be mentioned that it is important for citizens to be vigilant and protect their democracy. They can do this by voting in elections, monitoring the activities of their representatives, and combating disinformation. In this, in our opinion, the ties of a democratic regime and a civil society are manifested.

Secondly, let us point out such a characteristic of democracy (which defines it as a value) as diversity and dialogue. Democracy is based on the idea of open exchange of ideas and opinions among different members of society. Diversity of views, beliefs, ethnic groups, cultural traditions, etc., is considered a strength promoting the emergence of innovative solutions and the improvement of political processes.

Democracy thrives on the richness of ideas, thoughts, and experiences brought by people of diverse ethnic backgrounds, cultural traditions, religious beliefs, political convictions, social statuses, etc. This diversity enables: expansion of the spectrum of ideas and solutions (different perspectives and approaches to problems stimulate creativity and the generation of innovative solutions that are impossible to conceive in a homogeneous environment); enhancement of decision-making quality: (diversity of opinions allows for a more thorough exploration of all aspects of an issue, consideration of various interests and needs, and consequently, the adoption of more balanced and fair decisions); strengthening unity and mutual understanding (open dialogue among different groups helps overcome stereotypes, prejudices, and disparities; mutual respect and understanding of different cultures and traditions become the foundation for a strong and cohesive society).

Open exchange of thoughts and ideas is vital for democracy. It enables: freely express one's opinion (every member of society has the right to freely express their opinion on any issues concerning social life. This right guarantees freedom of speech and pluralism of opinions); participate in decision-making (citizens have the right to participate in the political process, discuss, and influence on the adoption of laws and other important decisions affecting their lives); hold government accountable to the people: (open dialogue and a free press allow the public to monitor the government's activities, ensuring its accountability and responsibility).

In this context, it is important to note that Ukraine, as a multiethnic state with many cultures, has significant potential for democracy development by virtue of its diversity. It is crucial to make conditions for open dialogue and constructive interaction among various ethnic, religious, political, and social groups. This will allow Ukraine to:

– build up strong and consolidated society because unity of people on the principles of mutual respect and understanding of diversity of cultures and – traditions is the basis for the discrepancy overcome.

make efficient system of management, the use of diversity of ideas and experiences of different people for making decisions meeting the needs and interests of all citizens is the factor of this.

– become an example of a democratic regime for other states. Thus, Ukraine could demonstrate the whole world how diversity and dialogue might be the basis for the prosperous democracy.

At the same time, the democracy development in Ukraine faces a number of challenges, among which, in our opinion, the following can be identified. First and foremost, we will point out historical factors. Thus, soviet heritage and the policy of russification have shaped divisions among different ethnic and linguistic groups. Additionally, the military aggression from Russia has exacerbated these divisions. Russian propaganda and disinformation fuel hostility and hatred between different population groups. However, on the other hand, russian military aggression has also become a unifying factor for the Ukrainian society.

Secondly, it is worth noting the underdeveloped political culture. Inexperience in democratic processes and a low level of political culture (largely because of the historical factors) could complicate constructive dialogue.

Diversity and dialogue as characteristics of democracy also include tolerance. Tolerance plays a key role in modern society in maintaining peace and harmony among people of different beliefs and cultures. It is not only the acceptance of diversity but also the ability to respect other opinions and beliefs, even if they differ from one's own. Tolerance is based on the understanding that every person has the right to their own beliefs and way of life, and there is no the only "correct" or "incorrect" path. Therefore, freedom of expression is of particular importance in a democratic society. "Freedom of expression as well as the right to privacy is the foundation of a democratic society. These rights deserve equal respect. Acceptable criticism is a crucial component of democracy. Acceptable criticism is criticism that is not intended to demean a person and is based on factual grounds"¹⁰.

It is important to note that tolerance does not mean agreement with all views or actions. It is an attitude that promotes peaceful coexistence even in cases of deep disagreement. Tolerance requires us to be open to dialogue and willing to seek compromises while maintaining respect for others.

By virtue of tolerance, society becomes more open and contributes to the development of cultural exchange, innovation, and mutual understanding. It fosters an atmosphere of trust and cooperation, which is necessary for the stable functioning of the modern world. Thus, tolerance is not only an important component of democracy but is also a fundamental value helping preserve peace and harmony in diverse societies.

¹⁰ Alforova, T. M., Koba, M. M., Lehka., O. V., Kuchuk, A. M. Right to Freedom of Expression v. Reputation Protection (Based on ECtHR Practice Materials). *The Age of Human Rights Journal*. 2022. № 18. P. 312.

It is relevant to emphasize that this is why considerable attention is paid to fostering tolerance in the European states. Tolerance is a value on which education in democratic states is based. “Tolerance is a necessary component of the life of a modern European in a multicultural, multi-confessional, and multi-ethnic society. That is why educational institutions seek to instill tolerance towards otherness and overcome stereotypical xenophobic attitudes in the European youth”¹¹.

It can be argued that democracy is impossible without respect for the diversity of opinions, beliefs, cultures, and traditions. Tolerance enables people with different views to peacefully coexist and cooperate, and these are integral components of a democratic society. In a world where ethnic, religious, and political diversity is increasing, tolerance becomes a key factor in preserving peace and harmony. It allows people to find common ground, resolve conflicts peacefully, and build a fair society for all. Education in democratic states is based on the principles of tolerance and respect for human dignity.

2. Human rights as a democratic society’s value

As we mentioned above, democracy is closely linked to human rights. It is difficult to dispute the fact that human rights are properly ensured in a democratic society, whereas in non-democratic societies, human rights are not realized and are often denied to a significant extent.

In democratic societies (where democratic principles are implemented in practice), there is usually a high level of human rights protection and promotion. It is by means of democratic mechanisms people can influence on political processes allowing them to defend their rights and freedoms.

In contrast, non-democratic regimes often witness frequent violations and restrictions of human rights. Authoritarian governments often use their power to suppress opposition and limit the rights and fundamental freedoms of citizens. The absence of checks and balances mechanisms in such systems can lead to serious human rights violations without the possibility of resolving these issues by means of democratic processes.

In this regard, we can mention the thesis of a domestic researcher, where the connection between the state regime and the economic development of the country, as well as the state of human rights is covered. The paper demonstrates that the main determinant that significantly influences the administrative and legal regulation of the economy in a given country is its state and legal regime (the implementation of the experience of the individual institutions functioning, as well as means of administrative and legal regulation of the economy will be fruitless if the manner of exercising public authority is not taken into account)¹².

¹¹ Біденко С.В. Толерантність та демократія як опорні пріоритети в системі моральних цінностей європейського освітнього простору. *Гуманітарні студії: педагогіка, психологія, філософія*. 2021. Т. 12. № 1. С. 66.

¹² Іванченко В.В. Адміністративно-правове регулювання економіки: порівняльно-правовий аспект: дис. ...канд. юрид. наук: 12.00.07. Одеса, 2023. С. 18.

It is important to note that democracy not only contributes to human rights protection but also stimulates their active use and development. In a democratic society, citizens have the opportunity to express their opinions, organize peaceful protests, and influence on the enactment of laws and political decisions. This promotes awareness of the importance and significance of human rights, as well as strengthens democratic institutions and the culture of a law-based state.

Therefore, it can be stated that democracy and human rights complement each other, creating the foundation for the development of a free and just society. While democracy ensures mechanisms for the protection of human rights, it is through the commitment to these principles that the functioning of a democratic system is possible, where every citizen has the opportunity to live with dignity and freely exercise their rights and freedoms.

It is worth emphasizing that this issue is quite important for the Ukrainian legal science, considering the aspiration to become a member of the European Union and the signing of numerous treaties by Ukraine in the field of human rights.

Over the past years, Ukraine has been actively developing its legal system, implementing the European standards and international obligations on human rights. This is reflected in the adoption of new laws, reforms of law enforcement agencies and the judiciary, as well as in the improvement of legal education and research in the field of human rights.

Signing of international treaties by Ukraine, including the Convention for the Protection of Human Rights and Fundamental Freedoms, imposes obligations on the international community to protect human rights at the national level. This contributes to strengthening the law-based state and guarantees a higher level of protection of rights and freedoms for Ukrainian citizens.

Thus, the understanding and implementation of human rights are of great importance for the further development of Ukraine as a democratic and law-abiding state that adheres to international standards.

However, unfortunately, even today, some Ukrainian legal scholars consider human rights through the prism formed within the soviet jurisprudence. “Such understanding of human rights places them in dependence on the state – it is the state that determines what a human right is and what is not, enshrining this provision in law. The right to freedom of speech is not provided by law; accordingly, a person must remain silent and speak only when asked by public authorities”¹³.

Overall, it can be agreed with some domestic scholars who point out that “considering that in the Constitution of Ukraine, as well as in the constitutions of many other states, the protection of human rights is defined as the duty of the state, the problem of taking into account changes that have occurred in the theory of human rights at the end of the XX-th – beginning of the XXI-st century and which significantly affect their understanding, becomes especially relevant”¹⁴.

¹³ Кучук А.М. Основи теорії правового поліцентризму : монограф. Дніпро : Дніпроп. держ. ун-т внутр. справ; Ліра ЛТД, 2017. С. 248.

¹⁴ Кучук А.М., Пекарчук А.В. Теорія людських прав: концептуальні зміни на межі століть. *Юридичний науковий електронний журнал*. 2020. № 8. С. 22.

The most challenging aspect for the Ukrainian jurisprudence to grasp is the vertical dimension of human rights. “The vertical dimension of human rights means that the violator (potential violator of human rights) is the state itself, not other people. Since it is the state that must ensure human rights, then it is the state that is responsible for the human rights violations”¹⁵.

The vertical dimension of human rights focuses upon the relations between a state and a person. This concept emphasizes the duty of the state to respect, protect and implement human rights.

Respect for human rights means that the state should not unjustifiably restrict the rights of its citizens. Human rights protection entails that the state must take measures to protect its citizens from violations of human rights committed by other people. Ensuring human rights obliges the state to take measures necessary for individuals to enjoy their rights.

The state is responsible for creating conditions in which all people, without any discrimination, have the opportunity to enjoy their rights, which includes establishing a fair and effective justice system, providing access to education, healthcare, and other services.

The vertical dimension of human rights is an important part of the overall concept of human rights. It guarantees that the state is responsible for protecting the rights of its citizens and for making conditions in which they can enjoy their rights.

Therefore, the human rights vertical dimension means that the state is not only refraining from directly violating human rights but also actively working to protect and ensure them. This approach reflects the principle of state responsibility to its citizens for ensuring their rights and freedoms.

Based on the vertical dimension approach envisages that the state bears responsibility for any actions of its institutions and officials violating human rights. This means that citizens have the right to appeal to state authorities, courts, and international organizations in case of their rights’ infringement. The state must ensure effective mechanisms for the protection of rights and restitution for their violation.

This approach also entails that the state must establish efficient mechanisms to control its institutions’ and officials’ activities to prevent human rights violations. This may include supervision, auditing, and internal investigations. In case of violations, the state must take immediate measures to remedy them and prevent similar situations in the future.

The vertical dimension of human rights also suggests that the individual is the bearer of rights, and duties lie solely with the state. This means that human rights are inalienable and inviolable, and they cannot be taken away or restricted by the state without substantial reason and due process. At the same time, individuals do not owe duties to the state regarding their rights.

This concept emphasizes the importance of the separation of powers between the individual, who has rights, and the state, which has duties towards its

¹⁵ Кучук А.М. Право в умовах постмодерну: правовий дискурс : монографія. Одеса : Видавництво «Юридика», 2023. С. 40.

citizens. The state is obligated to guarantee and protect human rights by ensuring their full and effective implementation at various levels of governance. It is pertinent to emphasize that it is this approach that is reflected in Article 3 of the Constitution of Ukraine: “Human rights and freedoms and their guarantees determine the essence and direction of the state’s activities. The state is responsible to the individual for its activities. The affirmation and ensuring of human rights and freedoms are the main duty of the state.”¹⁶

Such an approach underscores the principles of democracy and a law-based state, where power derives from the people and is intended to protect citizens’ rights and interests. It also emphasizes that the state must be accountable to its citizens for providing them with legal guarantees and protecting their rights and freedoms.

International agencies on human rights play an important role in the vertical dimension of human rights. These agencies, namely the UN Human Rights Council, can monitor the human rights situation in countries around the world and take measures in case of their violations.

Given the above, the words of the domestic scholar about that that “the theory of human rights, the basic provisions of which are implemented by the Ukrainian society into the national legal system, was shaped in the second part of the XX century are entirely correct. According to its content, the nature of human rights is imperative for the modern state (this is manifested in the vertical aspect of human rights): human rights are requirements for public authorities (emphasis should be placed on public authorities, not other private individuals) that have the duty to ensure them; herewith, human rights define the limits of the state’s activity.”¹⁷

Let’s emphasize the verticality of human rights, taking into account the fact that while covering the issue of human rights in the national legislation the focus is on the duties of a person. But human rights are not related to the duties of a person. There is no duty that corresponds with human rights. The only state’s duty corresponds to human rights.¹⁸

We also emphasize that human rights and the free development of personality are inseparably linked. Human rights guarantee basic freedoms and opportunities for self-realization of each individual. This means that every person has the right to life, freedom of choice, freedom of speech, religion, as well as the right to education and health. These rights make conditions for individuals to develop, improve their abilities, and achieve their potential. The right to education and access to information are crucial for human development.

¹⁶ Конституція України від 28 червня 1996 року. *Відомості Верховної Ради України*. 1996. № 30.

¹⁷ Кузніченко С.О. Концепт обмеження прав людини в умовах воєнного стану. *Південноукраїнський правничий часопис*. 2022. № 1-2. С. 32.

¹⁸ Кучук А.М., Завгородня Ю.С. Права дитини як критерій державно-правового режиму. *Науковий вісник публічного та приватного права*. 2022. Вип. 1. С. 4-5; Кучук А.М., Завгородня Ю.С. Особливості прав дитини: загально-правовий аспект. *Науковий вісник публічного та приватного права*. 2022. Вип. 4. С. 4.

Education provides people with knowledge and skills necessary for successful life and access to information makes them aware and active participants in society¹⁹.

Human rights, such as the right to life, freedom, and personal integrity, make a safe environment in which people can develop freely²⁰. Without these fundamental rights, people are constantly in fear and unable to focus on self-improvement.

Rights to work, social protection, health care, housing, and cultural life ensure people's basic needs and enable them to focus on self-development. Without these rights, people constantly struggle for survival, which does not allow them to unleash their full potential.

Human well-being is also an important aspect related to human rights. The right to work, decent working conditions, and adequate living standards are all components of well-being that can be ensured through the observance of human rights. Security and social protection are necessary for every individual to feel protected and to have the opportunity to achieve their goals.

Free development of individuals also entails access to culture, arts, and science. The right to participate in cultural life and scientific research expands individuals' horizons, fostering personal growth and cultural richness. People have the right to their identity and cultural heritage, as well as access to information and knowledge.

Rights to freedom of thought, speech, religion, and peaceful assembly empower individuals to participate in social life, influence decision-making, and shape their futures. This makes people active and responsible members of society, leading to comprehensive personal development.

In summary, human rights, well-being, and free development are interconnected concepts that contribute to shaping a society where each person can live with dignity, feel protected, and have the opportunity to realize their potential. Human rights are fundamental freedoms that guarantee people the ability to live with dignity, freely, and without fear. They are the foundation for comprehensive personal development, self-realization, and the attainment of full potential.

Respect for human rights is not only a prerequisite for the free development of individuals but also leads to their well-being. When people have the opportunity to develop freely, they contribute to the society development that in its turn leads to overall prosperity. This creates a cycle of positive change where respect for human rights results into development, and development, in its turn, causes to greater affirmation of human rights.

¹⁹ Dobroboh L, Zavorodnii V., Orlova O. Legal education in Ukraine in the context of integration to the European educational space. *Asia Life Sciences*. 2019. № 2. P. 421–432.

²⁰ Dobroboh L. Legal Relations Peculiarities as a Subject of Legal Regulation in the Complex Law Branch. *Scientific Bulletin of the Dnipropetrovsk State University of Internal Affairs*. 2020. Special Issue № 1. P. 15–21.

Another aspect we'd like to discuss is the differences between the American and the European concepts of human rights.

1. *Sources and history*: The American theory of human rights is based on natural rights proclaimed in the Declaration of Independence (1776) and the U.S. Constitution (1787). It emphasizes individual freedoms such as freedom of speech, religion, and the right to bear arms. The European theory of human rights has evolved from various historical traditions, including Roman law, Christian ethics, and social movements. It pays more attention (unlike the American) to social and economic rights as well as collective rights. The European concept of human rights is mainly based on the European Convention on Human Rights and its judicial system including the European Court of Human Rights²¹.

2. *Role of the state*: American: the state plays a limited role in protecting human rights, emphasizing negative rights (freedom from interference). European: the state bears more active responsibility for ensuring positive rights (access to resources and opportunities)²².

3. *Judicial review*: American: courts play a key role in protecting human rights through interpreting the constitution and laws. European: there are specialized human rights agencies, such as the European Court of Human Rights, which have the authority to influence decisions that violate human rights.

4. *Economic and social rights*: American: less emphasis on economic and social rights often regarded as issues of personal responsibility rather than of the state's policy. This is why the United States of America have not ratified the International Covenant on Economic, Social and Cultural Rights of 1966. European: stronger tradition of protecting economic and social rights, such as the right to work, education, and social security.

5. *Cultural and religious values*: American: greater influence of Protestantism and individualism. European: greater influence of Catholicism and social democracy.

6. *Correlation with international law*: American: more skeptical attitude towards international human rights treaties, which are perceived as encroachments on national sovereignty. European: more active support for international human rights treaties and institutions.

It is important to note that these are just general trends, and there are various approaches within each concept.

²¹ Завгородня Ю.С. Міжнародно-правові стандарти забезпечення прав дитини та їх вплив на вітчизняне право. Український правовий вимір: пошук відповідей на глобальні міжнародні виклики: мат-ли Міжнар. наук.-практ. конф. (м. Дніпро, 27 травня 2022 року). Дніпро : Університет митної справи та фінансів, 2022. С. 142.

²² Кучук А.М. Національне та міжнародне право в умовах сьогодення. Інтеграція теорії у практику: проблеми, пошуки, перспективи : матеріали II міжнар. наук.-практ. конф. (м. Чернігів, 04 листоп. 2022 р.) / гол. ред. О. М. Тогочинський; Академія Державної пенітенціарної служби. Чернігів : Академія ДПТС, 2022.С. 171.

So, while both concepts acknowledge and uphold human rights, they might have different approaches to how these rights and freedoms are interpreted and protected within their respective legal systems.

Human dignity is another important aspect that should be covered in this part of the research. Human dignity is an inherent value of every individual stemming from their human nature. It encompasses respect for life, freedom, autonomy, and the ability to self-realization.

Human rights are a system of norms and principles that recognize and protect the value of human dignity. They guarantee fundamental freedoms to people such as the right to life, freedom from torture, freedom of speech, religion, and belief, the right to education, work, social security, and others.

The connection between human rights and human dignity can be considered from three main aspects:

1. Human rights serve as the basis for protecting human dignity. They establish legal frameworks that prohibit actions degrading human dignity, such as slavery, human trafficking, torture, and other cruel, inhuman, or degrading treatment or punishment.²³

2. Human dignity forms the basis for the human rights concept. Recognizing the value of human dignity makes it necessary to protect fundamental rights and freedoms allowing people to live a dignified life.

3. Human rights and human dignity mutually reinforce each other. The realization of human rights contributes to the development of human dignity, while recognizing human dignity motivates people to defend human rights.

Human dignity is the idea that every person has inherent worth, regardless of their status, religion, race, nationality, or other characteristics. This means that every person should be protected from oppression and should have the opportunity to live in dignified conditions. Human rights play a crucial role in protecting and ensuring human dignity.

Therefore, the protection of human dignity and human rights is an consequential task for all people. We can contribute by making conscious choices, fighting injustice and intolerance, and supporting organizations that defend human rights. Human rights and human dignity are interconnected and interdependent concepts contributing to formation of a just and humane society where every person can live freely and with dignity.

Human dignity is the concept recognizing the inviolability and importance of every human being, regardless of their status, origin, or other characteristics. This notion implies respect for the individuality of each person and their right to a dignified existence. Human dignity entails that every individual has the right to respect for their personality, non-stop protection from oppression, and respect for their rights and freedoms²⁴.

²³ Корнієнко М.В. Забезпечення прав людини органами правопорядку в екстраординарних умовах: доктринальний аспект. Одеса : Видавництво «Юридика», 2023. С. 25.

²⁴ Корнієнко М.В. Особливості діяльності адвоката, як захисника в умовах тоталітарного режиму в державі. *Вчені записки ТНУ імені В.І. Вернадського. Серія: Юридичні науки*. 2023 Том 34 (73) № С. 186–190.

Human dignity also encompasses the idea that every person has the right to conditions sufficient for living, ensuring their physical and psychological comfort. Human dignity entails that individuals should not be subjected to improper treatment and should have the opportunity to realize their potential and live according to their values and beliefs.

Moreover, human dignity is recognized as a fundamental principle of international law and human rights. It is a foundational principle acknowledged in various international instruments and conventions aimed at protecting the rights and freedoms of every individual.

3. The Rule of Law as a Democratic Society Value

The rule of law is one of the values of the European legal culture. Undoubtedly, certain ideas underlying the rule of law concept were expressed as far back as Ancient Greece. Aristotle, in his papers, pondered that laws should rule, not people. However, as a clear concept, the rule of law developed much later, in the 17th and 18th centuries. During this time in Europe, there was a struggle to limit the power of monarchs and establish democracy.

An important stage in the development of the concept was the adoption of the English Magna Carta in 1215. This document first recorded the principle that even the king is subject to the law. Significant contributions to the development of the rule of law theory were made by thinkers such as John Locke, Jean-Jacques Rousseau, and Montesquieu.

In the 19th and 20th centuries, the rule of law concept became the basis for constitutional law in many countries worldwide. Today, the rule of law is recognized as one of the fundamental principles of democracy. It means that all people, regardless of their social status, origin, or political beliefs, should be equal before the law. The rule of law also ensures that laws must be fair, transparent, and meet the society needs.

However, the justification of the rule of law theory is associated with the name of Albert Dicey. The basic principles of the rule of law were formulated in the late XIXth century. Dicey believed that the rule of law means that the law is the supreme norm that everyone, including public authorities, must respect. He emphasized that even public authorities must act within the law limits and be subject to it. Dicey considered the rule of law is a necessary condition for ensuring justice and preventing despotism. He emphasized the importance of the independence of the judiciary in enforcing the law and protecting human rights. His ideas found wide resonance and influenced the formation of legal culture in many countries, including the United States and European countries. Albert Dicey is considered one of the foremost representatives of legal philosophy, whose papers are still studied and discussed in academic circles. Therefore, it is possible to agree with the conclusion of B. Malyshev that “for A. Dicey, the principle of the rule of law is primarily a stable functioning mechanism for judicial protection of human rights without any privileges for the state or government officials”²⁵.

²⁵ Малишев Б.В. Принцип панування права (the rule of law) у праці Альберта Дайсі «Вступ до вивчення конституційного права». *Проблеми філософії права*. 2008-2009. Том VI-VII. С. 123.

As rightly O. Panchenko noted: “the concept of the rule of law is filled with real content if its defining element (component) – law – is considered not as a result of the state’s law-making activity, not as an act of the state power, and, moreover, as its instrument, but as a social phenomenon rooted in world and national culture, spiritual history of the people, their traditions, national mentality, as a phenomenon directly related to such fundamental categories as justice, freedom, formal equality, humanism”²⁶.

In our opinion, the following important characteristics of the rule of law can be distinguished.

1. Priority of the law. One of the key features of the rule of law is that the law is the supreme norm to which all other norms and acts of authority must conform. This means that no individual or entity, even the government, can act in violation of the law.

2. Transparency and accessibility of law. The rule of law envisages that laws should be open and accessible to all citizens. This ensures equal access to justice and prevents arbitrary exercise of power.

3. Independence of the judiciary. An important aspect of the rule of law is the independence of the judiciary from the influence of power and political factors. Courts should be able to adjudicate cases objectively and impartially, adhering strictly to the law.

4. Accountability under the law. The rule of law dictates that all individuals and authority institutions are equal before the law. This means that no one can evade accountability for violating the law, regardless of their status or official capacity.

5. Guarantee of citizens’ rights and freedoms. The rule of law includes safeguarding the rights and freedoms of every individual. This encompasses ensuring due process, freedom of speech, the right to a fair trial, and other fundamental rights that cannot be infringed without legitimate purpose.

In our opinion, these fundamental features define the essence of the rule of law in modern democratic societies.

It is worth noting that the issue of the rule of law, starting from XXI-st century, has become the subject of research for many domestic scholars in the field of law; however, this does not mean it’s resolved. There remain many unresolved aspects, among which the following can be singled out:

1. The impact of the rule of law on economic development. Studying the connection between the rule of law and various economic indicators such as GDP, investments, innovation, and poverty levels is essential.

Analyzing how the rule of law can stimulate entrepreneurial activity and economic growth is crucial. Additionally, examining the influence of the rule of law on wealth distribution and inequality is necessary.

2. The rule of law and access to justice. Researching how the rule of law can guarantee access to justice for all segments of society and studying the challenges faced by vulnerable groups in accessing justice are pertinent.

²⁶ Панченко О.О. Верховенство права як соціокультурний феномен : дис. д-ра філософії: 081. Львів, 2023. С. 3.

This research direction may culminate in the development and implementation of strategies to improve access to justice for all.

3. The role of the rule of law in combating corruption. This aspect involves studying the connection between the rule of law and the level of corruption. Investigating how the rule of law can help prevent and eradicate corruption and developing and implementing effective anti-corruption measures are promising research directions²⁷.

4. The rule of law and new technologies. Among the main aspects of the direction the following should be distinguished:

- studying the impact of new technologies such as artificial intelligence and blockchain on the rule of law;
- analyzing how new technologies can be used to enhance the rule of law;
- developing legal norms that regulate the use of new technologies in accordance with the principles of the rule of law.

5. The rule of law and globalization. “The rule of law is used as an ideological concept. International institutions insist on the importance of the rule of law. International law seeks to form standards of the rule of law. International law seeks to promote the restoration of the rule of law”²⁸ – notes K. Horobets.

Among the research directions in this aspect, the following can be distinguished:

- studying the impact of globalization on the rule of law;
- examining how international legal norms and standards can help protect the rule of law;
- developing mechanisms to ensure compliance with the rule of law at the transnational level.

6. The rule of law and cultural context. Let’s quote the domestic scientist A. Kuchuk “An important methodological basis for an adequate perception of the content of the rule of law principle is taking into account the axiological aspects of both its perception and the understanding of the rule of law itself as an axiological component of the national law system”²⁹.

Among the directions of scientific research in this aspect, the following should be singled out:

- research on how cultural factors influence the understanding and practice of the rule of law;
- studying how the principles of the rule of law can be adapted to different cultural contexts;
- development of inclusive and contextually sensitive approaches to the rule of law.

²⁷ Добробог Л., Шевченко С., Юнін О. Профілактика корупції в органах та підрозділах національної поліції. Дніпро : Дніпропетровський державний університет внутрішніх справ, 2022.

²⁸ Горобець К. Верховенство права: чи є в нього майбутнє за межами національних правових систем? URL <https://www.slideshare.net/UCULawSchool/ss-82103805>

²⁹ Кучук А.М. Верховенство права як аксіологічна складова національної системи права. *Юридичний науковий електронний журнал*. 2023. № 3. С. 562.

One of the rule of law aspects that may be less thoroughly studied is its implementation in practice in different countries and contexts. Although the concept of the rule of law is well defined at the theoretical level, its actual application can vary significantly depending on cultural, historical, political and other factors.

For example, some countries may have a strong tradition of reforming national law and guaranteeing the rule of law, while in other countries political or power structures may impede this principle. It is also important to examine how the rule of law interacts with other social factors such as economics, culture, religion and other aspects of society.

7. The rule of Law and the Role of Civil Society. This direction involves exploring how civil society can contribute to upholding the rule of law; advocating for rights and freedoms; combating corruption; and ensuring government accountability.

Civil society plays a crucial role in ensuring the rule of law. Investigating this topic will help us understand how to better engage civil society in defending the rule of law and building a more just and democratic society. Studying best practices for involving civil society in decision-making processes and policy formation and developing mechanisms for more effective cooperation between the state and civil society is an important research direction in domestic jurisprudence.

8. Use of empirical research methods. It is advisable to study the broader use of empirical research methods to cognize the rule of law, which may include collecting and analyzing data on the rule of law from different countries and contexts. Use of empirical research to inform authorities' practices and state policy is important.

9. Interdisciplinary research. This direction involves the following:

- encouraging interdisciplinary research on the rule of law;
- collaboration between lawyers, political scientists, sociologists, economists, and other researchers;
- developing a more comprehensive understanding of the rule of law.

10. Dissemination of knowledge about the rule of law, including: amplification of cognizance about the rule of law among the general public; development of educational programs on the rule of law for different audiences; raising awareness of the importance of the rule of law for the development of the society.

These are only a few aspects of the rule of law that should be further cognized. Study of these and other themes will help us better understand the rule of law and its role in the development of a just, peaceful and prosperous society.

Within the scope of our research, let's address another aspect of the rule of law, which, judging from the scientific publications of domestic legal experts is worth exploring. We are referring to the correlation between the rule of law and the principle of legality. This issue is complex and multifaceted, and it has been studied by lawyers for a long time. In our opinion, several key points should be taken into account in considering this issue.

Firstly, the rule of law is a broader concept. The rule of law is a broader concept including the principle of legality but is not limited to it. Thus, the rule

of law encompasses the following principles, namely justice (laws should be fair and based on universally accepted values); equality (all individuals should be equal before the law regardless of their background or other characteristics); access to justice (everyone should have access to a fair and impartial judiciary); independence of the judiciary (courts should be independent of the influence of other branches of power), and more.

Secondly, legality can be seen as the foundation of the rule of law. The principle of legality is the foundation of the rule of law. It means that all authority institutions and public officials must act only within the framework of the law. Laws should be clear, understandable, and accessible to all. No actions can be justified if they do not comply with the law.

Thirdly, these concepts should be considered in terms of their interrelation and interdependence. The rule of law and the principle of legality are inseparably linked. Legality cannot exist without the rule of law because laws that do not adhere to the principles of justice and equality cannot be considered regulators of social relations. On the other hand, the rule of law cannot be achieved without strict adherence to legality.

Fourthly, possible discrepancies should be taken into account. In some cases, discrepancies between the rule of law and the principle of legality may arise. This can happen when a law, which formally adheres to the principle of legality, contradicts the principles of justice, equality, or other fundamental values. In such cases, it is important to strike a balance between the two principles based on the specific circumstances of the case.

It is important to emphasize that the rule of law and the principle of legality are fundamental to any democratic state. Their observance guarantees the protection of the rights and freedoms of individuals and ensures justice and order in society.

CONCLUSIONS

Democracy, as a value of the European society, is grounded on the principles of equality, freedom, and public participation in making socially significant decisions. In the European Union states, democracy is embodied through representative democracy systems and the protection of human rights. Democratic principles encompass free elections, diversity, and dialogue. The European democracy fosters the development of civil society and upholds the law-based state, ensuring the protection of minorities and equal opportunities for all citizens. Exercising control over authority and its accountability to citizens is a vital component of the European democracy. Recognizing the importance of democracy as a value contributes to the state strengthening and enhancing the prosperity of society. Tolerance is an integral component of democracy. Tolerance goes beyond mere acceptance of diversity; it entails an active stance based on respect for human dignity, recognition of the value of diversity, and a commitment to peaceful coexistence. Fostering tolerance is a shared responsibility of families, schools, and society, crucial for democracy and peace building.

Human rights are among the important values of democratic society, perceived as inherent and natural opportunities for individuals, the realization of

which relies on the state's functions. It is the state (and only the state) that is obliged to recognize, implement and protect human rights. Such feature as verticality of human rights is manifested in it. Human rights are vertical, meaning individuals have rights but not corresponding obligations (rights and duties correspond in specific legal relations). It is also important to recognize the distinction between different theories of human rights, particularly the American and the European approaches (although both consider human rights as inherent and natural opportunities for individuals).

Human rights are closely linked to human dignity. Human dignity is a crucial concept that acknowledges the inviolability and significance of every human being, ensuring their right to respect and protection from restrictions, enabling them to live in dignified conditions and realize their potential.

Rule of law is another value of a democratic society. It entails requirements for how national law should function. Despite active research by domestic scholars into the rule of law, many aspects still require further exploration to refine the legal foundations of the society functioning.

Investigating these values is not static; they continually evolve and adapt to new challenges. The European Union plays a vital role in safeguarding and promoting these values both in Europe and globally. However, it is crucial to remember that these values are not set in stone; they require constant protection and promotion.

SUMMARY

The paper is dedicated to three values being the basis of the European identity: democracy, human rights, and the rule of law. It emphasizes that these values are interrelated and are the foundation for a peaceful, just, and prosperous society.

It is revealed that democracy is a system of government under which power belongs to the people; citizens have the right to participate in political life, elect their representatives and influence decision-making. Human rights are inalienable rights and freedoms that belong to every person from birth. The rule of law is a principle that means that all people, regardless of their status or wealth, are equal before the law. It assumes that laws should be fair, clear and accessible to all.

The content of the paper indicates that democracy, human rights, and the rule of law are not just the European values; they are universal values. Their promotion worldwide is a guarantee of a peaceful and just future for all.

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Information about the author:
Dobrobog Liudmyla Mykolaivna,

Doctor of Law, Professor,
Professor of Department of General and Law Disciplines Dnipropetrovsk
State University of Internal Affairs
26, Nauky Avenue, Dnipro, 49005, Ukraine