

THE RULE OF LAW AS THE INSTITUTIONAL BASIS OF THE MODERN RULE OF LAW

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INTRODUCTION

The rule of law is a fundamental principle underlying the development of a modern legal state and a defining guideline for improving law-making in Ukraine. In the context of European integration and the transformation of the national legal system, this principle acquires particular importance, since it is through high-quality law-making that the proper normative consolidation of human rights and freedoms, the stability of legal regulation, and the effectiveness of state institutions are ensured.

The rule of law is not only a general theoretical category but also a practical standard that determines the content, direction, and limits of the activities of law-making entities. The adoption of the Constitution of Ukraine established the rule of law as a fundamental principle of state functioning, which became the starting point for the modernization of law-making activity. Subsequently, the development of administrative, procedural, and sectoral legislation has demonstrated the gradual implementation of European standards of rule-making, particularly through strengthened requirements concerning the justification of regulatory legal acts, transparency in their preparation, and public participation in the law-making process.

The current stage of law-making development is characterized by an orientation toward the implementation of the *acquis* of the European Union, which necessitates improving the quality of legislation, eliminating regulatory conflicts, and ensuring the coherence of the legal system. In this process, the rule of law serves as a methodological criterion for assessing the effectiveness of legal regulation from the perspective of safeguarding human rights and democratic values. Legislative acts should be developed in accordance with the principle of legal certainty, which requires the clarity, predictability, and stability of legal norms, as well as the prevention of excessive state interference in the sphere of private legal relations. The principle of the rule of law is of particular importance in administrative and procedural legislation, where the effectiveness of protecting individual rights in relations with public authorities directly depends on the quality of law-making. The development of the Code of Administrative Procedure of Ukraine, legislation on administrative procedures, and mechanisms of judicial control over the activities of public authorities demonstrates the gradual establishment of a human-centric approach in the state's law-making policy. The legislator is

increasingly focused on ensuring a balance between public interests and individual rights, which is consistent with the European concept of good governance.

1. The rule of law in administrative law: content and elements of realization

With the proclamation of independence of our state and the adoption of the Constitution of Ukraine, the principle of the rule of law began to be actively and comprehensively established in our country and naturally received constitutional enshrinement as one of its main achievements and directions of further development. Citizens of Ukraine are guaranteed the right to apply to court for the protection of their constitutional rights and freedoms in accordance with Article 8 of the Constitution of Ukraine¹. The normative consolidation of the principle of the rule of law in Ukraine testifies to the harmonization of the national legal system with the European legal doctrine.

The implementation of this principle has found its continuation in Chapter II of the Constitution of Ukraine, namely Article 55 «Human and citizens' rights and freedoms are protected by the court», which provides that citizens are guaranteed the right to appeal in court against decisions, actions or inaction of state authorities, local self-government bodies, officials and public servants. Citizens of Ukraine have the right, after using all national means of legal protection, to apply for protection of their rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organizations of which Ukraine is a member or participant².

At the same time, in Ukraine there are problems regarding the realization of the principle of the rule of law, which results in an increase in the level of corruption in various spheres, the absence of high-quality justice, honest and fair judicial proceedings, and violations of human rights and freedoms. Therefore, the study of issues related to the realization of the principle of the rule of law in administrative proceedings becomes particularly relevant.

From an etymological point of view, the term «principle» (from Latin principium – basis, beginning, foundation) denotes a guiding idea; a basic rule of conduct; an expression of necessity or, in a certain aspect, the regularity of certain processes of objective reality. Also, «principles» are defined as features underlying the creation or implementation of something, the method

¹ Конституція України: Закон України від 28 черв. 1996 р. № 254к/96-ВР. URL: <https://zakon.rada.gov.ua/laws/show/254к/96-вр>

² Конституція України: Закон України від 28 черв. 1996 р. № 254к/96-ВР. URL: <https://zakon.rada.gov.ua/laws/show/254к/96-вр>

of formation or implementation of something; beliefs, norms, rules that guide life and behavior, a canon³.

To conduct a comprehensive study, it is necessary to define the concept of the «rule of law». The principle of the rule of law belongs to the general principles of law. This legal principle originates from the natural law school. The term «rule of law» began to be used as early as the 17th century, but a thorough development of this concept took place in the 19th century and was associated with the name of the Oxford University professor Albert Venn Dicey. In the work «Introduction to the Study of the Law of the Constitution» (1885) he presents aspects of the concept of the application of the rule of law: the supremacy of law, the rule of law, the supremacy of the spirit of legality⁴.

At the same time, scholars draw attention to the fact that «it is important to take into account that the principle of the rule of law is in no way identified with the more well-known principle of the «supremacy of the law», which in the ideology of legal positivism means the priority of laws over other forms of legal regulation of social relations⁵.

In modern conditions of the development of social relations, the content of the rule of law is most systematically outlined in the Report of the Venice Commission on the rule of law, which identifies its constituent elements: 1) legality, which includes, in particular, transparency, accountability, and a democratic procedure for adopting laws; 2) legal certainty; 3) prohibition of arbitrariness; 4) access to justice; 5) respect for human rights; 6) non-discrimination and equality before the law.

The principle of the rule of law has a constitutional character and is enshrined in Article 8 of the Constitution of Ukraine. However, the Constitution of Ukraine does not contain its detailed legal definition. In the scientific literature, it is reasonably noted that under the conditions of the dominance of legal positivism, characteristic of the countries of the continental legal system, the principle of the rule of law for a long time was in fact identified with the principle of the supremacy of law. Such an approach for a long period was also characteristic of the domestic administrative law doctrine⁶.

At the same time, the adoption of the Constitution of Ukraine and the further development of administrative proceedings, in particular the adoption

³ Сучасна правова енциклопедія / за заг. ред. О.В. Зайчука. Вид. 3-тє, переробл. і доп. Київ: Юрінком Інтер, 2015. 408 с.

⁴ Скочиляс-Павлів О.В. Адміністративне судочинство України : підручник. Львів: «Растр-7», 2024. 402 с.

⁵ Конвенція про захист прав людини і основоположних свобод від 04 лист. 1950 р. URL: https://zakon.rada.gov.ua/laws/show/995_004#Text

⁶ Адміністративне право України : підручник / Битяк Ю.П. та ін.; за ред. Ю.П. Битяка. Харків : Право, 2020. 392 с.

of the Code of Administrative Proceedings of Ukraine of Ukraine, significantly transformed approaches to the understanding and realization of this principle. According to the provisions of this Code, the court when considering cases, is guided by the principle of the rule of law, according to which a person, his or her rights and freedoms are recognized as the highest social value and determine the content and direction of the activity of the state. At the same time, the application of this principle is carried out taking into account the practice of the European Court of Human Rights, which ensures the approximation of national law enforcement practice to European standards of human rights protection⁷.

Thus, the principle of the rule of law as a fundamental principle of administrative law is characterized by a set of interrelated features. First, the determining priority of the legal system is recognized to be the individual, his or her rights and freedoms, while the state, law, and other public institutions have a derivative character and function as instruments for their provisions and guarantee. Second, law and legislation are not identical categories: a normative legal act whose content contradicts fundamental human rights and freedoms loses the features of a legal act and should not be applied in law enforcement activity. Third, legislation that corresponds to the principles of the natural law doctrine and generally recognized human rights standards is subject to mandatory execution and its disregard entails legal liability established by law. Fourth, the principle of the rule of law determines the content, limits and direction of the activity of the state, primarily courts and subjects of public administration, orienting them toward the priority of protecting human rights in the process of exercising public authority.

Thus, in the sphere of administrative law, the principle of the rule of law means the establishment of law as the highest social value, which determines the obligation of public authorities to act exclusively taking into account the necessity of ensuring and effectively protecting the rights and freedoms of the individual and the citizen.

The principle of the rule of law is the leading principle of administrative law. From a practical point of view this principle means the subordination of the activities of all public institutions to the needs of realization and protection of human rights, the establishment of their priority over all other values of a democratic, social, governed by the law state⁸.

The principle of the rule of law is currently enshrined both at the level of international acts and in national legislation, in particular in the preamble to

⁷ Кодекс адміністративного судочинства України : Закон України від 06 липн. 2005 р. № 2747-IV. URL: <https://zakon.rada.gov.ua/laws/show/2747-15>

⁸ Мельник Р.С., Бевзенко В. М. Загальне адміністративне право: навч. посіб. / за заг. ред. Р. С. Мельника. Київ : Ваїте, 2014. 376 с.

the Statute of the Council of Europe, which emphasizes the «devotion» of the member states to the «spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political freedom and the rule of law – principles which form the foundation of every genuine democracy»⁹; the preamble to the Convention for the Protection of Human Rights and Fundamental Freedoms, which states that «the governments of European countries ... are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law»¹⁰; Part 1 of Article 8 of the Constitution of Ukraine (the principle of the rule of law is recognized and operates in Ukraine)¹¹; Part 1 of Article 6 of the Code of Administrative Proceedings of Ukraine (when resolving a case, the court is guided by the principle of the rule of law, according to which, in particular, the person his or her rights and freedoms are recognized as the highest value and determine the content and direction of the activity of the state)¹²; Part 1 of Article 3 of the Law of Ukraine «On the Cabinet of Ministers of Ukraine» (the activity of the Cabinet of Ministers of Ukraine is based on the principles of the rule of law)¹³; Part 1. Of Article 4 of the Law of Ukraine «On Civil Service»¹⁴ (the principles of civil service include the rule of law), etc.

From the above provisions it can be concluded that the principle of the rule of law is a universal requirement, first of all for the state, and therefore must be taken into account by its representatives both during law-making and during law enforcement activities. In other words, the formation of norms of administrative law, as well as their application, must be carried out with mandatory observance of the principle of the rule of law. That process will have a chance of success only when, first, a rejection of a purely positivist view of law is carried out and, second, foreign publications devoted to this issue are properly studied, since in the absence of national traditions of the rule of law and the lack of development of the relevant theory, the process of understanding the principle of the rule of law is doomed to failure¹⁵.

⁹ Статут Ради Європи від 05 травн. 1949 р. URL: https://zakon.rada.gov.ua/laws/show/994_001#Text

¹⁰ Конвенція про захист прав людини і основоположних свобод від 04 лист. 1950 р. URL: https://zakon.rada.gov.ua/laws/show/995_004#Text

¹¹ Конституція України: Закон України від 28 черв. 1996 р. № 254к/96-ВР. URL: <https://zakon.rada.gov.ua/laws/show/254к/96-вр>

¹² Кодекс адміністративного судочинства України : Закон України від 06 липн. 2005 р. № 2747-IV. URL: <https://zakon.rada.gov.ua/laws/show/2747-15>

¹³ Про Кабінет Міністрів України: Закон України від 27 лют. 2014 р. № 794-VII. URL: <https://zakon.rada.gov.ua/laws/show/794-18#Text>

¹⁴ Про державну службу: Закон України від 10 грудн. 2015 р., № 889-VIII. URL: <https://zakon.rada.gov.ua/laws/show/889-19#Text>

¹⁵ Головатий С. Верховенство право (правовладдя): як його тлумачить Венеційська комісія. *Право України*. 2011. № 10. С. 154-184.

The task of ensuring the coherent character of the entire legal system under conditions of the coexistence of contradictory norms is primarily assigned to the judicial authority and to subjects of public administration in the process of carrying out executive activity. A special role in the system of institutional support of the rule of law is assigned to administrative proceedings. The principle of the rule of law is the primary system-forming principle of administrative proceedings¹⁶.

The principle of the rule of law in administrative proceedings consists, in particular, in the fact that during the administration of justice the administrative court is obliged to assess legal acts from the standpoint of compliance with the rights, freedoms and legitimate interests of the individual. In the case of applying provisions of legal acts that restrict or violate human rights and freedoms, or interpreting them in a manner that leads to an unjustified narrowing of the content of such rights, the court decision adopted may be recognized as one that does not meet the requirements of legality and justice. Such an approach is consistent with the provisions of the Constitution of Ukraine, which establishes the priority of human rights and freedoms and defines the rule of law as a fundamental principle of the functioning of the legal system of the state.

The practical realization of this principle in administrative proceedings is manifested through a number of interrelated elements. First, the possibility for an individual to apply to an administrative court for the protection of his or her rights, freedoms and legitimate interests is ensured directly on the basis of the Constitution of Ukraine. Second, the administrative court is authorized to consider and resolve public law disputes even in the absence of proper legislative regulation, as well as in cases of its incompleteness, ambiguity, or inconsistency, which guarantees the effectiveness of judicial protection. Third, an important component is the application by courts of legal positions and the practice of the European Court of Human Rights, which ensures the harmonization of national judicial practice with European standards of human rights protection.

Taken together, these elements create the basis for the realization of universal human values, in particular justice in public law relations.

Respect for human rights and ensuring access to justice are two mandatory conditions for the realization of the principle of the rule of law and the development of institutional mechanisms for its provision; in this regard, the role of administrative proceedings should be particularly noted. The introduction of a system of administrative proceedings in Ukraine is one of

¹⁶ Адміністративне право України. Повний курс : підручник / В.Галуцько, П.Діхтієвський, О.Кузьменко та ін.; за ред. В.Галуцько, О.Правоторової. Вид. 4-те. Херсон : ОЛДІ-ПЛЮС, 2021. 656 с.

the most significant steps on the path to establishing the rule of law in our state. A significant positive contribution to this process belongs to the legislative support for the establishment of the rule of law in the Code of the Administrative Procedure, which sets out the structural elements of the principle of the rule of law (Articles 8, 9, 19, 11, 12, 13, 16, 135, 237)¹⁷.

The mechanism for ensuring the effectiveness of the rule of law in the domestic legal system is the constitutional principle according to which the norms of the Constitution are norms of direct effect, and the right to apply to the court for the protection of the constitutional rights and freedoms of the individual and the citizen directly on the basis of the Constitution of Ukraine is guaranteed. From this it follows that the norms of direct effect in the Constitution are only those norms that concern the rights and freedoms of the individual and citizen¹⁸.

Thus, the right to apply to a court directly on the basis of constitutional norms of direct effect is guaranteed only for the protection of the rights and freedoms of the individual and the citizen, and not for their restriction.

The principle of the rule of law in administrative law is also realized through the principle of legality. The principle of legality in modern law is derived from the principle of the rule of law and must not contradict it. The idea of the supremacy of law is a fundamental component of the principle of legality, the foundation for the existence of a rule governed state and the activity of its bodies. This means the following:

Subjects of public administration are obliged, when carrying out any actions, to strictly comply with the legislation of Ukraine and to act exclusively in accordance with the formula of legal regulation «everything is prohibited except that which is expressly permitted by law», which is reflected in Article 6 of the Constitution of Ukraine: «Bodies of legislative, executive and judicial power exercise their authority within the limits established by this Constitution and in accordance with the laws of Ukraine» and Article 19: «Bodies of state power and bodies of local self-government and their officials are obliged to act only on the grounds, within the limits of authority, and in the manner envisaged by the Constitution and the laws of Ukraine»¹⁹.

Ensuring compliance with legislation by all non-authoritative natural and legal persons, while natural persons who do not have a special public status have the right to act in accordance with the first formula of legal regulation «everything is permitted except that which is expressly prohibited by law»,

¹⁷ Науково-практичний коментар кодексу адміністративного судочинства України : / Армаш І.О. та ін.; за ред. А.Т. Комзюка. Київ : Прецедент ; Істина, 2009. С. 97-103.

¹⁸ Конституція України: Закон України від 28 черв. 1996 р. № 254к/96-ВР. URL: <https://zakon.rada.gov.ua/laws/show/254к/96-вр>

¹⁹ Конституція України: Закон України від 28 черв. 1996 р. № 254к/96-ВР. URL: <https://zakon.rada.gov.ua/laws/show/254к/96-вр>

which is enshrined, in particular, in Article 23 of the Constitution of Ukraine: «Everyone has the right to the free development of his or her personality, provided that the rights and freedoms of other persons are not violated, and has duties to society in which the free and comprehensive development of his or her personality is ensured»;

strict observance by subjects of public administration of administrative procedures and rules of legal technique;

the adoption by executive authorities and local self-government bodies of all means permitted by legislation to ensure the prevention and termination of unlawful encroachments on the rights, freedoms and legitimate public interests of natural and legal persons, the inevitability of bringing those guilty of committing offences to legal liability, and the restoration of violated rights and freedoms.

By carrying out a comparative analysis of the principles of the «rule of law» and «legality», the following conclusions can be drawn:

1. Natural persons who do not have an authoritative or special status may rely in administrative-legal relations on the principle of the rule of law, according to which they have the right to go beyond the limits of permissions established by current legislation. The main requirement is that prohibitive legal norms and the rights and freedoms of other natural and legal persons are not violated.

2. Subjects of public administration must act strictly within the limits of the legislation of Ukraine – in other words, strictly adhere to the principle of «legality» without the right to go beyond the limits of formally established competence, except for the direct and urgent protection of human life and health.

Modern scientists provide their own definition of legality as one of the elements of the principle of the rule of law in administrative law. Thus, legality should be understood as the observance by public administration, in the process of its functioning, of the principles of law, the provisions of international and national acts, as well as customs and case law²⁰.

In other words, legality is not limited only to compliance with the requirements of laws (acts adopted by Parliament). It should be considered in the context of all written and unwritten forms of administrative law.

Having a subordinate character, – as French scholars note, – a subordinate act in turn is also a source of legality. This is connected with the following: first, among subordinate acts there exists a hierarchy that corresponds to the service (administrative) hierarchy. A government resolution has priority in compliance with legality compared with resolutions, for example, of

²⁰ Мельник Р.С., Бевзенко В. М. Загальне адміністративне право: навч. посіб. / за заг. ред. Р. С. Мельника. Київ : Ваїте, 2014. 376 с.

ministers, prefects or mayors. Second, subordinate acts have priority over individual acts issued by the same body. This principle originates in Roman law – the author of a subordinate act is himself bound by the necessity to comply with it until the act is amended or repealed²¹.

The requirement of legality applies to both natural and legal persons. With regard to officials, it means that they may act only when they are authorized to do so and only within the defined limits.

Part 2 of Article 19 of the Constitution of Ukraine provides that state authorities and local self-government bodies, their officials are obliged to act only on the basis of, within the limits of authority, and in the manner provided for by the Constitution and the laws of Ukraine²². In this case, the expression «laws of Ukraine» should be understood in a broad sense, that is, as a system of all existing legal acts. Otherwise, it would mean that officials and public servants could violate the requirements regarding their own competence formulated, for example, in subordinate legal acts, such as resolutions of the Cabinet of Ministers of Ukraine.

Legality also presupposes that a person cannot be punished if he or she has not violated previously adopted legal prescriptions that have entered into force.

2. Rule of law as a leading principle of administrative justice

The principle of rule of law occupies a key place in the system of principles of functioning of a democratic and legal state, determining the nature of the relationship between an individual and public authorities. In the current conditions of development of the legal system of Ukraine, ensuring the implementation of this principle in the field of administrative justice, which is designed to guarantee effective judicial protection of the rights, freedoms and legitimate interests of individuals and legal entities in public legal relations, is of particular importance. It is the administrative courts that act as an important institutional mechanism for controlling the activities of subjects of power and ensuring compliance with the standards of legality, justice and legal certainty.

The rule of law is such a basic principle of the state, without which the laws of human rights and freedoms, as well as the guarantees provided to them by the authorities, is impossible²³.

The well-known Ukrainian legal scholar notes that in the European doctrine the principle of the rule of law is also identified for the most part with

²¹ Доровський В.О. Реалізація принципу права в адміністративному праві : маг. робота. Вінниця : Донецький національний університет імені Василя Стуса, 2020. 87 с.

²² Конституція України: Закон України від 28 черв. 1996 р. № 254к/96-ВР. URL: <https://zakon.rada.gov.ua/laws/show/254к/96-вр>

²³ Скрипнюк О. В. Соціальна, правова держава в Україні: проблеми теорії і практики : монографія. Київ: Ін-т держави і права ім. В. М. Корецького НАН України, 2000. 600 с.

the supremacy of basic rights and freedoms of the individual, and its content is directly related to such concepts as justice, equality, and humanism²⁴. A similar statement is supported by S. P. Holovaty, who points out that the principle of the rule of law has the idea of natural statute, that is, an idea that appeared on the recognition of such a fact: a person as a natural being is born with certain rights and freedoms that no one gives him and no one has the right to take away from him²⁵. Therefore, human rights and freedoms are natural, inalienable, fundamental, and essential.

The rule of law exists in two ways. The rule of law is the supremacy of the rights of the individual over the obligation of the state to realize all human rights and freedoms. The first way, which can be called constitutional, refers to the obligation of the state to create the foundations for the realization of human rights through its actions. The rule of law is the supremacy of the natural rights of the individual over the rights of the state, the rights of social groups, and the rights of society. The second way refers to the special status of natural human rights²⁶.

In modern conditions of the development of social relations, the content of the rule of law is most systematically outlined in the Report of the Venice Commission on the Rule of Law and its components are listed: 1) legality, which provides, in particular, transparency, accountability and a democratic procedure for adopting statutes; 2) legal certainty; 3) prohibition of arbitrariness; 4) access to justice; 5) observance of human rights; 6) non-discrimination and equality before the statutes.

The content of the principle of the rule of law remains insufficiently specified both at the level of substantive and procedural legislation of Ukraine. Its comprehensive implementation in practice is ensured in numerous court decisions adopted by domestic administrative courts in view of the provisions and case law of the European Court of Human Rights.

For administrative proceedings, the main element of the principle of the rule of law is the obligation of the state to carry out its activities, determine the ways of further development in accordance with the priority of human rights and freedoms and provide guarantees for their implementation. The activities of state institutions must be subordinated to the needs of the implementation and protection of human rights. Therefore, in modern conditions, the main functions of the administrative court should be law

²⁴ Музика І. В. Принцип верховенства права: сучасний погляд на проблему криз призму кантівського праворозуміння. *Проблеми філософії і права*. 2008-2009. Т. VI-VII. С. 112-116.

²⁵ Головатий С. Верховенство право (правовладдя): як його тлумачить Венеційська комісія. *Право України*. 2011. № 10. С. 154-184.

²⁶ Малишев Б. В. Принцип верховенства права (теоретико-правовий аспект). *Бюлетень Міністерства юстиції України*. 2012. № 8. С. 14-20.

enforcement and human rights protection, and its main tasks should be to ensure the implementation of rights, freedoms and legitimate interests of a person and a citizen, to protect and restore violated rights.

To implement these tasks, in accordance with the Code of Administrative Procedure of Ukraine, the administrative court is guided by the principle of the rule of law when deciding cases. A person, his rights and interests become the main objects of protection, and the task of the administrative court becomes the protection of human and citizen rights in the event of their violation by executive authorities, local self-government bodies, their officials and employees. After all, the protection of human and citizen interests is an important factor in the stability of civil society, the proper functioning of the state apparatus and the state as a whole.

Article 6 of the Code of Administrative Procedure of Ukraine defines the content of the principle of the rule of law: when deciding a case, the court is guided by the principle of the rule of law, according to which, in particular, a person, his rights and freedoms are recognized as the highest values and determine the content and direction of the state's activities²⁷. Such a definition fully corresponds to Article 3 of the Constitution of Ukraine, which defines human rights as primary and higher in relation to the interests of the state. However, the above does not reveal all aspects of the rule of law, but gives only the most general understanding of the direction of administrative proceedings and the criteria for judicial control over the activities of public administration.

The principle of the rule of law is a set of principles, provisions, ideas – requirements based on the natural rights of the individual and his autonomy in relation to the state. The implementation of these requirements must be reflected in the activities of all branches of government, including the judicial branch.

Turning to doctrinal legal sources, it should be noted that representatives of the legal scientific community in their works make efforts to accurately determine the content of the principle of the rule of law. According to Zh.M. Melnyk-Tomenko, the principle of the rule of law as a universal principle of administrative justice is the initial, fundamental basis of the administrative process, according to which the administrative court, when deciding a case, proceeds from the fact that the law is «higher» than the statute, and administrative-procedural relations in general are built according to the

²⁷ Кодекс адміністративного судочинства України : Закон України від 06 липн. 2005 р. № 2747-IV. URL: <https://zakon.rada.gov.ua/laws/show/2747-15>

formula: a person, his life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value²⁸.

In particular, according to V.B. Averyanov, who, characterizing the principle of the rule of law and thereby confirming its content complexity, noted that «the concept of the rule of law intertwines scientific truth and values of goodness and justice, legal ideals and practical legal experience, legal ideas and legal feelings, achievements of science and common sense»²⁹.

Considering almost thirty years of experience in building a legal state in Ukraine, we can distinguish the following main components of the rule of law, taking into account new doctrinal developments:

- first, the interpretation of the rule of law as a system of closely intertwined principles is the most productive approach to its understanding.
- second, the diversity of principles – components of the rule of law – general, sectoral, inter-sectoral, etc.;
- third, the general characteristics of the basic principles – components of the rule of law in the field of justice – separation of powers and non-interference of each in the activities of the others, independence of the judge, access to justice, legality, predictability, proportionality, legal certainty, priority of protection of human and citizen rights³⁰.

However, the most versatile interpretation of the principle of the rule of law is given in the decisions of the European Court of Human Rights, which operates on the basis of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. In the preamble to this Convention, the rule of law is defined as a principle that unites the member states of the Council of Europe. In its decisions, the Court repeatedly refers to the principle specified in the preamble to the Convention and, considering it one of the fundamental principles of the functioning of the member states, provides it with an interpretation when deciding cases.

The Convention for the Protection of Human Rights and Fundamental Freedoms are part of national legislation. By the Statute «On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the First Protocol and Protocols Nos. 2, 4, 7 and 11 to the Convention»³¹, Ukraine recognized the mandatory jurisdiction of the

²⁸ Мельник-Томенко Ж.М. Принцип верховенства права як універсальна засада адміністративного судочинства. *Актуальні проблеми вітчизняної юриспруденції*. 2019. № 6. С. 84-89. DOI <https://doi.org/10.15421/3919101>.

²⁹ Права громадян у сфері виконавчої влади : адміністративно-правове забезпечення та захисту : монографія / за заг. ред. В.Б. Авер'янова. Київ : Наукова думка, 2007. 586 с.

³⁰ Доровський В.О. Реалізація принципу права в адміністративному праві : маг. робота. Вінниця : Донецький національний університет імені Василя Стуса, 2020. 87 с.

³¹ Конвенція про захист прав людини і основоположних свобод від 04 лист. 1950 р. URL: https://zakon.rada.gov.ua/laws/show/995_004#Text

European Court of Human Rights in all matters relating to the interpretation and application of the Convention.

That is why the Code of Administrative Procedure of Ukraine states that the court applies the principle of the rule of law taking into account the case law of the European Court of Human Rights and reveals the content of the principle of the rule of law through the formulation of the requirements deduced from this principle.

The principle of the rule of law extends its effect to all branches of state power – legislative, executive and judicial. Important are, in particular, the following questions: how can the principle of the rule of law be applied in administrative proceedings and how should the court act in case of violation of the requirement of the quality of the statute? The provision of Part 4 of Article 8 of the Code of Administrative Procedure prohibits refusal to consider and resolve an administrative case on the grounds of incompleteness, ambiguity, contradiction or absence of legislation regulating the disputed relations³². This provision guarantees the right of access to court even in the absence of regulatory grounds for the protection of violated rights, freedoms or interests. Therefore, the court must overcome the gap by applying an analogy of law or law, or eliminate ambiguity or conflict by interpreting the provisions of the law so that it ensures rights and freedoms. Therefore, administrative procedural activities should stimulate all participants in the process to responsibly exercise their rights and obligations.

In conclusion, it should be noted that in the scientific and educational literature there is no unity in determining the essence and content of the principle of the rule of law, but there are a large number of approaches to clarifying its true resource. Given the lack of a single doctrinal position and an unambiguous normative definition of the principle of the rule of law, it is necessary to consider the prevalence of the rights and legitimate interests of a person and a citizen in legal relations with subjects of public administration as fundamental in its content.

It is also worth supporting the position of the majority of administrative scientists regarding the recognition of the principle of the rule of law as basic, fundamental, basic, prevailing (both in the system of principles of administrative law and in the system of principles of administrative procedural law)³³. Therefore, in order to ensure the rule of law in Ukraine, it is necessary to create a legal culture of compliance with legislation at all levels, and the

³² Кодекс адміністративного судочинства України : Закон України від 06 липн. 2005 р. № 2747-IV. URL: <https://zakon.rada.gov.ua/laws/show/2747-15>

³³ Капля О.М. Верховенство права в системі принципів адміністративного судочинства України. *Науковий вісник Ужгородського національного університету. Сер. Право*. 2017. Вип. 45. Том 2. С. 10-13.

principle of the rule of law should be considered as a legal principle within the framework of international and European integration processes, which includes a number of criteria that are distinguished by compliance with the rights and freedoms and legitimate interests of citizens³⁴.

Thus, the implementation of the tasks of administrative justice and its effectiveness is directly dependent on the correct application of the principle of the rule of law, which is decisive in the formation of all institutions of the state and society as a whole.

3. Theoretical issues of the interaction of the rule of law and legality in a modern legal state

One of the most important principles of a legal state is the supremacy of just statute s, that is, statutes that reflect and protect the natural rights and freedoms of the individual, the objective needs of social relations in the appropriate legal regulation. A necessary condition for the implementation of this principle is the optimal combination, as well as a deep and comprehensive scientific substantiation of the mechanism of interaction of the rule of law and the rule of statutes. At the same time, the study of the mechanism of interaction of law and statute is relevant not only in the theoretical, but also in the practical aspect³⁵.

The relationship of law and statute is a central problem of jurisprudence and legal understanding. Do rights and law coincide or not, whether law can be reduced to laws and other regulatory acts or not – these problems have always been in the focus of legal science and practice. First of all, it should be noted that one of the decisive factors on which the development of an effective mechanism for the interaction of law and law depends is a completely consistent methodological approach to the definition of the specified legal phenomenon. Thus, the term «right», should be given a meaning that covers not some separate part or side of law or its separate definition («objective law», «subjective law», «positive law», «natural law», etc.), but its meaning, which includes all these definitions together, its philosophical and legal meaning³⁶. In this sense, law should be considered not as one of the subsystems in a higher-order social system, but as a specific regulator of social relations in the system of governance of a state-organized society.

In the normative sense, law is characterized by the following features:

³⁴ Адміністративне судочинство : навч. посіб. / за заг. ред. О.П. Рябченко. Вид. 2-ге, перероб. і доп. Харків : ХНУ імені В. Н. Каразіна, 2014. 304 с.

³⁵ Доровський В.О. Реалізація принципу права в адміністративному праві : маг. робота. Вінниця : Донецький національний університет імені Василя Стуса, 2020. 87 с.

³⁶ Сучасна правова енциклопедія / за заг. ред. О.В. Зайчука. Вид. 3-тє, переробл. і доп. Київ: Юрінком Інтер, 2015. 408 с.

1) it is an independent legal category that has its own content and meaning in the system of legal regulation;

2) it is a set of generally binding rules of conduct that are established by the state or adopted by other entities on the basis of the powers granted by the state;

3) it has a formally defined nature and is objectified in the form of regulatory and legal acts that are hierarchically dependent according to their legal force;

4) it functions as an instrument of state and government influence on social relations, aimed at their regulation, protection and ensuring the proper implementation of public administration.

It is essential that each historical power and political regime solved the specified problem in its own way, relying on the social values dominant in society, determined mainly by the general interests of the social forces ruling at a particular time³⁷. All the arguments of jurists regarding the correlation of the categories of «law» and «statute» fluctuated within quite wide limits. Using various methods and means, scientists came to a multifaceted understanding of these legal phenomena.

Some scientists identified them, others distinguished them, and some suggested that it was inappropriate to express the right of an individual in the form of a statute at all, since the nature of this form was imperfect.

In legal science, the issue of the correlation of law and statute is traditionally considered as one of the fundamental problems of the theory of state and law. Several main doctrinal approaches to understanding this problem were formed in different historical periods.

The first approach is associated with legal positivism, whose representatives actually identified law with statute. According to this concept, law is understood as a system of norms established or sanctioned by the state and enshrined in the form of regulatory legal acts. This position was characteristic of the classical positivist school, in particular for the works of John Austin and Hans Kelsen. Within this approach, the statute is the main form of the existence of law, and its validity is determined by the procedure of adoption by the competent body of state power.

The second approach is based on the natural law concept, within which law and statute are distinguished. Representatives of this theory proceed from the fact that law has a deeper meaning and includes natural, inalienable human rights that exist independently of the will of the state. In this sense, the statute can be both legal and illegal if its content contradicts the principles of justice

³⁷ Скрипнюк О. В. Соціальна, правова держава в Україні: проблеми теорії і практики : монографія. Київ: Ін-т держави і права ім. В. М. Корецького НАН України, 2000. 600 с.

and natural human rights. Similar ideas were developed in the works of John Locke, Montesquieu and other representatives of the natural law doctrine.

The third approach is associated with a critical rethinking of the role of statute as a form of expression of law. Some researchers have drawn attention to the fact that statute as a normative act is not always able to adequately reflect the content of law, since it may be limited by political interests, imperfections of legislative technique or features of state power. Within the framework of such approaches, it is emphasized that human rights are of a primary nature, and the statute should only consolidate and guarantee their implementation. These ideas have been developed in modern concepts of the rule of law, where priority is given not to formal law, but to a system of legal values, among which human rights and freedoms occupy a central place.

Thus, in modern legal doctrine, the position prevails, according to which law and statute are not identical categories. Statute is considered as the main, but not the only form of expression of law, and its legitimacy is determined by compliance with the principles of justice, human rights and the idea of a state governed by the rule of law. This approach was developed in the practice of the European Court of Human Rights, which considers law through the prism of the principle of the rule of law and the need to ensure real protection of human rights and freedoms.

The distinction between the principles of the rule of law and legality, as well as the recognition of the priority of the rule of law, do not reduce the importance of legality as a fundamental basis for the functioning of the legal system. In scientific doctrine and law enforcement practice, legality is considered a necessary element of the implementation of the rule of law, since it is it that ensures the stability of legal regulation, the predictability of the activities of public authorities and the appropriate level of legal certainty. At the same time, legality is characterized by greater formal certainty, clarity of content and practical suitability for direct application, which determines its important role in everyday law enforcement activities.

Thus, A. T. Komziuk and O. Yu. Salmanova note that the principle of the rule of law in a generalized form can be interpreted as the idea of the rule of law, which is embodied in the creation of appropriate statutes, their appropriate implementation, the prohibition of arbitrariness, respect for human rights, non-discrimination and equality before the law³⁸.

At the same time, «in practice, employees of the police, prosecutor's office, and other law enforcement agencies cannot question the compliance of the statutes with the ideas of social justice, freedom, equality, etc., they cannot,

³⁸ Комзюк А. Т., Салманова О. Ю. Верховенство права та законність як принципи діяльності Національної поліції. *Правова держава*. 2021. № 44. С. 45-53. DOI: <https://doi.org/10.18524/2411-2054.2021.44.245083>.

when performing their tasks and functions, be guided not by formally defined current laws, but by moral norms, traditions, customs, and unrecorded norms of natural law»³⁹.

Thus, in the activities of these bodies, the principle of legality is of decisive importance, while the implementation of the principle of the rule of law is carried out by ensuring compliance with the requirements of the law, preventing arbitrary decisions and actions, guaranteeing human rights and freedoms, ensuring a non-discriminatory approach and equality of all before the law.

The principle of legality is closely related to the rule of law. In a general sense, legality is a set of diverse but uniform requirements related to the attitude to laws and their implementation: the requirement to strictly and strictly comply with the laws to whom they are addressed; the requirement to comply with the hierarchy of laws and other regulatory acts; the requirement that no one can repeal the law, except for the body authorized to do so⁴⁰.

According to D.G. Manko, the principle of legality should be understood as a system of ideas and views based on the laws of social development. These ideas and views become the initial principle for forming motives for appropriate behavior and internal conviction regarding the need to comply with laws and regulations. The specified legality guarantees the transformation of the conceived, enshrined in legal norms, order of social relations into a real order, thereby creating the necessary prerequisites for the proper functioning of society, ensuring order, organization and discipline, as the author continues to note⁴¹.

Thus, the rule of law and legality are two key principles that underlie the implementation of any activity. Their content implies that in the process of interaction, public administration bodies and subjects of such activity must comply with the norms of current legislation, as well as other social regulators, such as: norms of morality, ethics, legal customs, etc. In addition, it is on the basis of these principles that other, both general and special, principles are based, among which the following should be highlighted: continuity; common interests; awareness; partnership; simplification and rationalization of procedures; stimulation; transparency; planning; mutual responsibility.

³⁹ Капля О.М. Верховенство права в системі принципів адміністративного судочинства України. *Науковий вісник Ужгородського національного університету. Сер. Право*. 2017. Вип. 45. Том 2. С. 10-13.

⁴⁰ Ізбаш К.С., Коломієць Ю.М. Верховенство права як провідний принцип адміністративного судочинства. *Актуальні проблеми правознавства*. 2021. №3. С. 63-68. DOI: 10.35774/app2021.03.063.

⁴¹ Манько Д.Г. Легалізація як правова процедура : дис. ... канд. юрид. наук : 12.00.01. / Одес. нац. юрид. акад. Одеса, 2010. 205 с.

The principle of the rule of law is reasonably considered as a priority principle of the modern legal system, since it acts as a normative ideal, towards the achievement of which the development of any state and its legal order should be aimed. The universal nature of this principle determines its integrative nature, as it combines a number of interrelated components, among which the principle of legality, separation of state powers, popular sovereignty, democracy, legal certainty, as well as guarantees of a fair trial are of particular importance. In this context, legality acts as the primary structural element of the rule of law, ensuring the formal orderliness of the activities of state bodies and the predictability of legal regulation.

At the same time, despite the inclusion of legality in the content of the principle of the rule of law, it retains the meaning of an independent legal principle, which has special practical significance, primarily in the activities of law enforcement agencies and public administration entities. It is through compliance with legality that the daily implementation of legal norms, the stability of management processes and the proper level of law and order are ensured. However, the rule of law has a broader substantive dimension, since it is not limited to the formal implementation of statutes, but involves their assessment from the standpoint of justice, humanism and compliance with fundamental human rights. This is due to the fact that legislation is not always perfect: individual regulatory legal acts may be outdated, incomplete or do not fully comply with the principles of social justice.

In this regard, a statute adopted by parliament must meet the criteria of a «legal statute», that is, be adopted in the established procedure, be based on natural law principles, be consistent with constitutional provisions and international legal standards, primarily in the field of human rights protection. Such a statute must contribute to the implementation of democratic values, not create unjustified restrictions on the rights and freedoms of the individual and ensure a balance between the interests of the state and the individual. These requirements are of particular relevance in the process of adapting Ukrainian legislation to European Union law in the context of the state's acquisition of candidate status for membership, which involves the implementation of European standards of the rule of law and good governance.

Thus, the essence of the principle of the rule of law lies in the determining direction of the activities of the state, its bodies and officials to establish and guarantee the rights and freedoms of man and citizen as the highest social value. Legislative activity, law enforcement and the functioning of public authorities must be carried out taking into account this axiological basis, which ensures not only formal legality, but also real justice, legal certainty and public trust in the state and its legal system.

Taking into account the above, it is necessary to state that the principle of the rule of law occupies a decisive place in the system of principles of administrative justice, since it ensures the orientation of judicial activity to the establishment and protection of human and citizen rights and freedoms in the sphere of public legal relations. Its content consists not only in formal compliance with the legislation, but also in ensuring the compliance of law enforcement with the fundamental values of law, such as justice, legal certainty, proportionality and non-discrimination. In this context, administrative courts act as an important mechanism for controlling the activities of subjects of power, ensuring a balance between the interests of the state and the rights of the individual.

A feature of the implementation of the principle of the rule of law in administrative justice is its close connection with the principle of legality, which is a necessary condition for the functioning of the legal system. At the same time, the rule of law has a broader substantive nature, as it involves the assessment of regulatory legal acts and actions of subjects of power from the standpoint of compliance with constitutional values and international standards for the protection of human rights. This necessitates the application by courts not only of national legislation, but also of the legal positions of the European Court of Human Rights, which contributes to the harmonization of Ukraine's law enforcement practice with European standards of justice.

Thus, the principle of the rule of law in administrative proceedings is a fundamental legal principle that determines the content, direction and boundaries of the activities of administrative courts. Its practical implementation ensures effective judicial protection of human rights and freedoms, increases the level of legal certainty in public legal relations and contributes to the establishment of the principles of a state governed by the rule of law and democratic governance in Ukraine.

CONCLUSIONS

At the same time, the development of law-making activity in Ukraine is accompanied by a number of problems, including an excessive number of regulatory legal acts, their fragmentation, frequent legislative changes, and an insufficient level of systematic legal regulation. Such factors negatively affect the implementation of the principle of the rule of law, as they reduce the level of legal certainty and complicate law enforcement practice. Therefore, further improvement of the legislative process should include the introduction of mechanisms for regulatory impact assessment, the strengthening of scientific support for law-making, and the ensuring of consistency among different branches of law.

In modern conditions, the rule of law also determines the need for the digitalization of law-making activity, the openness of the legislative process,

and the use of electronic tools for public consultations. This contributes to increasing the transparency of state authorities' activities, expanding citizen participation in the formation of legal policy, and strengthening the democratic principles of public administration. Thus, the development of Ukrainian legislation is increasingly oriented toward the standards of open governance, which constitutes an essential component of the modern understanding of the rule of law.

Therefore, the rule of law serves as a system-forming principle of law-making in Ukraine, determining the qualitative characteristics of legislation, directing state policy toward the protection of human rights, and ensuring the consistency of the national legal system with European legal standards. Further improvement of law-making should be based on a combination of constitutional values, international legal obligations, and scientifically grounded approaches to rule-making, thereby creating the prerequisites for strengthening the rule of law and ensuring the sustainable development of Ukrainian society.

SUMMARY

The conducted research confirms that the principle of the rule of law serves as a fundamental institutional basis for the functioning of a modern legal state and determines the direction of development of the national legal system. It has been established that the implementation of this principle presupposes adherence to legal certainty, proportionality, the prohibition of arbitrariness, equality before the law, and the guarantee of effective judicial protection.

It is substantiated that within administrative proceedings the rule of law acquires practical significance through ensuring access to justice, a fair hearing of cases, and the application by courts of the case law of the European Court of Human Rights, while judicial review of the activities of public authorities acts as a key mechanism for its implementation in public-law relations.

It has been proven that the effectiveness of the implementation of the rule of law depends on proper interaction among public authorities, the independence of the judiciary, and the stability of legal regulation. Therefore, the establishment of the rule of law as an institutional foundation of statehood constitutes a necessary condition for ensuring human rights, strengthening legality, and further development of Ukraine as a democratic state governed by the rule of law.

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