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Rule Of Law Is Becoming A Value

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ABSTRACT

In the article, the rule of law is positioned as a universal principle of ensuring human rights, the main value of modern society. The history of formation, legal nature, the content of the rule of law as a principle, a legal phenomenon and a conceptual approach to modern human rights have been studied. Besides, the foreign experience of the implementation of the rule of law has been analyzed in the CIS countries, the European Council, the United States and researched mechanisms for ensuring the rule of law. The principle of the rule of law is presented as the only effective means of ensuring the inviolability of democracy, as well as one of its main features, and its provision and control is a guarantee of ensuring human rights to the extent that decent living conditions are created for every person.

The article also analyzes the value of the Rule of Law Index of the World Justice Project (WJP) on the example of the Republic of Uzbekistan.

KEYWORDS

Rule of law, constitutional rights, the rule of law index, limitation of government institutions' competence, absence of corruption, order and security, protection of fundamental rights, transparency of government institutions, compliance with laws, civil justice, criminal justice.

INTRODUCTION

The rule of law is a universal principle of ensuring human rights and is becoming the main, basic value for the development of a modern democratic civil society. Increasingly, the concept of "rule of law" is being introduced in the system of legal conceptual apparatus of many countries, including the Republic of Uzbekistan. More recently, even lawyers were unable to distinguish between the concepts of "rule of law" and "supremacy of the law". "Supremacy of the law" refers to rule of legal acts, i.e. written norms. Now everyone knows clearly that the supremacy of law is one of the components of several principles of ensuring the rule of law.

"The Secretary-General noted: "it is necessary to get rid of want and fear, but that is not enough. All people have the right to be treated with dignity and respect", - in his report called "In Larger Freedom: Towards Development, Security and Human Rights for All" (A / 59/2005), [paragraph 27]. The guarantee of ensuring such dignified treatment and respect for people is the full enjoyment of human rights, and the rule of human rights for their protection" [1].

A legal democratic state is a state in which the rule of law is implemented.

Insufficient certainty of the content of the category of the rule of law is largely due to the controversial nature and the absence of unambiguous answers to key questions that can give an idea of this phenomenon. What is the legal basis and content of the rule of law? What is meant by law in this case and over what types of acts and levels of regulation does it have supremacy? What is meant by ensuring the rule of law and what are its

mechanisms? Is it advisable to single out and assess the rule of law as an independent legal phenomenon for the development of legal doctrine and practice?

THE MAIN FINDINGS AND RESULTS

It is known that the doctrine of the rule of law as a kind of system of views on the structure and development of legal reality has been formed over several centuries, while historically its "homeland" is considered to be the system of common Anglo-Saxon law, where its content was firstly defined, which subsequently allowed to establish the rule of law as fundamental constitutional principle of English law. Traditionally, the first doctrinal source of ideas about the rule of law is the work of the English scientist A.V. Dicey on the foundations of state law in England. He conceptually substantiated the meaning and essence of the rule of law, including highlighting such components of this phenomenon as preventing the administration from abusing its power, subordinating all subjects of the country to English laws and courts, judicial protection of human rights and freedoms.

Modern theorists of English constitutional law have enriched the concept of the rule of law, focusing on the limitation of public power with the help of law, on determining the coherence of the courts' activity only by law and not by legal acts, and on the special significance of the judiciary in protecting human rights and freedoms. At the same time, great attention is paid to the relationship of the rule of law with the universally recognized principles of international law and fundamental human rights guaranteed by the

Universal Declaration of Human Rights of 1948 and the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950.

The rule of law is a universal principle. “The need for universal provision and compliance with the rule of law both at the national and international levels” was recognized by all UN member states in 2005 in the World Summit Outcome Document (§ 134) [2]. As stated in the Preamble and in Article 2 of the Treaty on European Union (TEU) [3], the rule of law is one of the basic values shared by the European Union and its members [4]. In 2014 in its document named “New Principles for Strengthening the Rule of Law”, the European Commission recalls that “the rule of law is steadily becoming the dominant organizational model of modern constitutional law and international organizations governing the exercise of public authority”. An increasing number of states refer to the rule of law in their national constitutions[5].

The UN has proclaimed the rule of law as a universal basic principle, for example in the Rule of Law Indicators. At the regional level, it was done by the Organization of American States, in particular, in the Inter-American Democratic Charter, and by the African Union, in particular in its Constituent Act. References to the rule of law can also be found in various Arab League documents. The rule of law is mentioned in the Preamble of the Charter of the Council of Europe as one of the three “principles that constitute the foundation of true democracy”, along with personal and political freedom. Article 3 of the Charter states that a precondition for the admission of a new State to membership in the

Organization is its respect for the rule of law. Thus, the rule of law, along with democracy and human rights, is one of the three intertwining and overlapping core principles of the Council of Europe. The close relationship between the rule of law and a democratic society is emphasized in various formulations of the European Court of Human Rights, for example: “a democratic society that recognizes the rule of law”, “a democratic society based on the rule of law”, and more generally: “the rule of law in a democratic society”. Securing these three principles - respect for human rights, pluralistic democracy and the rule of law - is considered the single and central goal of the Council of Europe.

The rule of law is systematically mentioned in the main political documents of the Council of Europe, as well as in various conventions and recommendations. In particular, it is referred to as an element of common heritage in the Preamble to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The rule of law is referred to as a basic principle of European democracies in Resolution Res (2002) 12 establishing the European Commission for the Effectiveness of the Administration of Justice (CEPEJ) and is referred to as a priority in the Statute of the Venice Commission. At the same time, none of the documents of the Council of Europe provides a definition of the rule of law. The Council of Europe has also not established any specific monitoring mechanisms on the rule of law.

Despite this, on a number of occasions the Council of Europe has taken action to promote and strengthen the rule of law through its institutions, in particular the European Court

of Human Rights (ECHR), the European Commission on the Effectiveness of the Administration of Justice (CEPEJ), the Advisory Council of European Judges (CCJE), Group of States against Corruption (GRECO), Monitoring Committee of the Parliamentary Assembly of the Council of Europe, the Commissioner for Human Rights and the Venice Commission. In its 2011 report on the rule of law, the Venice Commission examined the rule of law in the light of Parliamentary Assembly Resolution 1594 (2007), which indicated the need to ensure the correct interpretation of the term “rule of law”, “Rechtsstaat” and “Etat de droit” or “prééminence du droit” in the spirit of the principle of legality and due process [6].

At its 86th plenary meeting (March 2011), the Venice Commission approved the Rule of Law Report (CDLAD (2011) 003rev). In this report, the main elements of the Rule of Law, Rechtsstaat and Etat de droit were identified. An annex to the report contained the first draft of the checklist for assessing the rule of law in a given State. According to natural law theory, the rule of law requires that all regulatory legal acts and all activities of state power serve to protect dignity, freedom and human rights [7].

The Venice Commission analyzed the definitions proposed by various authors representing different legal systems and state organizations, as well as different legal cultures. The Commission concluded that the concept of the rule of law implies a clear and predictable legal system in which every citizen has the right to dignified, equal and reasonable treatment in accordance with the legal acts from all persons in power, and also has the opportunity to challenge their

decisions in independent and impartial tribunals in a fair trial. The commission warned against a purely formal approach to the concept of the rule of law, requiring only that the actions of an official be authorized by legal acts. “Rule by force of legal acts”, or “Rule by legal acts”, or even “Justice by legal acts” - all these are a distortion of the concept of the rule of law [8].

The concept of the rule of law implies that norms must be published, stable and predictable in their application. An important requirement is the availability of the justice system and its independence from the executive and legislative branches of government. Rationally, the rule of law does not assess the fairness of the norms themselves, but rather establishes the procedural attributes that a legal system should have. Today, the rule of law is a global goal of the international community, the achievement of which is possible only through international integration due to globalization and technological progress, which contribute to the growth of interaction among states at the international and regional levels.

The World Justice Project (WJP), an international independent nonprofit organization, first published the Rule of Law Index in 2010. The organization promotes the rule of law - a principle that recognizes the priority of law over the state and ensures accountability of all its individuals and institutions.

The Rule of Law Index® World Justice Project is the world's leading source of original, independent rule of law data. Covering 128 countries and jurisdictions, the index relies on national surveys of over 130,000 households and 4,000 legal practitioners and experts to

measure how the rule of law is perceived and implemented globally[9].

The rankers assess (128) states and jurisdictions on eight key indicators:

1. Limitation of government institutions powers.
2. Absence of corruption.
3. Order and safety.
4. Protection of fundamental rights.
5. Transparency of government institutions.
6. Compliance with laws(legal acts).
7. Civil justice.
8. Criminal justice.

Uzbekistan ranked 94 in 2019 [10] out of 126 and 12 out of 13 in the Eastern Europe and Central Asia region. The compilers of the index note that the situation with the rule of law in the country has improved, which allowed it to move up 2 positions in the world ranking. In the region, the place of Uzbekistan has not changed. The overall score of Uzbekistan is 0.46.

In 2020, Uzbekistan rose to 92nd place out of 128 states [11], which is a good indicator, since the country has risen 2 levels higher over the year. The WJP ranks countries on several factors, including absence of corruption, order and security, fundamental rights, civil justice, and more. We have the lowest indicators for government transparency and the absence of corruption, and the highest indicator is order and security, according to this criterion, we are in 11th place worldwide.

The rule of law ensures sustainable economic growth for societies, promotes accountability of governments around the world, and encourages respect for fundamental human rights. The principle of the rule of law is fundamental and systemic in the system of

law principles. Refusal in any sphere of state-power activity from submission to law is essentially the power's oblivion of the interests of society, its desire to rise above society, to consider a citizen as an object of its activity, not as an equal subject in relations with the state. This is inconsistent with the rule of law, entails the danger of arbitrariness, excludes the reality of legal reforms, including judicial reform, and potentially carries the threat of destruction of the state itself.

Of course, the Republic of Uzbekistan should develop its national methodology for calculating the Rule of Law index, as well as develop and effectively implement mechanisms to improve the indicators of the factors of this index, especially those factors that have the lowest indicators. It is necessary to monitor all systems that are taken into account, identify deficiencies and take systematic and regular measures to eliminate them.

Thus, the rule of law should be dealt with not only by state structures, but also by every citizen of Uzbekistan, since it is in the interests of each of us to increase the rating of our country.

The Declaration of the High-level Meeting of the UN General Assembly on the Rule of Law at the national and international levels of September 24, 2012 [12] reaffirms that human rights, the rule of law and democracy are interrelated and mutually reinforcing and they are universal and indivisible basic values and principles of any modern democratic state.

International standards establish the following basic principles of the concept of the rule of law:

Priority of international law over national;

Priority of human rights and freedoms over state interests;

Priority of law over legal acts, inadmissibility of contradiction of laws to the Constitution of the state;

The supremacy of legal acts and their effective implementation;

Separation of powers and principles of the relationship among the legislative, executive and judicial branches;

Access to justice;

Protection of personal liberty and dignity, procedural and substantive restrictions on government action against individuals;

Absence of corruption;

Access to the information;

Independence of the courts as a principle of the rule-of-law state.

One of the main contradictions of modern social development consists precisely in the fact that, having proclaimed a legal state de jure, but refusing to obey the law de facto, the state will develop along the vector leading to its collapse.

The cornerstone problems of the rule of law, expressed in the implementation of its basic principles, are the most urgent subject of multilateral public discourse: the future of the country and its role in the process of modern development of a multipolar world in the context of its globalization depend on their solution.

The constitutional consolidation of the norms on the rule-of-law state, the principle of the rule of law determine the field of activity of all branches of state power and the methods of

their activity. The state should not go beyond the boundaries of the legal field, crossing which the rule-of-law state turns into its antipode. The state cannot use in its activities methods that contradict the principles of the rule of law and the rule-of-law state. The rule of law creates a criterion for assessing the activities of the state, all branches of government - legislative, executive, and judicial. On the basis of this criterion, citizens must assess whether the activities of the state comply with the requirements that the rule of law must meet [13].

Thus, the rule of law is the foundation for the world's communities on which their development depends. Weak rule of law entails such problems as impunity for criminal offenses, lack of provision of medical institutions with the necessary medicines, lack of equality of classes before the law, unjustified curbing of foreign investment. Effective rule of law, on the other hand, helps to reduce corruption, improve public health and education, reduce income inequality, and protect people from crimes of various kinds. Strengthening the rule of law is one of the main goals of government, investors, business and civil society around the world. To ensure effective rule of law, it is necessary not only to know the fundamental features of the rule of law, but also to have an adequate basis for measuring and evaluating it. Therefore, the Rule of Law Index was developed.

In general, it can be stated that the legal positions of the highest judicial bodies, especially constitutional courts, are becoming the most important instrument for ensuring the doctrine of the rule of law and the implementation of legal life. At the same time, there is also a feedback - the influence on the

judiciary of the rule of law as the most important doctrinal and legal instrument for the development of judicial discretion and activism, the unification of national judicial and legal practices and the establishment of suprapositive general legal values in them.

CONCLUSION

In conclusion, it should be noted that the doctrine of the rule of law, accepted by legal practice, undoubtedly opens up additional prospects and opportunities for the implementation of international law, the development of the national legal system in the context of ensuring human rights and freedoms and the sovereignty of the individual, optimizing the activities of public authorities and the limits of their permissible impact on public relations, strengthening the independence of the judiciary.

In addition, in our opinion, it is very important to include the term "rule of law" in the conceptual apparatus of the national legislation of the Republic of Uzbekistan, as a universal principle of ensuring human rights. Accordingly, it would be advisable to establish a national mechanism for ensuring the rule of law. In this light, we consider it necessary to legislatively expand the powers of the Authorized Person of the Oliy Majlis of the Republic of Uzbekistan for Human Rights (Ombudsman) in monitoring the provision of the principle of rule by state bodies and the population.

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