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## ОТДЕЛЬНЫЕ ВОПРОСЫ СОВЕРШЕНСТВОВАНИЯ И ОСУЩЕСТВЛЕНИЯ ВЕДОМСТВЕННОГО КОНТРОЛЯ ДЕЯТЕЛЬНОСТИ ПАТРУЛЬНОЙ ПОЛИЦИИ ПО НАДЗОРУ ЗА ДОРОЖНЫМ ДВИЖЕНИЕМ

***Исследуются особенности и способы осуществления ведомственного (внутреннего) контроля деятельности патрульной полиции (отдельных ее должностных лиц) по обеспечению безопасности дорожного движения. Выделяются две основные формы контроля: текущий контроль полноты и качества исполнения патрульной полицией возложенных на нее законодательством задач и обжалования действий и решений, осуществляемых (принятых) должностными лицами патрульной полиции. Подчеркивается, что четкой регламентации организации и порядка проведения контроля несения службы полицейскими патрульной полиции до сих пор не существует, в связи с чем обосновывается необходимость разработки и утверждения приказом Национальной полиции соответствующих рекомендаций.***

***Ключевые слова: безопасность дорожного движения, законность,обеспечение прав граждан, контроль, патрульная полиция.***

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## SELECTED ISSUES OF IMPROVEMENT AND IMPLEMENTATION OF DEPARTMENTAL CONTROL OF THE ACTIVITY OF THE PATROL POLICE ON THE SUPERVISION OF ROAD TRAFFIC

***The article is devoted to the establishment of features and methods of departmental (internal) control of the patrol police (its individual officials) to ensure road safety. There are two main forms of control: current control of the completeness and quality of execution by the patrol police of the tasks entrusted to it by the legislation and appealing against actions and decisions carried out (adopted) by the officers of the patrol police. It is emphasized that a clear regulation of the organization and procedure for monitoring the service of police officers of the patrol police still does not exist, and therefore the need for the development and approval of relevant recommendations by the order of the National Police is justified.***

***Keywords: road safety, legality, ensuring the rights of citizens, control, patrol police.***

**УДК 340.1**

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# SCIENTIFIC RESEARCH IN THE RULE OF LAW FIELD: CURRENT SITUATION AND LONG-TERM PERSPECTIVES

***The universalization of international legal regulation presupposes formation of the common vision regarding the certain social values. Among such social values is well-known rule of law idea, which serves as an umbrella principle for the international community. The purpose of this article is to reveal the nature of the rule of law theoretical evaluation. The author discusses the issue of the pragmatic understanding of the rule of law idea. Essentially, attention was concentrated predominantly on the foreign legal thinker's researches. The foci of the discussion in this paper are four major fallacies and problems, namely, the components of the rule of law, its conceptualizing by international institutions, and permanent meaning in the globalization processes as well as further development in the field of Ukrainian law theory. In this work such research methods as the comparative and systematic were used. Specifically, with the aid of first method, it is possible distinguish main peculiarities of the foreign legal tradition from the Ukrainian knowledge about the rule of law. Indeed, the systematic method allows the author to reveal main gaps in the rule of law conceptualizing, thus create a set of questions serving as the focal points for the future academic findings. The author argues, there is a great difference between rule of law that operates at the international level (as fundamental regulator between States or/and other international institutions) and rule of developed by various international institutions with an aim to promote and "incorporate" this concept (or its particular component parts) into national legal systems. In other words, international organizations (both governmental and non-governmental) as the key actors in international law-making process often use the rule of law in their external policies, main aim of which is to promote different legal values (such as human rights and democracy) and various governance standards. It is concluded that the rule of law conceptualization could be done at different levels. Furthermore, the implementation mechanisms of the researched principle should be further investigated in the context of Ukrainian legal system.***

***Key words: rule of law, legal theory, concept, international rule of law, normative standards, foreign jurisprudence, international organizations.***

**Introduction.** Does rule of law principle make a difference in the real world? Does implementation of its core normative standards lead to the improvement of national legal orders? This is the questions that determine the relevance of the present article. For the last decade, the rule of law agenda has become overloaded with dozens issues related to its practical implementation into domestic legal systems. In this context, it is of utmost importance to realize that rule of law has become an effective tool for the global governance to guide assistance policies, planning and implementation of programs concerning human rights.

Taking into account the aforesaid, this research paper is devoted to the systematization of diverse academic findings in the rule of law area. Thus, its overall aim is to examine current situation on the rule of law concept development. This will allow the author to outline further perspectives in the rule of law investigation as well as to mark out existing gaps in its theoretically-normative construction.

In the absence of the rule of law and strong civil society, reformation of particular governance system has no effect and is associated in some cases with exclusion and marginalization within a State. To avoid it, it is necessary to explore modern legal practices on the facilitation of the rule of law adherence. Logically, those legal practices are based on the complex theoretical knowledge, encompassing a wide range of rule of law adaptation mechanisms and models. Unfortunately, in most cases Ukrainian Academe has not possibility to investigate such-line scientific sources. Hence, in accordance with such methods as comparative and systematic, the author intends to demonstrate foreign scientific trends in the rule of law conceptualization.

The key objectives of the article are reflected in its main sub-sections. Particularly, the sub-section A focused on the essential rule of law issues. Next parts oriented on the global rule of law aspects, namely, its international dimension and global operationalization. And, finally, in sub-section G the author tries to highlight unexplored rule of law questions, thus demonstrating its dynamic character.

**Key messages of the research.** The legal literature routinely inform us about various aspect of the rule of raw, causing new waves in its theoretical conceptualization, developing new instruments of its perception and practical application, renovating institutions both governmental and intergovernmental. So, does the rule of law doctrine examined in sufficient detail? To answer to this question depends, of course, on the perspective from which this idea is considered and from the degree of rule of law adherence in particular country. Clearly, the concept of the rule of law is actively developed by foreign (predominantly, Western) academics and the author's main task is to systematize existing approaches to the rule of law investigating as well as to delineate its aspects that remained unexplored in the light of new globalization challenges.

**Traditional aspects of the rule of law.** Recently, an increasing number of rule of law researchers justify the thesis regarding the necessity of applying such a definitional approach, according to which this principle is seen in perspectives of elemental composition. In this sense, for the purposes of the current study, scientists' investigations related to the rule of law perception via its constituent parts is essential as it allows to choose optimal mode for its direct understanding. Thus, there is a strongly held view that the necessary groundwork for this approach was laid in 1969 in the fundamental work of the famous philosopher L. Fuller in his "The Morality of Law". To show the Rule of Law "polarization", researcher referred to eight requirements that should be imposed on the content and form of the law, the observance of which allows to outline the purpose of the very rule of law principle [11, p. 39].

His followers in the American law philosophy recognize the need to identify the components of the rule of law not only in order to comprehend its essence, but also to identify the main directions of improving its implementation in the field of regulation of relations between society and the State. Thus, J. Raz in his "The Rule of Law and Its Virtue" also defines eight basic Rule of Law principles and adds that each of these principles is modified within a specific societal context and in response to specific societal conditions [32, pp.16-19].

Aforesaid works have become the main benchmark for the further research of structural elements of the investigated principle.

**Some linguistic confusion.** Nevertheless, the field-specific literature is characterized by the chaotic use of such word-expressions as "elements of the rule of law", "rule of law requirements", "rule of law principles", "indicators of the rule of law", "components of the rule of law" etc. For example, some of the above definitions were used in the studies of J. Waldron (there is no distinction between rule of law requirements and its principles) [37, p. 2], R. Fallon (confusion between rule of law requirements to the quality and form of the law with procedural elements of the rule of law) [9, pp. 7-9], M. Rosenfeld (minimal requirements for the effective rule of law implementation are identified with the structural parts that constitute the elemental its composition) [33, p.1313], J. Jowell (rule of law elements are revealed through its main sub-principles, which are at the same time can be regarded as the legal values) [18, pp. 18-22] and others.

Consequently, using such word-combinations, the authors in most cases do not make a significant distinction between the above terms, which in turn creates considerable barriers in designing the logical structure of the rule of law definition. To illustrate our rationale, three following immanent characteristics should be marked out:

1) the elements of the rule of law principle, which in fact are its structural (constituent) parts;

2) the requirements of the rule of law principle, which are imposed on national legal systems (to ensure maximum efficiency in consolidation of generally accepted rules of international law); such requirements largely reflect certain standards in protection of fundamental human rights and freedoms from the State's arbitrary actions;

3) the requirements directly affecting the rule of law; here we are talking about the improvement of rule of law national versions, taking into account the practice of improving this principle by the main actors of international legal relations.

Existing number of scientific sources, focusing on the elemental composition of the rule of law principle, shows that comprehensive definition of this concept should be made within the framework of the systemic-functional approach, which had not previously been applied either by domestic or foreign legal thinkers in terms of to the structural determinants of this principle.

Therefore, since the current research paper task is to examine how the rule of law principle manifests itself in contemporary legal practice, it is especially relevant to consider the investigated idea as a specific structure of the theoretically-normative nature. However, it should be noted that in most broad implications, the modern stage of Ukrainian legal theory development is characterized by the lack of scientific developments on some issues. For the author, the application of the systemic-structural approach will allow to make the rule of law principle more flexible, being not only a product of purely scientific research, but also a specific set of normative standards widely used within national legal practices.

**Rule of law global perspectives.** It is generally accepted that the rule of law is not limited to the national legal system today. Taking into account the fact that foreign legal thought has accumulated some theoretical experience of studying the operation of researched principle at the international level, national science (and the legal theory in particular) has an important mission: to find a methodologically appropriate way in conceptualizing the functional peculiarities of this principle precisely in the area of international legal relationships.

Among the researches with a synthesizing nature, it is necessary to distinguish papers devoted to the theoretical explanation of the operationalization peculiarities of the investigated principle in the process of the world legal order globalization [for example, studies undertaken by M. Heupel [14], S. Zifcak [41], J. Heckman [13] and F. Neate [25]. Indeed, such research deal with the questions of rule of law axiological rethinking via improving its content within present-day processes of world environment internationalization. Therefore, the main attention is drawn to the shifting of values that are in the subject field of the rule of law principle. It appears that a such-like perspective on the rule of law study is correct, but needed to be clarified. Primarily, utmost importance is given to the fact that among the legal consequences of the universalization of the investigated principle is the convergence of legal systems in the area of implementation and adaptation of generally accepted international legal standards. Thus, during a lively discussion regarding the rule of law nature and functioning within the framework of the international legal system, a much simplified understanding of this phenomenon was overcome.

A significant layer of scientific literature consists of studies devoted to the internationally-tangible aspect of the rule of law. In contrast to Ukrainian legal scholars, the research-area of foreign experts necessarily includes complex issues related to the conceptual content of this principle in its international dimension (namely,

researches made by A. Watts [39], B. Chinmi [7], H. P. Aust [2], K. Keith [20], A. Nollkaemper [27] as well as J. Waldron [38] and others).

Since current article is in itself of descriptive nature, the author wants to suggest systematized methodological approaches to the rule of law understanding found in international law theorists' academic papers. Specifically, using broad-spectrum (and sometimes diametrically opposed) methodology, western scholarship tends to design an international version of the examined concept with an aid of a wide range of legal and political categories. Moreover, "they range from reaffirmations of the protection of the individual by human rights over the rule of law as a benchmark for good governance to understandings which equate the rule of law simply with the idea that there is a law in international relations" [39, p. 15]. Such approaches can be classifies into following sub-groups:

Sub-group 1: Approaches which identify particular legal phenomenon by parity of reasoning; in our case, international rule of law is defined clearly as its domestic version, that is, as the ideal, according to which international law subjects are subject to the well-established law customs and standards [7, p. 291].

Sub-group 2: "Vehicular" approaches focusing on the instrumental capabilities obtained by the rule of law in order to transform certain parameters of the legal reality. Being a powerful tool, international rule of law is considered in two following complexions:

a) the concept designed to tackle the problems that arise "when one or more governments become parties to the controversies; when there is a dispute between an individual (or corporation) and a foreign government, or between the governments of two or more nations"; at the same time, its instrumentality is manifested in the fact that international law itself unites the norms, stipulated in international customs and corresponding treaties that are "considered by nations as legally binding on themselves in their dealings with one another and with each other's citizens" [3, p. 556];

b) the international rule of law by its whole nature is policy-oriented concept; this means the rule of law plays a dual role at the international level: as a principle which should be incorporated in States external policies, imposing a set of liberal political commitments, which depoliticize power relations "embedded" in the process of legalizing certain international relations; at the same time, rule of law serves as a recognized by international community social value, which provides nations and people with a path to peace and prosperity [15, p. 378].

Particularly, the instrumental approach, described above, was extensively used in the context of accountability and responsibility of the States in their domestic and foreign policies. Thus, the rule of law idea, placed into the international relations "vacuum" is seen, as the normative and moral standard employed by States in their cooperation with each other as well as in respect to their relations with the citizens [2].

Sub-group 3: Elemental approach, according to which international rule of law is understood the process through which special Rule of Law principles in relations between States and other subjects of international law are applied [6]. In order to specify this methodological technique, rule of law at the international level much differs in its constituent part from the domestic analogue. However, some legal academicians extensively debating about the operationalization of certain rule of law elements at the international level. In author's personal opinion, such scientific struggles continue to be carried out. Namely, if we are talking about legal certainty at the international level, an awkward question may arise: whether this principle is applicable in relations between international law actors.

From the comparative perspective, it is quite obvious that international rule of law in itself envisages mutual interaction with its national version. Thus, the question of the rule of law functioning at two levels of legal relations is characterized by ongoing scientific inquiries in relation to development of a variety of conceptual approaches. Usually, it is emphasized that the correlations ("tangency points") between two rule of law versions must be analyzed from three different positions:

1) in what way the concept of national rule of law, understands, accepts and opposes its international version;

2) in what way international rule of law doctrine understands, accepts and opposes its national version;

3) how and in what way can be understood and evaluated the interaction between two versions by the international community [19, pp. 2-3].

Such an approach is methodologically faithful, since the analysis of the international rule of law (namely, its target-orientation nature) requires a rethinking of the principle in such a way, according to which all existing systemic differences between national and international legal orders will be taken into account [25, p. 155].

A benchmark approach to the contemporary academic papers, written by Western European and American authors, allows us to make a more complete and clear picture regarding the delineation of international rule of law and its national analogue. Usually, the diversity of views focused on the correlation between international and national rule of law ideas can be reduced to the following statements:

1) there is a substantial distinction between national and international rule of law, in respect of different methods and ways applied to the implementation the principle in particular level of legal relations [38, p. 317; 30, pp. 192-193; 40, pp. 299-300; 15, pp. 266-367].

2) there is a certain relationship between national and international rule of law (in this context, it is referred to the substantial interaction between national and international law); for example, an outstanding legal thinker from the Netherland A. Nollkaemper, such interplay examines from the perspective of mutual reinforcement of these two rule of law manifestations [26, p. 76].

Crucially, in recent decades, foreign academic interest in the issue of interaction between the rule of law versions in recent decades continues to grow. Specifically, among such urgent concerns is the transposition issue of national versions of the rule of law to the level of international legal relations. The solution to this problem may be based on several diametrically opposed positions. Some legal academics (for example, A. Watts in his publication "The International Rule of Law" and I. Hurd in his article "The international rule of law and the domestic analogy") strongly argue that there is no any theoretical and methodological grounds for transposing the national rule of law analogue to the rule of law (or some of its characteristics, structural elements) operated at the international level. Consequently, the international rule of law formula cannot be simply deduced from the domestic rule of law doctrines. It is believed that these two variants developed separately, addressing different in their content political challenges and needs, because they are based on various principles of the political power organization [39, p. 16; 15, p. 376].

Other legal theorists, by contrast, believe that the logical consequence of the coexistence of the two rule of law variations is in their constant interaction, directly expressed via the transposition of their essential characteristics and their further "assimilation" [19, p. 3]. In support of the latter approach, it should be argued that the

international scientific community has developed a number of issues related to the investigation of the international law standards reception by national legal systems, including the concept of international rule of law. However, the set of issues, related to the theoretical and legal characteristics related to the "assimilation" of rule of law national concepts by the international legal system, still remains unresolved.

Undoubtedly, the papers of the above-mentioned authors represent a significant contribution to the study of the rule of law functional patterns in the modern world. However, in present-day studies, despite their overall importance, the researcher's attention has not been drawn fully to the following important theoretically-methodological issue. Today, the rule of law, operating in the international legal area, can be represented via two interrelated, but different in their teleological orientations, principles. In the first case, this is the rule of law principle, which operates in the relationship between all subjects of international law. Traditionally, the authors, whose investigations are devoted to the study of this aspect, build their arguments around the international rule of law. Otherwise, the rule of law also acts as the tool employed by the international law actors (international organizations and other human rights institutions). However, from the perspective of instrumental approach, the rule of law, being in an interaction "vacuum" between two levels of legal order (international and national), represents a principle of universal character, encompassing a set of legal standards. And such standards are developed, improved by the relevant international organizations and amplified into national legal systems.

Perhaps the only author who directly drew attention to the second aspect of the rule of law functioning, as well as the need to distinguish it from the principle that acts as a generally accepted standard of conduct in the international arena, is the aforementioned representative of the Netherlands School of the Rule of Law, A. Nollkaemper. In his scientific findings, special emphasize is placed on the concept of so-called "internationalized" rule of law [27, pp. 1–4], Understanding the rule of law as the principle of a universal, "supranational" nature allows us to determine, at a broader theoretical level, the need for re-constructing the theoretical and legal model for the interaction between international and national legal orders, logically resulting from present status of globalization processes, including extensive legal integration.

**Rule of law principle in the international law-making process.** In this regard, another question arises in relation to the development of the rule of law concept in acts of international law-making activity. It should be noted that the distinction of international law-making as an independent object of general theoretical legal study presents some difficulties, since this concept involves the interaction of the international legal system with the domestic legal systems. Naturally, all domestic researches related to the theoretical evaluation of international law-making were carried out mostly within the framework of international law.

At the same time, further research of international law-making activity within the framework of the general law theory seems to be necessary, as it will allow to establish new mechanisms for the implementation of international standards into the national laws. The product of international law-making is the legal norms formalized in various acts enacted by international institutions with an aim to improve existing domestic legal systems. Reference to the rule of law principle as to the principle recognized by the entire international community is present in almost every international legal act. The obvious universalization of the investigated principle demonstrates the rule of law functionality for the international law-making activity. It must be acknowledged that this question is still open for both theoretical jurisprudence and field-oriented legal science. Over the last decades of extensive globalization, the development of international law-making and the role of the rule of law in this process, there is only one foreign collaborative study devoted to the rule of law operationalization in the process of informal law-making. [8]. However, in this context, the rule of law here serves rather as a normative benchmark, a mandatory requirement for the recognition of informal law-making acts as of legitimate force. In contrast, the vector of scientific research should be directed towards the investigation the process of developing the rule of law standards within the hard and soft law as well as the peculiarities of their implementation into the domestic legislation.

**Rule of law concept in international institutions' activity.** Significant number of legal findings focuses on the theoretical foundations of the interpretation and conceptual improvement of the rule of law principle within the major international organizations' activities. Debates over the instrumental role of the rule of law principle, in particular, the institutional aspect of its functioning in the international law environment, can be seen in a number of scientific sources.

Having said this, the investigated principle is permanently treated from two aspects:

1) Theoretically-legal – the attention is focused on the conceptual interpretation of the rule of law principle by the international institutional mechanisms [1; 31; 34; 10].

2) Analytical and application-oriented – is aimed at developing practical recommendations for the improvement of the rule of law national versions in accordance with standards developed by international practice [28; 5; 29].

Curiously, the focus area of the first group of sources is in issues related primarily to the theorizing of the rule of law as an indicator of the international system effectiveness, including international organizations and the legitimacy of their functioning. At the same time, much of the discussion is built around the relevance of the rule of law existence at the international level as well as definition of the limits beyond which international organizations should not be involved in the implementation of their foreign policy towards States.

The conceptual goal of the second group of sources is to develop a pragmatic model of the rule of law functioning within the national legal system. Such a model is based on an analysis the degree of the rule of law adherence by the particular State. Typically, authors of this type of literature offer recommendations for improving policy in the realm of the rule of law principle.

Another aspect that is actively studied is the role and importance of the rule of law in international judicial practice. The scientific situation is currently characterized by the emergence of certain academic works, in which, to a greater or lesser extent, the international institutions' decision-making is considered in terms of their instrumental role in the rule of law development. Thus, the problems of rule of law interpretation by modern scholars were analyzed in the acts of international judicial law-making from different perspectives. Some authors consider the activities of international judicial bodies as an environment in which the rule of law principle becomes effective and improved on the basis of real legal relations [35].

It is interesting that in the international organizations' framework, rule of law predominantly is operated in two dimensions: 1) internal dimension – as a foundational and common value for the whole European community; being a keystone, rule of law reflects aim and character of the organization's politico-legal system; in case of violations of such overriding principles, organization is able to use sanctions against member-State; also, this principle is in

synergies with other well-known tenets – democracy and protection of human rights; in this contexts, they organization has "sharp contour" of how this institution is organized and what values it promotes; 2) external dimensions – as a benchmark and guiding principle for both organization member-States and candidates in their legislative systems and government actions; in this case, rule of law is a concurrent foreign policy objective; this dimension presupposes active cooperation between organization and states on the rule of law promotion and unification its standards at the national level.

For this reason, international organizations constantly enriches the meaning and particular scope of this principle thereby enabling it with dynamic and flexible character. Even without fixed definition of the rule of law, comprehensive approach to its essence can be suggested. Instead of static rule of law determination, taking into account intensification of globalization processes, there is a good reason to consider this principle through the application of structural-systemic approach, which is premised on the diversification of the rule of law principle into the mutually-referenced components (sub-principles) which in their unity convey rule of law target orientation and its distinctive axiological aspects. Organically, there are dozens of scientific discussions about attributes possessed by the rule of raw. Holding the complex approach to the legal phenomenon analysis, in the institution normative framework this concept has both substantive and formal (procedural) components.

The largest corpus of scientific research works is devoted to the operationalization of the rule of law principle at the level of the European Court of Human Rights and the International Court of Justice. It is quite common for researchers working within the framework of interpretative problems, to conceptualize the rule of law as an effective tool for the evolutionary interpretation of universal international legal acts. Considering the rule of law as the generally accepted standard for the international system, the emphasis in such-like investigations is mainly shifted to the methodology of studying this principle through the prism of the common values of the international community and the reflection of the rule of law with human rights (see, for example, a comprehensive study by G. Lautenbach "The Concept of the Rule of Law and the European Court of Human Rights" [35] or the article written by the famous lawyer P. Jessup entitled "The International Court of Justice and the Rule of Law" [17].

**Researches in the field of the rule of law promotion.** Furthermore, the emergence of successful legal integration processes requires from the contemporary legal thinkers to make scientific investigations devoted to the national law approximation to the international legal standards. Globally speaking, the identified issues relate either to the general theoretical basis of adaptation of domestic legislation to the legislation of the European Union, namely to its acquis communautaire; or specific studies carried out within the framework of certain branch of legal sciences (e.g., energy law or intellectual property law). Instead, domestic jurisprudence has overlooked the problem of the implementation of international rule of law standards into the legislation of certain States. Thus, since the proclamation of independence, no scientific study was devoted to the significance of the interaction between international and national legal systems for the implementation of the rule of law principle (specifically, its normative components).

The foregoing confirms once again that the proper elaboration of thematic cluster on the dynamic development of the rule of law concept within the national legal order could not be achieved without examining the dialectical relationship between international legal systems with its national analogies.

In contrast, recently, there has been a significant amount of interest among English-language legal scholars, in changing the linear perception of the rule of law as a purely dogmatic category. Thus, in most cases, the issue of the implementation of the rule of law international standards is viewed through the lens of promotion or advancement of this principle in the national legal systems. Among other things, one of the first substantive researches is the book entitled "Promoting the Rule of Law Abroad: In Search of Knowledge", edited by a well-known rule of law scholar T. Carothers, where the authors briefly review the main features of the assistance programs aimed at the rule of law promotion in those countries where degree of the rule of law compliance is fairly low [4]. A notable impact on the outlined problem has R. Kleinfield's scientific findings. The application of the critical approach has allow to examine researched phenomenon through the prism of the legal relationships reformation and to substantiate the successful practices oriented promoting the rule of law in order to create a common strategy for the implementation its separate standards into the legal system of particular country [22].

As highlighted earlier, at the current stage of development of ideas about the applied nature of the rule of law, , it is becoming particularly urgent to use the pragmatic methods in the establishment the clear boundaries of the rule of law target determination. Therefore, the ideas expressed in the collaborative research of Michael J. Trebilcock and Ronald J. Daniels "Rule of Law Reform and Development: Charting the Fragile Path of Progress" seems to be quite important for the conceptualizing rule of law functioning in the real world. Thus, certain paragraphs of the research are directly related to the synergetic connections between contemporary trends in world globalization and the development of the rule of law principle through the application of adapted strategies on /national legal systems reformation. However, the above-mentioned aspects are mainly considered from the political economy as "the most important direction for the international community" [36]. The approaches related to the investigation of the rule of law effectiveness through the application of various economic instruments can also be found in academic writings of such scholars as Eric Gilbert Jensen and Thomas Heller [16], Kenneth W. Dam [21] and others. In most cases, the effectiveness of the rule of law principle is linked predominantly to financial stability and the structural organization of economic management within the country. Without denying the essential role of economic institutions in the development of the researched concept, in our view such an approach requires the use of an integrated methodology in interdisciplinary research that will form clear legal and theoretical frameworks for the development of appropriate programs in the rule of law promotion in countries around the world.

A separate group consists of works, where attention is mainly focused on the rule of law principle in post-conflict (so-called transitional) societies. Abroad, issues related to the restoration of the legal institutions' activities within the countries' post-conflict development are under ongoing scrutiny by comparative scholars. For example, the peculiar methodological feature is the work of Laura Grenfell, in which the rule of law is considered through the prism of globalization processes. In this case, an important instrumental role is played by the awareness of the conceptual relationship between the very principle of the rule of law and the phenomenon of legal pluralism [12]. In line with current trends, ideas are being put

forward on the reconstruction of the substantive aspect of the rule of law through the study of the transitional justice paradigm [for example, 24].

In the general theory of state and law, the understanding of the rule of law is usually reduced to its consideration as the category with the static aspects. In other words, modern general theoretical research is aimed primarily at the declaration of "universality" and the multidimensionality of this principle, while appealing against the impossibility of defining its concept. At the same time, the concept of the dynamics of the rule of law principle, its development within the framework of the interaction between international and national legal systems is considerably less developed. The question of the rule of law dynamic characteristics was updated in the collaborative study "Rule of Law Dynamics in an Era of International and Transnational Governance", edited by M. Zurn, A. Nollkaemper and R. Peerenbom. Today, this is the only work devoted to the comprehensive study of the rule of law applied aspects, in particular, the definition of its quality, the comparative analysis of the policy on the rule of law promotion in Western countries, as well as the development of a theoretical basis for the assessment of the rule of law promotional effectiveness in countries with developing economies [42].

**Unbeaten aspects of the rule of law.** The problem in the current rule of law research is clear: theoretical expectations in this field need to be re-conceptualized. The tendency to isolate the rule of law concept from practical implications has led Ukrainian scholars to overlook a larger picture.

The focal point in the rule of law investigation activities, in our view, is in that the global institutionalization of this concept has been a double-edged sword.

From one side, the target determination of the rule of law is an extremely high, thus there is no content clarity in the revealing certain parameters of researched principle.

From the other side, global rule of law idea has the rather weak institutional mechanisms to implement its standards into the domestic legislations, as well as to monitor the effectiveness of created rule of law assistance programs.

Nevertheless, the rules of law advocates regularly mobilize around these challenges and develop platforms, where new empirical material about rule of law is generated.

Conducted above complex analysis has shown, in the last decade or two, theoretically-normative dimension of the rule of law has attracted growing attention in the international legal theory. Internationalization of the rule of law has had an unmistakable influence on this concept. Originally developed in the national legal systems, rule of law refers to the idea that pays special attention to human rights question, democratic organization of the global legal order. Thus, it challenges the assumption regarding the national determination of the rule of law.

Another important aspect is that rule of law international institutionalization tends to reduce dogmatic approach to understanding of this principle. This line of scientific research explicates how global standards influence national legal orders.

In author's view, this will allow to overcome the isomorphic rule of law issues and construct principally new directions for the theoretically-practical perception of this principle. Among them, particularly, are:

- Treatment of the rule of law as the product of interaction between international legal order and its national variations;
- Conceptualizing the rule of law as the set of standard, which applied in different spheres of legal relationships regulation;
- Revealing the rule of law through the prism of international law-making activity, where it could act simultaneously as the tool for international standards generating and as the object for the global law-making, etc.

**Conclusions.** In our view, such a multifaceted nature of rule of law scientific exploration and conceptualization is quite logical and shall be explained as follows :

- firstly, the universalization of scientific knowledge about the rule of law category, its internationalization as part of the promotion of national legal systems reformation;
- secondly, the dynamics of the rule of law development as the principle of cross-cutting nature, the necessary basis for the stable and effective functioning of international legal order;
- thirdly, the cognitive and methodological potential of rule of law, which serves as the underlying concept for the development of large-scale legal phenomena (international law-making activity, interpretation of the rules of law by international judicial bodies, etc.).

In the light of the above mentioned, rule of law research findings should be subdivided into two main groups:

I. Research findings, suggesting theoretical foundations and new conceptualizing frameworks for the rule of law development.

II. Research findings of pragmatic nature, predominantly focused on the analysis of practical implications of the rule of law, development and establishment of new analytical frameworks aimed at the rule of law assistant programming.

The author's efforts to generalize and systematize existing developments in the study of the rule of law field will allow:

- to determine the research degree of the rule of law investigation;
- to identify existing gaps in present-day scientific developments on the theoretical and pragmatic aspects of the rule of law;
- to determine future-oriented strategies for Ukrainian legal theory, within which new rule of law immanent characteristics will be revealed and theorized.

Despite of the quite abstract nature and absence of comprehensive definition, both rule of law researchers and practitioners emphasized on its substantial content and importance in the functioning not only at the supranational level, but also in the domestic framework.

Following on from the results of current research, crucial aspects, which help understand the rule of law comprehensively, can be circumscribed: a) reflects the nature of international organization as the community based on universally legal standards and values; b) as the maxim according to which international judicial bodies (namely, European Court of Justice and European Court of Human Rights) exercise protection; c) is the part of international organization's constitualization strategy (in the sense of entrenchment new rule of law manifestations into the national legal contexts); d) as the indispensable part of the international legal order (in this sense, rule of law is the principle of normative legal binding nature and serves as the "building block" for the mutual recognition of legal decisions of both national governments and associated members of the particular organization).

Thus, it is appropriate to shape an inclusive algorithm of how rule of law principle is externalized in international context. Firstly, organization's external policies regarding the rule of law mostly represented in the promotion and strengthen processes. Secondly, such processes are manifested through special defense and enforcement mechanisms, which, in their turn, represented through different approximation procedures. And, finally, these

compliance procedures usually are accompanied with great variety.

From the perspective of international affairs, rule of law principle is commonly associated with the following legal values: 1) access to justice, the independent and impartial character of judicial branch of power; 2) effective, comprehensive and systematic legal and institutional reforms; 3) good governance and effective public administration system; 4) the instrument and "descriptor" in the fight against corruption and fraud; 5) strengthening democratic institutions; 6) effective and accessible means of legal redress and independent legal system which guarantees equality before the law; 7) he requirement to the executive branch of power to be subject to the law and others.

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**Надійшла до редколегії 06.12.18**

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## НАУКОВІ ДОСЛІДЖЕННЯ У СФЕРІ ВЕРХОВЕНСТВА ПРАВА: СУЧАСНИЙ СТАН ТА ДОВГОСТРОКОВІ ПЕРСПЕКТИВИ

***Універсалізація міжнародного правового регулювання передбачає формування спільного бачення щодо певних соціальних цінностей, однією із яких є добре відома ідея верховенства права, яка служить керівним принципом для міжнародного співтовариства. Метою цієї статті є здійснення теоретичної оцінки концепту верховенства права. Автор розглядає питання прагматичного розуміння ідеї верховенства права. Увага зосереджується переважно на дослідженнях іноземного спрямування. Основними напрямками обговорення у дослідженні виступають чотири основні питання, а саме: складові ідеї верховенства права, її концептуалізація міжнародними інституціями та практичне значення у процесах глобалізації, а також подальший розвиток у рамках української теорії права. Стверджується, що існує велика різниця між верховенством права, яке діє на міжнародному рівні (як фундаментальний регулятор між державами та/або іншими міжнародними інституціями) і верховенством права, розробленого різними міжнародними інституціями з метою сприяння та "інкорпорування" цього концепту (або окремих його складових) у національні правові системи. Іншими словами, міжнародні організації (як урядові, так і неурядові) як основні учасники міжнародного правотворчого процесу часто використовують верховенство права у своїй зовнішній політиці, основною метою якої є сприяння просуванню різних правових цінностей (наприклад, правам людини і демократії) та різних за своєю природою стандартів управління. Зазначається, що концептуалізація верховенства пра-***

*ва може бути виконана на різних рівнях. Крім того, механізми реалізації досліджуваного принципу слід вивчати в контексті української правової системи більш поглиблено та прагматично.*

*Ключові слова: верховенство права, правова теорія, концепція, міжнародний правопорядок, нормативні стандарти, іноземна правова наука, міжнародні організації.*

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## НАУЧНЫЕ ИССЛЕДОВАНИЯ В СФЕРЕ ВЕРХОВЕНСТВА ПРАВА: СОВРЕМЕННОЕ СОСТОЯНИЕ И ДОЛГОСРОЧНЫЕ ПЕРСПЕКТИВЫ

***Универсализация международного правового регулирования предполагает формирование общего видения относительно определенных социальных ценностей. Одной из них есть хорошо известная идея верховенства права, которая служит руководящим принципом для всего международного сообщества. Целью этой статьи является осуществление теоретической оценки концепта верховенства права. Автор рассматривает вопросы прагматического понимания данной идеи. Внимание сосредотачивается преимущественно на исследованиях иностранного направления. Основными направлениями обсуждения в этой работе выступают четыре основных вопроса, а именно: составляющие идеи верховенства права, ее концептуализация международными институтами и практическое значение в процессах глобализации, а также дальнейшее развитие в рамках украинской теории права. Утверждается, что существует большая разница между верховенством права, которое действует на международном уровне (как фундаментальный регулятор между государствами и / или другими международными институтами) и верховенством права, разработанного различными международными институтами с целью содействия и "инкорпорирования" этого концепта (или отдельных его составляющих) в национальные правовые системы. Иными словами, международные организации (как правительственные, так и неправительственные) как основные участники международного правотворческого процесса часто используют верховенство права в своей внешней политике, основной целью которой является содействие продвижению различных правовых ценностей (например, прав человека и демократии) и различных по своей природе стандартов управления. В качестве заключения отмечается, что концептуализация верховенства права может быть выполнена на разных уровнях. Кроме того, механизмы реализации исследуемого принципа следует изучать в контексте украинской правовой системы более углубленно и прагматично.***

***Ключевые слова: верховенство права, правовая теория, концепция, международный правопорядок, нормативные стандарты, иностранная правовая наука, международные организации.***

**УДК 340.1**

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# ПРАВОВА ПОЗИЦІЯ В УКРАЇНСЬКІЙ ПРАВОВІЙ ДОКТРИНІ

***Досліджуються погляди на поняття "правова позиція". Аналізується чинне законодавство, доктрини розуміння поняття "правова позиція". Дослідження даного поняття співвідноситься і з прецедентом як джерелом права. За результатами дослідження формується власне доктринальне визначення поняття "правова позиція", її ознаки.***

***Ключові слова: правова позиція, елементи, прецедент, джерело права.***

**Вступ.** Система національного законодавства перебуває у стані реформ. Змінюються суспільні відносини, які потребують відповідного правового регулювання, змінюються і погляди суспільства, окремих його членів, що призводить до перегляду усталених і сформованих, у переважній своїй більшості за радянського періоду існування, наукових поглядів і доктрин. Безумовно, спадковість, континуїтет відіграють важливу роль у стабільності правової системи, однак така стабільність не повинна характеризуватися ознаками консерватизму та архаїчності. Зазначені елементи становитимуть стрижень правової системи лише в умовах логічного сприйняття сучасних вітчизняних наукових поглядів на правову дійсність, рецепцію передового досвіду законотворчості та регулювання нових суспільних відносин, виникнення яких зумовлено розвитком суспільства і державності, міжнародних відносин.

Законотворча діяльність в Україні не вирізняється надзвичайною її ефективністю, зокрема щодо приведення у відповідність новоприйнятих норм і норм раніше чинних нормативно-правових актів. Практика правореалізації та правозастосування свідчить про відсутність єдності в регулюванні однорідних суспільних відносин за допомогою одних і тих самих засобів та інструментів. Як результат, рішення у справах за подібними (якщо не аналогічними) спірними відносинами, обґрунтовуються суб'єктами правозастосування по-різному, що призводить до ухвалення подекуди кардинально протилежних рішень. Зазначений стан справ не позначається на правовій визначеності норм позитивного права, довірі до інститутів держави, уповноважених ухвалювати відповідні рішення та розв'язувати по суті спори.

Виходячи із цього, законодавець для забезпечення мобільності засобів правового регулювання суспільних відносин, ухвалюючи 2 червня 2016 р. нове законодавство про судоустрій та статус суддів, передбачив ряд новел, які мали б призвести до забезпечення єдності практики застосування норм законодавства, оперативно заповнюючи відповідні прогалини та усуваючи колізії в законодавстві. Очевидно, що саме на вирішення зазначених питань і спрямовані положення, що містяться в ч. 5, 6 ст. 13 Закону України "Про судоустрій і статус суддів", де ідеться про те, що висновки щодо застосування норм права, викладені в постановах Верховного Суду, є обов'язковими для всіх суб'єктів владних повноважень, які застосовують у своїй діяльності нормативно-правовий акт, що містить відповідну норму права. Висновки щодо застосування норм права, викладені в постановах Верховного Суду, враховуються іншими судами при застосуванні таких норм права.

З огляду на визначення обов'язковості виконання рішень і застосування практики Європейського суду з прав людини в Україні існує можливість запровадження судового прецеденту в систему джерел права України, ще 2009 р. писала Н. М. Пархоменко. Водночас, слід ураховувати специфіку судової практики які джерела права, яка є вагомим чинником не лише правореалізаційної, а й правотворчої діяльності законодавчих органів влади [5, с. 20]. Разом із цим вважаємо, що значного впливу на правозастосування та правореалізацію справляють не лише судові правові позиції та висновки, що