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## **ЗАХИСТ ПРАВ ЛЮДИНИ В КОНТЕКСТІ ФОРМУВАННЯ ПРИНЦИПУ ВЕРХОВЕНСТВА ПРАВА: МІЖНАРОДНИЙ АСПЕКТ**

**Анотація.** Охарактеризовано закріплення принципу верховенства в міжнародних документах. Встановлено, що верховенство права в роботі ООН стало темою постійного обговорення. Значну активізацію придбало з 2007 року, затвердившись як одна з найбільш важливих сфер діяльності організації. В документах ООН верховенство права визначається як принцип або як сфера діяльності Організації і країн-членів. Діяльність в області верховенства права Генеральний секретар ООН у доповіді розділяє на три сектори: верховенство права на міжнародному рівні, верховенство права в контексті конфліктних і постконфліктних ситуацій, верховенство права в контексті довгострокового розвитку. У щорічних доповідях Генерального секретаря ООН продовжено спрямування зусиль із сприяння верховенству права на національному і міжнародному рівнях. Діяльність і документи ООН засвідчують, що зміцнення верховенства права на міжнародному рівні неможливо без заохочення, дотримання і здійснення міжнародних договорів, вирішення суперечок мирними засобами, а також захисту прав людини, які мають нерозривний зв'язок з принципом верховенства права. Зазначено сфери діяльності, які зміцнюють верховенство права. Проаналізовано зміст резолюцій «Верховенство права на національному і міжнародному рівнях», за результатами узагальнення змісту і спрямованості сесій Генеральної Асамблеї протягом останніх п'ятнадцяти років, визначено напрями діяльності в цих рамках. Верховенство права визнається одним із засадничих принципів європейської спільноти та закріплено у її регіональних актах. Визначено елементи принципу верховенства права за результатами узагальнення практики ЄСПЛ. Встановлено, що саме в європейському регіоні велику роль у формуванні і тлумаченні концепту верховенства права відіграє його судова інтерпретація, яка здійснюється двома міжнародними судовими установами: ЄСПЛ і Європейський суд справедливості. Верховенство права отримало представлення в роботі Організації по безпеці і співпраці в Європі (ОБСЄ), грає істотну роль в просуванні і захисті прав людини. Значний вклад в розвиток нормативних положень реалізації принципу верховенства права на міжнародному рівні зроблено Міжнародною неурядовою організацією «World Justice Project», яка розробила в 2010 році індекс верховенства права. Охарактеризовано показники виміру індексу верховенства права в державі та проведено їх аналіз в динаміці на міжнародному рівні і розподіл індексу верховенства права по факторам в Україні

**Ключові слова:** принципи права, верховенство права, міжнародних суперечки, права людини, доступ до правосуддя

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## **PROTECTION OF HUMAN RIGHTS IN THE CONTEXT OF THE DEVELOPMENT OF THE RULE OF LAW PRINCIPLE: THE INTERNATIONAL ASPECT**

**Abstract.** *The consolidation of the principle of supremacy in international documents is described. It is established that the rule of law in the work of the UN has become a subject of constant discussion. It has gained significant momentum since 2007, establishing itself as one of the most important areas of the organisation. UN documents define the rule of law as a principle or as a sphere of activity of the Organisation and member countries. In their report, the UN Secretary-General divides the rule of law into three sectors: the rule of law at the international level, the rule of law in the context of conflict and post-conflict situations, and the rule of law in the context of long-term development. The UN Secretary-General's annual reports continue to work to promote the rule of law at the national and international levels. UN activities and documents demonstrate that strengthening the rule of law at the international level is impossible without the promotion, observance, and implementation of international treaties, the settlement of disputes by peaceful means, and the protection of human rights that are inextricably linked to the rule of law principle. Areas of activity that strengthen the rule of law are identified. The content of the resolutions "Rule of Law at the national and international levels" was analysed, based on the results of generalisation of the content and direction of the sessions of the General Assembly during the last fifteen years, the directions of activity within this framework were determined. The rule of law is recognised as one of the fundamental principles of the European Community and enshrined in its regional acts. The elements of the principle of the rule of law are identified based on the results of generalisation of the case law of the European Court of Human Rights. It is established that in the European region a great role in the development and interpretation of the concept of the rule of law is played by its judicial interpretation, which is engaged in by two international judicial institutions: the ECtHR and the European Court of Justice. The rule of law is represented in the work of the Organisation for Security and Co-operation in Europe (OSCE) and plays a significant role in the promotion and protection of human rights. A significant contribution to the development of regulations for the implementation of the rule of law at the international level was made by the International Non-Governmental Organisation "World Justice Project", which developed in 2010 the Rule of Law Index. The indicators of measuring the rule of law index in the country are characterised and their analysis in the dynamics at the international level and the distribution of the rule of law index by factors in Ukraine*

**Keywords:** *principles of law, rule of law, international disputes, human rights, access to justice*

### **INTRODUCTION**

The principle of the rule of law and human rights are closely interrelated. Without respect for human rights, the rule of law will have no meaning and will be meaningless. Moreover, the rule of law can only be fully implemented if human rights are respected. In turn, it is the observance

of the rule of law principle that ensures the protection and development of human rights. Moreover, some human rights cannot exist without the rule of law and are interrelated concepts, such as the fairness of the court and freedom of expression. Historically, the rule of law has developed as

a means of limiting the power of the state (government). Human rights were seen as a means of protection against encroachment by the holders of this power (so-called “negative rights”). The rule of law is a universal principle, has international legal practice and the practice of individual regions of the world (EU), as well as wide application at the national level.

The rule of law creates a criterion for assessing the quality of human rights law. Legal provisions at any level (national, international) must be clear and non-discriminatory, applied by independent courts and have procedural guarantees. The principle of the rule of law has been studied by many well-known scholars from various fields of law, both Ukrainian: A. Volchenko [1], V.V. Mikhailenko [2], N.M. Onishchenko [3], S. Shevchuk [4], Yu. S. Shemshuchenko [5], and foreign scientists: D.V. Krasikov [6], N.M. Lipkina [7] and others.

The direct interrelation between the principle of the rule of law and human rights has been investigated by such Ukrainian scholars as S. Holovaty [8; 9], M. Koziubra [10], I.A. Malyutin [11], V.F. Nesterovych [12], R.O. Padalka [13], O.V. Sachko [14], V. Tertyshnyk [15], M.H. Khaustova [16], S.O. Yakymchuk [17], as well as foreign: N.V. Varlamova [18], L.G. Loucaides [19]. All these scholars point to the inseparability of the rule of law principle and human rights. Thus, I.A. Maliutin [11] proposes to interpret this principle as the predominant priority of human rights and freedoms in society. Notably, international organisations have also published numerous studies on these issues and provided assistance in their publication [20; 21]. O.V. Petryshyn [22]. emphasises the dominant role of the judiciary in the mutual application of this principle in human rights protection.

However, despite considerable attention to this issue, the problem of implementing the rule of law through the lens of human rights protection in legal doctrine has not yet become widespread in the scientific achievements of scientists.

## 1. MATERIALS AND METHODS

Analytical and legal methods of analysis served as the methodological basis of the research. General scientific and special methods are used. The study investigates the main provisions of the legal framework at the international, national level, and in some regional zones. The applied methodology allowed to develop the main directions of optimising the application of the rule of law and its implementation in the national legal system. The methods used allowed to obtain reliable and substantiated conclusions and results. As one of the main methods of analysis, this study employed the comparative method, which allowed to compare the domestic practice of implementing this principle in the process of human rights protection with the legal framework for regulating the object of study in the European Union and internationally.

At the theoretical level of the analysis, a study of the main provisions of the legal framework for the regulation and implementation of the rule of law in the protection of human rights at the international, foreign, and national levels. The descriptive method allowed to present

the results of the study in a logical sequence. Methods, synthesis, analogy, system, classification, and analytical methods were also used during the research. The normative method was used to analyse aspects of issues that arise in the framework of the implementation of measures of legal regulation of human rights in the context of the rule of law. The application of the analytical method allowed to draw conclusions about the level of consideration of the recommendations of the UN, the Council of Europe and other international organisations in the national legislative system [23].

The method of synthesis allowed to solve the research problems through its application to primary sources on this issue. The application of the analytical method to these primary sources allowed to make recommendations regarding the implementation of the provisions of European and international legislation into the national legal system; highlight the main areas of experience in its application in the process of human rights protection and the compliance of national systems with the international base and case law in the EU. Methods of induction and deduction are used to analyse the content and structure of legislative texts, the characteristics of legal provisions in the context of the subject matter. In the process of analysis, the historical method was used, which allowed to study the process of development of the principle of the rule of law in rule-making and legal doctrine at different levels. The genetic method allowed to identify stages in the evolution of the rule of law and the system of protection of human rights, to establish their sequence in time and to trace how and under the influence of which factors the provisions governing them changed. Due to the structural-functional analysis it was possible to consider the features of the structural organisation of modern institutions that implement and apply the rule of law and protect human rights and control over their observance, their interaction with each other and with other institutions, the activities of which concern these issues to some extent, as well as to systematise information on the effectiveness of their operation both in Ukraine and abroad, and at the international level. To achieve this goal, a system of methods of cognition of social and legal phenomena was also used, as the development of a legal mechanism for the implementation of international and foreign law in the domestic legal system is a complex problem.

## 2. RESULTS AND DISCUSSION

The principle of the rule of law is widely enshrined in international instruments. Thus, the importance of the rule of law is emphasised in the Preamble to the Universal Declaration of Human Rights, which states that the purpose of this document is to ensure that human rights are protected by the rule of law in order to ensure that people are not forced to resort to tyranny and oppression. The implementation of the rule of law has been widely used in the activities of the UN, a number of European organisations (EU bodies, the Council of Europe, the Organisation for Security and Cooperation in Europe) and in some non-governmental organisations (e.g. the International Justice Project).

The rule of law in the work of the UN has been the subject of constant discussion, it has gained considerable momentum since 2007, establishing itself as one of the most important areas of the organisation. Although the rule of law is not explicitly enshrined in the UN Charter, the text of its preamble contains provisions that are inconsistent with this principle: “to create actions in which justice and respect for the obligations arising from treaties and other sources of international law”; “to carry out by peaceful means, in accordance with the principles of justice and international law, the settlement or resolution of international disputes or situations that may lead to a breach of peace”<sup>1</sup>. These provisions contain the *pacta sunt servanda* principle and the principle of peaceful settlement of international disputes, compliance with which is an important condition for the exercise of the rule of international law.

An indication of this principle dates back to the middle of the 20<sup>th</sup> century – from the analytical analysis of the content of the preamble of the Universal Declaration of Human Rights<sup>2</sup>, which is considered the first act of the International Bill of Human Rights. The reference to it follows from this text: “it is necessary that human rights be protected by the rule of law”. There is good reason to believe that it is the duty of the rule of law to protect human rights by law. Its importance is directly indicated in the UN Millennium Declaration of 2000<sup>3</sup>, which reflects the intention of Member States to strengthen universal respect for the rule of law in international and domestic affairs. It is stated that the UN should promote the provision of three fundamental freedoms in order to promote human rights and the rule of law:

- freedom to tackle problems related to peace and security without fear;
- freedom from need to ensure further development;
- freedom to live in decent human conditions.

In 2005, Resolution 60/1<sup>4</sup> of the Heads of State and Government enshrined the need to uphold and apply the rule of law at the national and international levels and reaffirmed the direction of the international order on the rule of law. This document launches a mechanism for the annual preparation by the UN Secretary-General of reports on strengthening and coordinating UN activities to establish the rule of law. The document also contributed to organisational change, including the establishment of a Rule of Law Unit in the UN Secretariat, the Rule of Law Coordination and Resource Group. At the same time, if the previous document defined “rule of law” as a principle, then

this document defines it as the scope of the UN and member countries. Since the adoption of this resolution in 2005, the issue of the rule of law has become permanent on the agenda of the annual session of the UN General Assembly. This principle has been widely used in resolutions adopted by the UN General Assembly since 2005, as well as in the annual reports of the UN Secretary-General on the rule of law at the national and international levels.

Thus, in pursuance of the task of the Final Document of the 2005 World Summit, the UN Secretary-General presented this report in 2007 on the comments and information received from governments. The report presents the views of the governments of Austria, Egypt, Finland, France, Germany, Kuwait, Lebanon, the Libyan Arab Jamahiriya, Liechtenstein, Mexico, the Netherlands, Qatar, Sweden, and the United States. The general focus of these countries is to strengthen the rule of law as one of the key elements of the prosperity of the world. In their opinion, strengthening the rule of law at the international level is impossible without the promotion, observance, and implementation of international treaties, the settlement of disputes by peaceful means, and the protection of human rights, which are inextricably linked to the rule of law. States have supported the right of the Security Council to transfer situations to the International Criminal Court, as they see this as strengthening the rule of law. In 2006, the UN Secretary-General divided rule of law activities into three sectors in his report (Table 1).

Subsequent annual reports of the UN Secretary-General continue to focus efforts on promoting the rule of law at the national and international levels. The objects of attention of these reports are the issues of codification, development, and implementation of the international base of provisions and standards, the activities of international and mixed courts and tribunals and non-judicial mechanisms for resolving disputes in the international arena.

The Report “Strengthening and coordinating the activities of the United Nations in the field of the rule of law”<sup>5</sup>, which covers a list of means and ways to implement the rule of law, also deserves to be mentioned. Assistance in the field of the rule of law extends to more than 110 countries in different regions of the world, is to promote judicial reform, implementation of national strategies in the field of law, the development of security and fair justice, protection of human rights. This report also lists areas of activity that strengthen the rule of law (Figure 1).

1. Preamble to the UN Statute. (1945). Retrieved from <https://www.un.org/ru/sections/un-charter/preamble/index.html>.

2. General declaration of human rights. Resolution of the UN General Assembly dated 10th June 1948, 217 A (III). (1948, December). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_015#Text](https://zakon.rada.gov.ua/laws/show/995_015#Text).

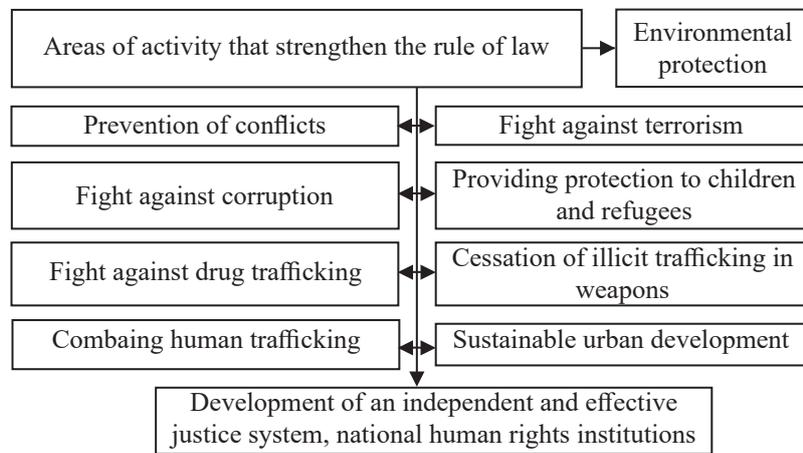
3. United Nations Millennium Declaration. General Assembly resolution 55/2. (2020, September). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_621#Text](https://zakon.rada.gov.ua/laws/show/995_621#Text).

4. Resolution 60/1. General Assembly of the United Nations. 2005 World Summit Outcome Document. (2005, October). Retrieved from <http://docs.cntd.ru/document/902131568>.

5. Supplement by the UN Secretary General A/63/226 «Amendments and coordination of UN action in the sphere of the rule of law». (2008, August). Retrieved from <https://undocs.org/en/A/63/226>.

*Table 1. Rule of law sectors<sup>1</sup>*

Sector	Scope	Areas of implementation
Rule of law at the international level	UN Charter, multilateral treaties, international dispute settlement mechanisms, International Criminal Court, advocacy training and education in the field of international law	
Rule of law in the context of conflict and post-conflict situations	– justice in transition	national consultation processes on issues of justice in transition, truth establishment and reconciliation processes, redress, international and hybrid tribunals, national human rights institutions, control processes and special investigations, fact-finding and commissions of inquiry
	– strengthening national justice systems and institutions	
Rule of law in the context of long-term development	strengthening national justice systems and institutions: – dispute resolution mechanisms; – protection of victims and witnesses and providing them with assistance; – combating and control of corruption, organised crime, transnational crime, and drug trafficking; – legal education; – public law issues; – temporary law enforcement and executive-judicial functions performed by the UN; – security support for national police forces	strengthening legal and judicial institutions, law enforcement, criminal law reform, trust fund management and monitoring



*Figure 1. Areas of activity that strengthen the rule of law<sup>2</sup>*

In the appendices to this report, the UN Secretary-General reaffirms the relationship between the rule of law and human rights<sup>3</sup>. The Secretary-General further stated in the report that the results of the rule of law should not be assessed in isolation, but rather in the context of achieving broader development goals, promoting human

rights and maintaining peace and security<sup>4</sup>. From the content of resolutions “Rule of law at the national and international levels” it is possible to define such directions of maintenance and protection of human rights in the context of development of the rule of law principle (Table 2).

1. Report of the Secretary-General “Consolidating our strengths: revitalizing United Nations efforts to promote the rule of law” (A/61/636/2006/980). (2006, December). Retrieved from <https://undocs.org/ru/S/2006/980>.

2. *Ibidem*, 2008.

3. Report of the Secretary-General “Strengthening and coordinating United Nations rule of law activities, addendum”. (2014, July). Retrieved from [http://www.un.org/ruleoflaw/files/94198\\_A-68-213-Add.1.pdf](http://www.un.org/ruleoflaw/files/94198_A-68-213-Add.1.pdf).

4. Report of the Secretary-General S/2013/341 “Assessing the effectiveness of support from the United Nations system in promoting the rule of law”. (2013, June). Retrieved from <https://www.refworld.org/ru/docid/51f63c075b.html>.

**Table 2.** Contents of resolutions “Rule of law at the national and international levels”

Year	Resolution	Establishing relationships	Reference
2006	61/39 <sup>1</sup>	human rights, the rule of law and democracy are interrelated and mutually reinforcing and are among the universal and indivisible core values and principles of the United Nations	questioning the views of countries on the rule of law at the national and international levels
2008	63/128 <sup>2</sup>	the importance of ensuring the rule of law at the national level and the need to strengthen the support provided to Member States at their request for the implementation of their respective international obligations at the national level	reaffirming the effectiveness of the UN system in addressing the rule of law on a regular basis
2010	65/213 <sup>3</sup>	to expand the dialogue between all stakeholders so that national priorities are at the heart of rule of law assistance activities in order to strengthen relevant capacity at the national level	to deal regularly with the rule of law in the course of their activities
2014	69/123 <sup>4</sup>	efforts to strengthen the rule of law through voluntary commitments	consider issues individually or collectively based on national priorities

*Source: generalised and systematised by the author*

Notably, according to the results of the activities and cooperation of states and governments that have recognised the rule of law as important for international cooperation and play a huge role in strengthening international peace and security, human rights, and development, adopted the “Declaration on the Rule of Law on National and International Level”<sup>5</sup>. Over the past fifteen years, based on the results of summarising the content and direction of the sessions of the General Assembly, one can identify the following areas of activity under the theme “Rule of law at the national and international levels”: – promotion of the rule of law at the international level; promotion and ensuring the rule of law at the national level; the laws and practices of the Member States in the implementation of international law; the rule of law and justice in transition in conflict and post-conflict situations; the rule of law at the national and international levels; the rule of law and the peaceful settlement of international disputes; exchange of national practical experience of states in the field of strengthening the rule of law by ensuring access to justice; strengthening the support provided to Member States for the implementation of commitments at national level; assistance in the field of the rule of law; the role of multilateral treaty processes in promoting and strengthening the rule of law; exchange of information on the national practice of states in the implementation of multilateral agreements; practical measures to facilitate

access to justice for all, including the poorest and most vulnerable; ways and means of further disseminating international law to strengthen the rule of law.

The rule of law is recognised as one of the fundamental principles of the European Community and enshrined in its regional acts. In particular, the Preamble to the Statute of the Council of Europe recognises the commitment of national governments to the spiritual and moral values that are the common property of their peoples and the true source of individual freedom, political freedom, and the rule of law. The Charter proclaims the principles that underpin democracy – individual liberty, political freedom, and the rule of law: “Each member of the Council of Europe must recognise the principle of the rule of law and the principle that all persons under its jurisdiction shall enjoy human rights and fundamental freedoms and cooperate sincerely and actively in the pursuit of the Council’s objective set out in Chapter I. Failure by the Members of the Council of Europe to perform these obligations shall result in their exclusion from the Council”. “The Venice Commission recognises activities affecting the implementation of the rule of law as one of the priorities”<sup>6</sup>. In the Rule of Law Report, the Venice Commission singled out the criteria proposed to be used to evaluate compliance with the rule of law<sup>7</sup>: “compliance with the rule of law; legal certainty; prohibition of arbitrariness; access to justice; respect for human rights; equality before the law and non-discrimination”.

1. Resolution of the UN General Assembly No. 61/39 “Rule of law at the national and international levels”. (2006, December). Retrieved from <https://undocs.org/ru/A/RES/61/39>.

2. Resolution of the UN General Assembly No. 63/128 “Rule of law at the national and international levels”. (2008, December). Retrieved from <https://undocs.org/ru/A/RES/63/128>.

3. Resolution of the UN General Assembly No. 65/213 “Human rights in the administration of justice”. (2010, December). Retrieved from <https://undocs.org/en/A/RES/65/213>.

4. Resolution of the UN General Assembly No. 69/123 “Rule of law at the national and international levels”. (2014, December). Retrieved from <https://undocs.org/en/A/RES/69/123>.

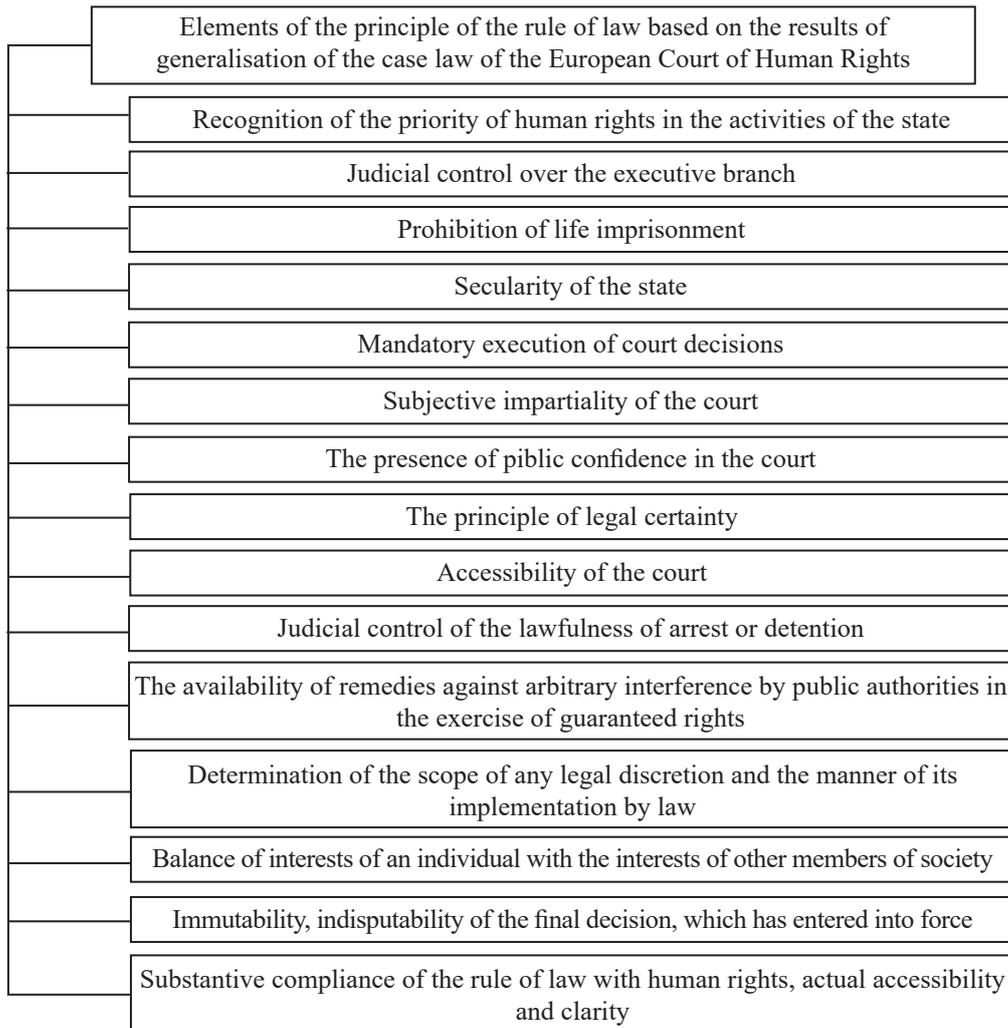
5. Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels. Resolution adopted by the General Assembly [without referral to the Main Committees (A/67/L.1)]. (2012, September). Retrieved from [https://www.un.org/ru/documents/decl\\_conv/declarations/ruleoflaw2012.shtml](https://www.un.org/ru/documents/decl_conv/declarations/ruleoflaw2012.shtml).

6. Statute for the Sake of Europe. (1949, May). Retrieved from [https://zakon.rada.gov.ua/laws/show/994\\_001#Text](https://zakon.rada.gov.ua/laws/show/994_001#Text).

7. Report on the Rule of Law. Approved by the Venice Commission at the 86th Plenary Session. (2011, March). Retrieved from [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)003rev-rus](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)003rev-rus).

The preamble to the ECHR notes that the governments of the member states of the Council of Europe are determined, as the governments of European states, which are driven by a common aspiration and with a common heritage of political traditions, ideals, freedom, and the rule of law, to take the first steps to ensure the collective enjoyment of some of the rights proclaimed in universal declaration of human rights. The principle of the rule of law is enshrined in the Preamble and Article 2 of the Treaty on European Union as a universal value together with human dignity, freedom, democracy, equality, and respect for human rights. It is in the European region that

its judicial interpretation, carried out by two international judicial institutions: the European Court of Human Rights and the European Court of Justice, plays an important role in shaping and interpreting the concept of the rule of law. In interpreting certain Convention rights, the ECtHR has repeatedly referred to the rule of law as a fundamental principle enshrined in the ECtHR’s preamble, giving it substantive content in its practice. According to the results of generalisation of the case law of the European Court of Human Rights<sup>1</sup>, one can distinguish the following elements of the principle of the rule of law [24] (Fig. 2).



**Figure 2.** Elements of the principle of the rule of law based on the results of generalisation of the case law of the European Court of Human Rights

The preamble to the Treaty on European Union states that the rule of law, together with human rights, freedom, democracy, and equality, are universal values of the European Union. In accordance with paragraph 2 of Article 6 of the Treaties on the European Union, “fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they follow from the constitutional traditions common to the

Member States, are part of European Union law as general principles”<sup>2</sup>. The rule of law has been represented in the work of the Organisation for Security and Co-operation in Europe (OSCE). Thus, the Member States have developed international standards and adopted several documents aimed at achieving the efforts of the Office for Democratic Institutions and Human Rights (ODIHR): the Helsinki Final Act of 1975, the Final Document of the Vienna Meeting

1. The former King of Greece et al. v. Greece, No. 25701/94. (2000, November). Retrieved from [https://zakon.rada.gov.ua/laws/show/980\\_007#Text](https://zakon.rada.gov.ua/laws/show/980_007#Text).

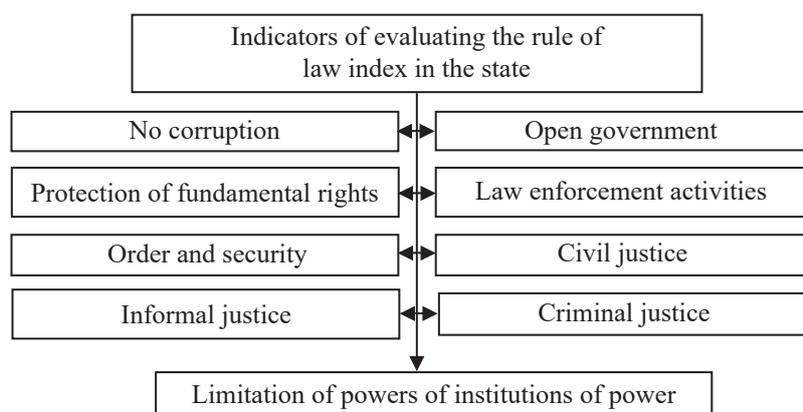
2. Treaty on the European Union. – Maastricht. (1992, February). Retrieved from [https://zakon.rada.gov.ua/laws/show/994\\_029#Text](https://zakon.rada.gov.ua/laws/show/994_029#Text).

of 1986, the Vienna Document of the OSCE of 1989, The CSCE Copenhagen Document of 1990, the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, and many others. Structural bodies such as the ODIHR, the High Commissioner for Minorities and the Representative on Freedom of the Media play a critical role in ensuring respect for human rights, democracy, and the rule of law.

Thus, the rule of law in the work of the OSCE plays an essential role in the promotion and protection of human rights: “The rule of law, as recognised by the OSCE Member States, is not just a formal legality, but justice based on the recognition and full acceptance of the highest value of the human person and is guaranteed by the institutions that form the structures that ensure its fullest expression”<sup>1</sup>.

The rule of law is implemented through transparent, accessible, impartial, and lawful activities of courts, prosecutors, lawyers, human rights defenders, independent courts, prosecuting authorities and other law enforcement agencies. At the same time, the judiciary is limited in its activities, as it does not have a judicial body, unlike the International Court of Justice at the United Nations or the European Court of Human Rights.

A significant contribution to the development of regulations on the implementation of the rule of law at the international level was made by the International Non-Governmental Organisation “World Justice Project”, which developed the Rule of Law Index in 2010. This index evaluates the rule of law in the country by measuring the development of the legal system (Fig. 3).



**Figure 3.** Indicators of measuring the rule of law index in the state

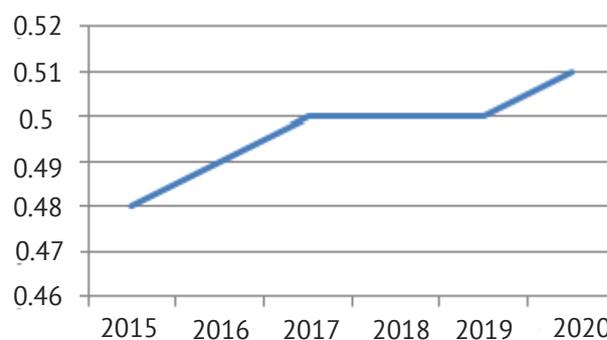
*Source:* systematised by the author

Nowadays, the index covers 128 countries and jurisdictions and is based on national surveys of more than 130,000 households and 4,000 legal practitioners and experts to measure how the rule of law is felt and perceived worldwide.

According to the results of the index in 2020, in each region, most countries have rolled back or remained unchanged in their overall rule of law. These trends have affected even Western Europe, which has some of the highest rates in the world. The downward trend is the third year in a row. Most countries have downgraded the overall rating. Congo, Cambodia, and Venezuela had the lowest overall scores – unchanged from 2019.

The first places were taken by Denmark, Norway, and Finland. For comparison, these countries have maintained their positions: in 2016, the top ten countries were Denmark, Norway, Finland, Sweden, the Netherlands, Germany, Austria, New Zealand, Singapore, and the United Kingdom.

In 2020, Ukraine ranked 72nd among 128 countries. Notably, there was a positive trend in a steady increase in the value of the rule of law index with its three-year preservation in recent years and further growth (Fig. 4).

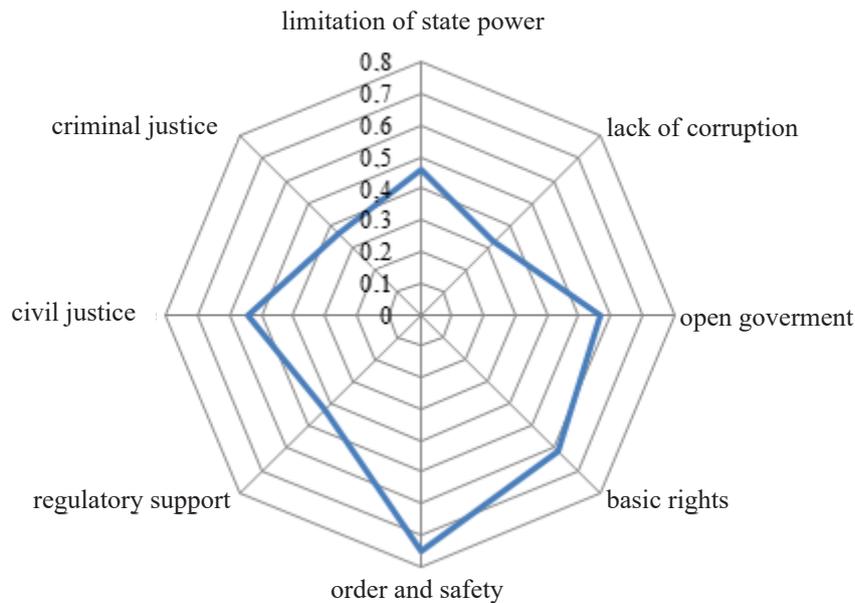


**Figure 4.** Dynamics of the rule of law index in Ukraine<sup>2</sup>

The distribution by factors for Ukraine is presented in Fig. 5. Thus, a negative trend in recent years is the decline in the rule of law in almost all jurisdictions, which has been going on for the third year in a row. The most noticeable decrease is in such an indicator as “limitation of the powers of government institutions”, which assesses the existing legal and institutional instruments in the country that allow to bring government officials to justice in accordance with the law. At the same time, the changes are not cardinal in nature and have a negligible pace.

1. Report of the UN Secretary General to the 60th Session of the General Assembly “Implementation of the decisions set out in the 2005 World Summit Outcome document requiring action by the Secretary General”. (2005, October). Retrieved from [https://digitallibrary.un.org/record/558714/files/A\\_60\\_430-RU](https://digitallibrary.un.org/record/558714/files/A_60_430-RU).

2. World Justice Project – Rule of Law Index. (2020). Retrieved from <https://worldjusticeproject.org/rule-of-law-index/country/Ukraine>.



**Figure 5.** Distribution of the rule of law index by factors for Ukraine<sup>1</sup>

Article 8 of the Constitution of Ukraine recognised and enshrined the principle of the rule of law in Ukraine as mandatory. However, at the regulatory level, its boundaries and implementation mechanism are not defined. First of all, the implementation of the rule of law is aimed at ensuring the implementation of human rights by state institutions. Thus, the principle of the rule of law obliges the court to interpret legal provisions in a way that ensures the priority of human rights in deciding the case. Interpretation cannot restrict human rights and all decisions must be made to uphold and protect them.

Despite the application and consideration of the principle of the rule of law by courts of civil jurisdiction, which is carried out with consideration of the case law of the European Court of Human Rights, the Civil Procedural Code of Ukraine did not find direct consolidation until 2017. Considering this principle was provided by the draft amendments<sup>2</sup>, according to which the rule of law is recognised as the basic principle of civil proceedings, and Part 1 of Article 10 is worded as follows: “The court in the case is guided by the principle of the rule of law”, and Article 263 states that the court decision should be based on the principles of the rule of law. Unlike civil ones, in administrative proceedings, this principle has been applied since 2005 and is noted in the law – in deciding the case, the court is guided by the rule of law, according to which, in particular, human, their rights and freedoms are

recognised as the highest values and determine the content and direction of the state<sup>3</sup>. The principle of the rule of law is approved by the Constitutional Court of Ukraine as the rule of law in society [25]. It requires the state to implement it in law-making and law enforcement activities, in particular, in laws that must be permeated primarily by ideas of social justice, freedom, equality, etc<sup>4</sup>.

## CONCLUSIONS

Considering the importance and significance of the rule of law for democratically developing rule of law states, it has found wide regulation in many international regulations, interregional documents, and in the acts of individual states. The principle of the rule of law is recognised as one of the fundamental and inviolable ideals of modern democracies, which must be adhered to by all civil society institutions at all levels.

The analysis indicates that both the doctrine and international legal acts on human rights and the rule of law are interrelated in many respects and can be traced in the activities of the UN, EU, OSCE, Council of Europe, ECtHR, and domestic authorities. At the international level, the concepts, legal content, competencies of relevant institutions, areas of implementation and measures to strengthen the protection of human rights at the international, national and conflict situations and the implementation of the rule of law were defined.

1. World Justice Project – Rule of Law Index. (2020). Retrieved from <https://worldjusticeproject.org/rule-of-law-index/country/Ukraine>.  
 2. Draft Law of Ukraine No. 6232 «On the introduction of changes to the State Procedural Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Judicial Service of Ukraine and the other legislative acts». (2017, March). Retrieved from [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61415](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61415).  
 3. Code of Administrative Judiciary of Ukraine: Law of Ukraine No. 2747-IV. (2005, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/2747-15#Text>.  
 4. Resolution of the Constitutional Court of Ukraine No. 15-rp/2004. (2004, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/v015p710-04#Text>.

## REFERENCES

- [1] Volchenko, A. (2011). *The rule of law. Political encyclopedia*. Kyiv: Parliamentary Publishing House.
- [2] Mikhailenko, V.V. (2019). *Implementation of the principle of the rule of law in criminal proceedings*. Kyiv: Palivoda A.V.
- [3] Onishchenko, N.M. (2010). The principle of the rule of law and the rule of law: Mutual exclusion or interdependence? *Problems of Jurisprudence and Law Enforcement*, 3, 3-7.
- [4] Shevchuk, S. (2011). The principle of the rule of law and the highest legal force of the Constitution of Ukraine. *Law of Ukraine*, 5, 175-187.
- [5] Shemshuchenko, Yu.S. (2008). *The principle of the rule of law: Problems of theory and practice*. Kyiv: Legal Opinion.
- [6] Krasikov, D.V. (2011). Approaches of international organizations to defining the content of the concept of “rule of law”. *Bulletin of the Saratov State Law Academy*, 2, 142-146.
- [7] Lipkina, N.M. (2015). Interpretation of the Convention for the Protection of Human Rights and Fundamental Freedoms by the European Court of Human Rights and the rule of law. *Journal of Russian Law*, 4, 130-142.
- [8] Holovaty, S. (2011). The triad of European values – the rule of law, democracy, human rights – as the basis of the Ukrainian constitutional order. *Law of Ukraine*, 5, 159-175.
- [9] Golovaty, S. (2006). *The rule of law*. Kyiv: Phoenix.
- [10] Koziubra, M. (2010). Human rights and the rule of law. *Law of Ukraine*, 2, 24-35.
- [11] Maliutin, I.A. (2012). Development of the rule of law in the context of the doctrine of natural law. *Administrative Proceedings*, 3-4, 61-68.
- [12] Nesterovych, V.F. (2017). The rule of law and human rights in the temporarily occupied territories of Ukraine. Scientific notes of NaUKMA. *Legal Sciences*, 200, 85-92.
- [13] Padalka, R.O. (2017). *The rule of law as a fundamental principle of law*. Kyiv: M.P. Drahomanov National Pedagogical University.
- [14] Sachko, O.V. (2018). *Problems of realization of the rule of law at application of special forms and modes of criminal proceedings*. Dnipro: Lira.
- [15] Tertyshnyk, V. (2010). Ensuring the rule of law and conceptual problems of harmonization of the legislative process. *Law of Ukraine*, 12, 74-79.
- [16] Khaustova, M.H. (2013). The rule of law – as a fundamental principle of the legal system of Ukraine in terms of modernization. *Bulletin of V.N. Karazin Kharkiv National University. Law Series*, 1062(14), 22-26.
- [17] Yakymchuk, S.O. (2012). Implementation of the principle of the rule of law in the civil procedural legislation of Ukraine through the prism of decisions of the European Court of Human Rights. *University European Notes*, 1(41), 355-366.
- [18] Varlamova, N.V. (2002). The rule of law – a basic principle of the European system for the protection of human rights. *Constitutional Law: An Eastern European Review*, 3, 151-178.
- [19] Loucaides, L.G. (2006). The principle of the rule of law and human rights: Taking into particular account the case-law of the European Court of Human Rights. *Human Rights. Practice of the ECHR*, 4, 25-42.
- [20] USAID from the American People. (2016). *Practical and methodical manual of the teacher “Rule of law and human rights”*. Kyiv: USAID.
- [21] Kostruba, A.V. (2018). Law enforcement as a form of realization of right: Phenomenological analysis experience (Civilized aspect). *Revista de Derecho Civil*, 5(1), 177-190.
- [22] Petryshyn, O.V. (2010). Rule of law in the system of legal regulation of suspicious decisions. *Law of Ukraine*, 3, 24-35.
- [23] Kostruba, A.V. (2018). Right deprivation in the legal regulation mechanism of civil property relations. *Journal of Legal, Ethical and Regulatory Issues*, 21(Special Issue 1), 1-15.
- [24] Golder v. The United Kingdom, 21 February 1975. (1975). Retrieved from <https://swarb.co.uk/golder-v-the-united-kingdom-echr-21-feb-1975/#:~:text=Ratio%3A%20G%20was%20a%20prisoner,determination%20of%20his%20civil%20rights%20.%20>
- [25] Holovaty, M. (2014). Multiculturalism as a means of nations and countries interethnic unity achieving. *Economic Annals-XXI*, 11-12, 15-18.

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