The Rule of Law as the Leading Principle of International Law in the Age of Globalization

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Abstract. Among the most leading principles of international law the rule of law stands out the most. The existence and functioning of the modern international legal order are based on the fundamental and universally recognized principles of international public law enshrined in the following documents: the Charter of the United Nations of 1945 (7 principles); the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by Resolution 26/25 (XXV) of the United Nations General Assembly on 24 October 1970 (7 principles); the Declaration of Principles of the Final Act of the Conference on Security and Co-operation in Europe (Helsinki 1975) (10 principles).

The quantitative formation of the modern system of principles of international public law contains only 10 principles that are recognized by the member states of the international community of states and legalized in more than ten thousand international treaties of different levels by means of their consolidation in the preambles of such treaties. Furthermore, in the age of legal globalization, which is new and the most integrated form of globalization, the rule of law becomes of increasing importance and development. Firstly, this principle is directed at the synergistic interaction of the legal systems of the member states of the United Nations with the purpose of the same approach to regulation of a wide range of issues, which, on the one hand, are the subject of regulation of national law, and on the other hand, they have already become the subject of international legal regulation (human rights, democratization of public administration, electoral law, local self-government, etc.). Secondly, it aims to ensure the supremacy of the norms and principles of international law in the activities of states, both at the international level and in domestic activities in accordance with their international legal obligations, which they have taken upon signing bilateral and multilateral international treaties.

1 Introduction

The 21st century is marked as important for humanity, to some extent, by global changes in the activities of the states, conditioned by both the uniqueness of each state, and the phenomenon of increasing globalization, which is directly related to the increasing role of international law in the system of interstate relations. The globalization leads to unification of social relations in the states of the world, unification of their economic and political structures, convergence of legal systems, and creation of economic-legal and political-legal conglomerates (Jankelová et al. 2017).

As a result, the role and significance of the principles of law are of growing importance, which are known to express the essence and content of law (Nonet et al. 2017), and therefore they play an important role in the implementation of the law-making and law-enforcement activities by the state.

The Rule of Law takes a special institutional and constitutional place among the fundamental principles of law, which play a fundamental role in the life of every democratic state. The problems of the formation and functioning of the Rule of Law have become the subject of the study of both foreign and Ukrainian scholars.

Some papers analyze the essence, structure, and functions of the phenomenon and the Rule of Law itself, the system of law and legislation, the significance of legal practice, the mechanism of legal regulation, a legal culture as elements of the Rule of Law. The rule of law is expressed in the provisions that state that all are equal before the law and are entitled without discrimination to the same protection of the law.

These provisions can not only be enforced directly, but also in disciplinary proceedings based on disciplinary rules prohibiting lawyers from participating in or supporting unauthorized legal practice, and asserted by clients against their former lawyers in civil actions or by counterparties in the context of disqualification requests. If fully enforced, the laws combined with the current state licensing system would have the practical effect of restricting lawyers to practice only within the limits of at most a few states.

For most of the legal history, state licensing of lawyers was not a particular concern, as most legal issues of clients were confined to a single state and knowledge of the law of that state was a particularly important qualification for lawyers. However, the wisdom of the traditional licensing and regulatory mechanisms has been challenged in light of changing client legal needs and changing legal practice. In many civil jurisdictions, membership in some legal professions depended on direct appointment by the state. While there was often a group of specialized lawyers, the value of legal representation was less significant than in a general legal system. The nature of the inquisitorial system and the view that lawyers served the state rather than the citizen led to state control of private lawyers in many civil law states. The incorporation of this complex network of obligations under the rule of law through a socialization process has traditionally been seen as one of the main tasks of the legal professions. Due to their relatively low status, private practitioners in the area of civil law were not trained to play a role as neutral partisans. In a civil law jurisdiction like Germany, for example, joint law training prepared lawyers for being judges rather than lawyers. Nonetheless, lawyers without a common legal system or tradition can adopt the ideals of liberalism and the Rule of Law.

While states are bound by international law under the treaties, they have signed and through international practices, the recognized human rights become part of the domestic law of some states, including common law countries, when transposed into national law. Especially important in this context is such direction of the United Nations as the establishment of the rule of law in international affairs, as emphasized in the UN Secretary-General's Annual Report 2000 (UN 2000), which for the first time pointed out the need for States to fulfill their international obligations solely on the basis of the principle of good faith, that is, not formally, but with due regard to the letter and spirit of the international treaty.

2 Materials and methods of research

During the research, general and special research methods have been used, in particular: theoretical generalization, comparison and morphological analysis was applied in the process of formation of the conceptual-categorical research apparatus. In addition, system analysis was employed in order to formulate the conceptual foundations for building a system of universally accepted principles of contemporary international law and to substantiate the leading role of the Rule of Law in contemporary international law in the age of globalization.

Moreover, we used the comparative analysis in order to identify the differences between the application of the Rule of Law at the national and international levels. Furthermore, we employed the logical-semantic analysis in order to identify the constituent elements of the Rule of Law in their national and international understanding.

In addition, we utilized socio-legal monitoring in order to assess the compliance of the institutional and regulatory environment that arises in the international community of states in the process of legalization and application of the Rule of Law.

3 Results and discussion

In the age of reformation of public relations, economic and political structure in Ukraine, the existence, functioning and use of the Rule of Law in a state-organized society are becoming more and more actualized and intensified. At the same time, it's organizational, managerial, and system-forming role is being objectified in contemporary international law.

It should be noted that the concept of the Rule of Law came from the national law of Great Britain to international law. Firstly, this concept is seen as a legal form of the existence and activity of governments (ontological and-managerial factor – Authors); secondly, it is ensured by the existence of an impartial, independent and guided for achieving justice of the justice system, which excludes any manifestations of arbitrariness, lawlessness, authoritarian methods of administration (institutional and judicial factor – Authors); thirdly, it is determined by the natural origin of constitutional norms (axiological factor – Authors); fourthly, it manifests itself as the legal equality of all citizens before the law (Strielkowski et al. 2016; Gryshova et al. 2017a; Abashidze and Melshina 2019) (factor of equality – Authors).

For the first time, the concept of the Rule of Law was presented by a prominent English scientist, professor at Oxford University Albert Venn Dicey in a monograph entitled "Introduction to the Study of the Law of the Constitution" (1885) (Dicey 1905), which to this day has a significant meaning for contemporary jurisprudence. Dicey considered the concept of the Rule of Law in several respects:

- compliance of the Rule of Law with the content of the Constitution, as well as the compliance of judicial decisions on the protection of constitutional rights and freedoms (principle of the supremacy of the Constitution – Authors);
- equality of all people before the law, that is, all without exception, regardless of social status in society (principle of absolute equality – Authors);
- the Rule of Law when any person regardless of his social status in a society, may be prosecuted in the case of a direct violation of the law in the manner prescribed by law and in a court of general jurisdiction (Dicey, 1905; (principle of inevitability of liability – Authors).

The current stage in the development of Anglo-American legal thought on the concept of the Rule of Law can be recognized as the period from the late 1940s to the beginning of the 21st century. It must be emphasized that the jurisprudence of states from the group of "common law" at the present stage defines and considers two directions of the concept of the Rule of Law. Having a common liberal platform, both directions differ from each other only by the fact that, conventionally, the first of them considers the concept of the Rule of Law in its narrow sense, and the second – in its broad sense (Gryshova et al. 2017b). The first direction is formal and inclined to positivism and instrumentalism (Gryshova et al. 2017c). The content of the law, as well as specific forms of management, are excluded from the scope of the study with this approach. This approach is supported in the writings of Raza and Fuller. At the same time, in its phenomenological and classical sense, the Rule of Law is a legal doctrine according to which no one can be higher than the law, all people are equal before the law, no one can be punished otherwise than in the manner prescribed by the law and only for its violation. The Rule of Law implies that all subordinate acts and acts of law enforcement obey and do not contradict the law. According to the natural-law theory, the Rule of Law requires that all normative legal acts (including the Constitution and legislation) and all government activities be subordinated to the protection of dignity, liberty and human rights (Koziubra 2000). The state, where the Rule of Law is implemented is called legal.

After the end of the WWII, and complex processes of the formation of international human rights (such as the Council of Europe, OSCE) and intergovernmental integration organizations (such as the European Union), due to the objectification of the need for coherence and optimization of global and regional management, the Rule of Law got quite a broad international legal application.

At the same time, requirements for its development, legalization, and implementation were enshrined in many international legal acts and documents of the UN as the only international universal organization and other leading international organizations under its auspices, as well as regional international, in particular European regional organizations such as the EU, the Council of Europe, the OSCE, etc. This has determined the emergence and development of both globalization and European integration concepts of legal state and the Rule of Law as the basics of international public law. The definition and clarification of the content of the Rule of Law of the EU were first given in the legal acts of the EU.

Moreover, in Europe, the term "Rule of Law" is perceived as the common value and the basic principle of achieving greater unity and determined in the Charter of the Council of Europe in 1949 (CU 2010). The European Union, the OSCE and their member states are also very committed to the Rule of Law. In its content, the Rule of Law of the EU means the priority of the rules of the law of this intergovernmental integration association over the norms of the national legislation of the member states, while the norms of the national law of the member states should not contradict the norms of EU law (Lepeshkov 1998; Gryshova et al. 2017c).

The principle mentioned above, along with such fundamental principles as "freedom, democracy, respect for human rights and fundamental freedoms", has been consolidated formally in Art. 6 (former Article F) of the "Treaty Establishing the European Economic Community" (EU 2010) and was the basis of the EU's internal law and order.

Whether one wants to study the Rule of Law in the framework of international public law, she or he should pay attention to the retrospective of its appearance in this independent legal system. This principle in international law did not appear on its own, however, it was borrowed from the constitutional right of national states, and, taking into account its special importance, has been transformed into a fundamental principle of international law. Thus, in the United States, this concept is known as "Government under Law", in France as "The Principle of Legality and the Supremacy of Law" ("Le principe de légalité et la Suprematie de la Regle de Droit"), in the Federal Republic of Germany – "The Rule of Law State" ("der Rechtsstaat") (Kalamkaryan 2004). The term "Rule of Law" is most often found in scientific literature and, by its essence, is a free translation of the phrase "Rule of Law" from the English language.

International law is an independent legal system that exists outside the legal order of certain states. For example, the United Nations General Assembly (UN), which is made up of representatives from some 190 countries, has the appearance of a legislature, but no authority to issue binding laws. Nor is there a system of courts with full jurisdiction in international law. As already mentioned before, the constitution explicitly recognizes treaties as the law of the country, far from shielding any specific country from the international law. It also empowers state legislation bodies, such as parliaments or assembly, to define and punish violations of international law. On the contrary, it encourages our active participation in the development and enforcement of international law. Overall, many countries are treating international law as a genuine right, taking its international obligations seriously, and empowering courts through its legal system to play an important role in international law enforcement. It has the power of the law, not from the extraterritorial reach of national laws or the abdication of its sovereignty by any nation, but from the adoption of rules that civilized communities' consent to facilitate amicable and workable trade relations. International or maritime law seeks no unity in such matters and does not intend to prevent a nation from enacting and amending its laws to govern its own shipping and territory. The law of the sea, like our city law, has attempted to avoid or resolve conflicts between competing laws by identifying and evaluating points of contact between the transaction and the states or governments whose competing laws are affected

4 Conclusions

In general, we can state that the Rule of Law was formed in the framework of national constitutional law as a principle directed against arbitrariness of the executive power and ensuring the Supremacy of the Constitution. The adoption of the Rule of Law by international law is determined by the need for synergistic cooperation between the legal systems of the UN member states in order to fulfil their international legal obligations undertaken in the framework of international multilateral treaties.

Clarity, perspective, universality, comprehensibility and rationality of legislation are the main principles of the Rule of Law, but so are often other existing constitutional requirements, as these principles are embedded in existing constitutional requirements.

In the age of globalization, the Rule of Law begins not only to develop, given its important institutional and executive role, but also is legalizing in international legal instruments of universal and regional international organizations – begins not only to claim the place among the generally accepted principles of international public law, but also takes a leading position among them.

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