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**Application of the Rule of Law in the Case Law of the Supreme Court of Ukraine**

The rule of law is a fundamental principle in most modern democratic states. A special Report On the Rule of Law was adopted at the 86th plenary session of the Venice Commission. It was a long and arduous process, as all members of the Commission had to reach an absolute agreement on a clear and correct interpretation of the concept of the “rule of law”. Thus, a number of mandatory elements of this principle were identified, including legality, legal certainty, prohibition of arbitrariness, respect for human rights and prohibition of discrimination, and equality before the law.

According to the Constitution, Ukraine is a sovereign and independent state [1, Art. 1], in which the rule of law is recognized and operates [1, Part 1, Art. 8]. This means that laws and other regulatory acts must comply with the Constitution, and all public authorities and their officials are obliged to act on the basis, within the powers and in the manner prescribed by the Constitution and laws of Ukraine.

The Supreme Court of Ukraine (SCU), as the highest judicial body in the system of judicial jurisdiction, consistently applies the rule of law in its practice. Let’s start with such an element as “legality”, since it is the first one mentioned in the Venice Commission’s report [2]. According to Part 2, Article 19 of the Constitution of Ukraine [1], it means that laws must be observed and is aimed at establishing restrictions on state interference with an enjoyment of fundamental human rights and freedoms. This element of the rule of law principle is applied in the Resolution of the Administrative Court of Cassation within the Supreme Court within the SCU, stating that “...the subject of power is obliged to act only in accordance with the law, under the conditions and circumstances determined by it, perform actions within the scope of his rights and obligations, follow the procedure established by the law, choose only the methods of lawful behavior established by the legislation of Ukraine in the exercise of his power” [3].

As for the legal certainty, it is multifaceted and implies compliance with a number of specific requirements, including clarity and accuracy of legislation, predictability and promulgation of laws, and the inadmissibility of arbitrariness and the use of non-transparent mechanisms that undermine trust in law, government agencies, and courts. If we consider these requirements in the context of the case law of the SCU, we could see the application of the first two of them. However, unfortunately, in the vast majority of cases, citizens do not have full confidence in the judiciary due to the high level of corruption in the country. According to the official corruption index [4], Ukraine ranks 104th out of 180 countries. This is what contributed to the approval of one of the US requirements (for military assistance to Ukraine and further European integration) to reform the SCU [5].

The prohibition of arbitrariness as a separate element of the rule of law also implies several specific aspects of its operation. First, it requires that all actions of the authorities must comply with the law. This means that the authorities can only use their powers within the framework of the current legislation, and any deviation from it must be clearly justified. Secondly, the principle of prohibition of arbitrariness implies predictability of the authorities’ actions. Accordingly, laws should be clear, understandable and not subject to ambiguity. People should be able to predict how the authorities will act in a given situation. However, returning to the problem of corruption in Ukraine, we can conclude that this element of the rule of law does not have a major impact on the Supreme Court, as it is precisely because of this that the level of people’s trust in justice is rapidly falling, which creates the basis for arbitrary actions by representatives of the judiciary.

Analyzing the requirements of the respect for human rights and the prohibition of discrimination and equality before the law, it is worth mentioning that all people have equal rights, which the state is obliged to guarantee and protect. Human rights may be restricted exclusively on the basis of the law for the purposes envisaged by the Constitution and only to the extent necessary for the normal functioning of a democratic society. However, it should be emphasized that in the case of human rights restrictions, the criteria of proportionality must be met and the “three-part test” must be applied, which provides for a reasonable balance between the cases of human rights restriction necessary in society and the legitimacy of such restriction. An example is the ruling of the Administrative Court of Cassation as part of the SCU [6]. It states that a LLC (limited liability company) challenged the decision of the city council on the establishment of local taxes, believing that it was illegal in terms of setting the tax rate on real estate other than a land plot for residential real estate owned by individuals. Having considered the case, the Administrative Court of Cassation of the SCU rejected the complaint and found that the contested decision of the city council did not comply with the requirements of the Tax Code of Ukraine, thereby protecting the rights of taxpayers.

In turn, the prohibition of discrimination and equality before the law guarantee equality in the enjoyment of fundamental rights and mean that everyone, regardless of race, origin or gender, is subject to the same regulations and cannot enjoy special legal privileges.

To summarize, I would like to note that the rule of law principle has a significant impact on Ukrainian legislation and is applied in the case law of the Supreme Court. However, despite most of the positive aspects of the analysis of court practice, there are certain gaps in the work of the SCU, including corruption crimes and abuse of power by judicial officials. To address these problems, it is necessary to launch a “transparent” process of electing judges to the position of the SCU President and the Grand Chamber of the Supreme Court, as well as to periodically carry out a comprehensive control of the judiciary with the support of the Venice Commission experts.

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