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ON THE RULE OF LAW PRINCIPLE NARROW UNDERSTANDING AS A DEFINITION GRANTED IN THE CODE OF ADMINISTRATIVE ADJUDICATION OF UKRAINE & APPROPRIATE COURT PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS TO ENSURE THE NECESSARY SCOPE

Combating corruption, terrorism and organized crime in any modern society is impossible without strengthening the key fundamental principles, governing transformations of the newly-emerged democratic legal systems. The Legality & the Rule of Law principles are presumed as fundamental principles of modern legal systems, have strong impact on development of all branches of law and legal practice. Domestic scientists in Eastern European countries still try to find drawbacks and grey areas in doctrinal understanding of correlation, essence and corresponding legal mechanisms, providing realization of the both principles in the legal order.

The main aim of this article is to introduce to the wide international auditorium modern developments of Ukrainian scientists regarding implementation of the Rule of Law principle in the domestic legal order, and to illustrate, in brief, discrepancies, that lead to partial implementation of human rights protection mechanisms or inconsistence with legislative grounds of public administration activities, to review modern issues of administrative law principles development in Ukraine.

The Rule of Law principle in the Ukrainian doctrine and legal practice is a new core ground, covering a large scale of ideas, rules, elements set forth in international and European conventions, acts and agreements, domestic legislation, but still not having common doctrinal basis for understanding the whole spectrum of demands, uniting it as a live concept interpreted via civilization development. Although it`s origins may be found in British tradition, American intervention on global level had had special impact on the Rule of Law concept interpretation in a rather wide understanding. In our opinion, such a wide interpretation of the Rule of Law may be considered as a mega-principle for transformation or modeling new legal systems in emerging Eastern European democracies. At the same time, we still witness rather strong impact of a Legality principle, shaping the effective system of legislation & domestic legal order according to the rules & doctrinal views common to post-Soviet countries.

A rather narrow interpretation of a Rule of law may be found in the Article 6 of the effective Code of administrative proceedings of Ukraine, that states, that the court is governed by the Rule of law principle, that implies, among other, that a human being, it`s rights and freedoms are deemed to be the highest values and define the essence and goals of the state activities. At the same time, it prescribes applicability of the case-law of the European court of human rights, but not defining the exact features or measures, sources for differentiating with Legality principle, Legal certainty principle as an element of the Rule of Law, protecting legitimate expectations etc.

Despite Eastern European countries, that had become members of the European Union, Ukraine couldn`t allocate sufficient financial resources of the World Bank for development of domestic doctrine and to provide modern draft codes and laws, modernizing the effective legal mechanism and, primarily – organization of public administration, to re-model external relations of public administrative with private persons according to modern demands of good governance and good administration, enshrined in the European legislation and practice. The results of constitutional and administrative reforms has not yet provided complex implementation of democratic fundamental

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principles in the domestic legal system, that constitutes significant drawback in comparison with other post-Soviet countries – Estonia, Latvia, Lithuania, and also outstanding example of Poland, as these countries had introduced more than 80 new special laws in the context of decentralization and revision of constitutional provisions due to strengthening European integration and entering the European Union.

Development of doctrinal grounds for renewal of the essence, role, classification of administrative law principles, their interconnection with good governance principles and good administration principles, modern principles and standards of organization and activities of public administration as a central institute of administrative law is an important actual problematic issue of not only theoretical, but also practical value. Solving this complex issue could reveal a number of important issues, connected with improvement of not only founding grounds of executive power institutionalization, but also contribute to development of new in their quality administrative legal institutes, legal regulation of social relations, originating in respect with rendering administrative services, codification of administrative legislation etc.

Realization of the complex administrative legal reform in Ukraine needs further development of future prior approaches for reform of the system of executive authorities and local self-governance bodies according to European principles and standards, among them, such founding institutional principles of public administration as the principle of functional decentralization, principle of deconcentration, principle of agencification, that till this time have not obtained necessary development and implementation in the domestic legislation and legal practice. At the same time experience of realization of modern institutional reforms for public administration in the EU member-states showed, that the common heritage of institutional principles of public administration should be implemented to provide administrative capacity of public administration, that constitutes necessary prior conditions for counteraction in the European administrative space (hereinafter – EAS) and performance of the obligations, connected with the associated membership in the EU.

Problematic issues of doctrinal review in a whole of the system of administrative law principles in Ukraine had been discussed by the leading domestic scientists for more than ten years, but till now a unique understanding has not been proposed, as both the list and essence of institutes of the mentioned branch of law. At modern stage we witness objective grounds, that substantiate necessity to review values, axiological grounds of the branch of administrative law, correlation of the goals, assignments of state ant state apparatus activities, providing fair balance between public, private, general and state interests, that are to be considered as the key factors for development of a new system of administrative law principles.

Modern development of European legal thought showed concretized understanding (interpretation) of the content of the concept and principles of the Rule of Law, that was declared to encompass the essential elements, stipulated in the court practice of the European court of human rights. The principle of the rule of law is to be construed as the fundamental principle which permeates all the contents of the Convention on the protection of the rights and fundamental freedoms, lies at the basis of law of the countries participating in this Convention, and the requirements of compliance cannot be broken and/or justified, even in times of emergency, military action and the like.

According to the results of the systematization of the court decisions of the European court of human rights, that contain the Rule of law, to the main groups of decisions in which reference is made to the concept or principle of the rule of law may be divided into five main groups:

1) cases and ECtHR decisions (generally – ECtHR decisions) that contain references to the content, legal meaning of the concept and / or principle the rule of law in a generalized sense;

2) ECtHR decisions that set out the quality requirements of the law, in particular on the legal restriction of the exercise of human rights and freedoms;

3) ECtHR decisions addressing various aspects of access to court and fair trial provided by a special mechanism Conventions and are consistent with the rule of law;

4) ECtHR decisions setting limits on discretionary powers and requirements to limit the arbitrariness of public authorities in accordance with the rule of law;

5) ECtHR decisions containing effective control requirements the realization of guaranteed human rights and fundamental freedoms.

The Convention is primarily concerned with the implementation of the principle of the rule of law. It should be understood that the list of groups is not exhaustive, but it allows to understand the most common (typical) aspects of application of the principle under consideration in the activities of the ECtHR and to assist in the search for judges, relevant court decisions.

Special attention should be paid to development of theoretical grounds for differentiation of principles of state governance, principles of organization & principles governing activities of state bodies, public administration, containing demands on good governance and good administration, their fixation in special laws and subordinated legislation. Particular attention must be provided to the issues of substantiation of the place and role of administrative law principles of general character, for example, of those provided by the European Convention on human rights protection & fundamental freedoms, founding principles of the EU law. Solving the underlined problematic issues would contribute to scientific development of the issues related to establishing relationships in the system of administrative law principles, explanation of their peculiarities and determination of the legal framework for the activities of executive authorities, local self-government bodies.

Administrative legal doctrine of Ukraine step by step implements doctrinal developments of foreign scientists, that substantiate grounds for a comprehensive study of newly developed principles, that would provide significant

contribution for development of national legal thought, although these principles have been defined as separate subsystems of legal principles by acts of European regional organizations, including the material and procedural principles set out in the Model Code of good administration, approved by the Council of Europe (hereinafter - CE). Such an approach makes it obligatory to solve the problem of content and the system of principles of good administration introduced for the activities of European public administration bodies and enshrined in the acts of the national legislation of the EU member-states, possibilities for their implementation in law-drafting and codification activities, in particular, regarding national administrative procedural legislation, as well as determining the place of certain specified principles in the system of principles of the branch of administrative law of Ukraine.

Along with that, it is important to address the issues of interaction and the correlation between administrative law principles and principles of other branches of law, their correlation with the principles of international law, European law, global and European administrative law, and the principles of administrative law formed by the European administrative traditions of EU member states, their comparison with the principles of state governance, legal regulation and sectoral principles of the main institutes of administrative law in the post-Soviet countries, as well as the principles formed by the case-law of the European Court of Human Rights (hereinafter - ECHR), that have special importance for transformation of the domestic system of administrative law principles.

The conceptual discrepancies in understanding the system of principles of administrative law between domestic and European administrative legal doctrine exist due to different approaches to the definition of the actual subject of administrative law, its recognition as being fundamental branch of the national law, as well as originating from administrative traditions formed by national legal systems. Therefore, an important attention should be paid to providing common doctrinal interpretation of administrative law principles based on unique concern on the subject of administrative law and the state`s axiological priorities for stable development, activities of it`s public administration. In the most of post-Soviet countries remains stable tendency to consider administrative law in a broad understanding of it`s subject, including not only key issues of organization and activity of state administration, but also other institutes of the branch of administrative law: civil service, administrative responsibility, administrative justice. At the same time principles of administrative law in the European countries are being developed in the context of public administration & detailed fixation of it`s organizational grounds. So, originating from the narrow understanding of the subject of administrative law, common to a range of European countries, without due attention are left important areas of state governance, traditionally observed in the special part of administrative law.

The traditional approach in the domestic and Soviet administrative law doctrines to understanding the principles of administrative law as normatively fixed key demands was based on positivist theory, describing their nature and role. It is important to note that during the Soviet period principles of administrative law were often identified with principles of state governance, and were considered strictly depending on ideology and relevance to the goals of Soviet state governance, had general character and were used as an instrument for protection of the interests of the state. In this regard, a qualitative review of the content of the Soviet period principles of administrative law, state governance, principles of legal regulation that have been implemented in the administrative legislation would contribute to democratic transformation of the field of administrative law on the basis of “a human-centered concept”, as well as to improvement & development of administrative law institutes, law-making and law-enforcement practice.

Conclusions. Author reviewed actual legal issues of understanding the essence, role of the Rule of Law principle in administrative adjudication, showed significant discrepancies in understanding the scope of the principle of Rule of Law in the definition, fixed in the Code of administrative adjudication of Ukraine, and the court practice of the European court of human rights, that underlined the necessary significant aspects of it`s understanding providing quality of the law; legal certainty, access to the court, fair trial, obligatory execution of court decisions, inadmissibility of any restrictions of the granted provisions on democracy and Rule of law even during war or another social disaster.

The Rule of Law principle in the Ukrainian doctrine and legal practice is a new core ground, covering a large scale of ideas, rules, elements set forth in international and European conventions, acts and agreements, domestic legislation, but still not having common doctrinal basis for understanding the whole spectrum of demands, uniting it as a live concept interpreted via civilization development. Although it`s origins may be found in British tradition, American intervention on global level had had special impact on the Rule of Law concept interpretation in a rather wide understanding. In our opinion, such a wide interpretation of the Rule of Law may be considered as a mega-principle for transformation or modeling new legal systems in emerging Eastern European democracies. At the same time we still witness rather strong impact of a Legality principle, shaping the effective system of legislation & domestic legal order according to the rules & doctrinal views common to post-Soviet countries.

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Резюме

Пухтецька А.А. **Про вузьке розуміння принципу верховенства права, визначене у дефініції Кодексу адміністративного судочинства України та відповідну судову практику Європейського суду з прав людини для забезпечення відповідності розуміння.**

У статті розглянуто актуальні правові аспекти розуміння змісту, значення принципу верховенства права в адміністративному судочинстві, виявлено значні розбіжності у тлумаченні обсягу принципу верховенства права в дефініції, закріпленій у Кодексі адміністративного судочинства України та судовій практиці Європейського суду з прав людини, в якій, зокрема, підкреслено такі важливі аспекти його розуміння як: забезпечення якості закону, юридична визначеність, забезпечення доступу до суду, право на справедливий суд, забезпечення виконання судових рішень, неможливість відступу від положень, що гарантують демократію, верховенство права навіть у період війни або стихійного лиха.

Принцип верховенства права в українській правовій доктрині та практиці є новим фундаментальним принципом, що охоплює за своїм змістом ідеї, правила, вимоги, принципи, що визнані на міжнародному рівні та в низці європейських актів законодавства, актах, договорах, національному законодавстві, проте до цього часу не отримали єдиного розуміння в національній доктрині адміністративного права, з метою формування спільних цивілізаційних засад розвитку. Хоча зміст принципу верховенства права і бере свій початок з британської традиції, надзвичайний вплив американських поглядів на глобальному рівні значно змінили сучасний зміст цього поняття та концепції, значно розширивши її зміст. На наш погляд, таке широке розуміння принципу верховенства права можна інтерпретувати як мега-принцип, за допомогою якого трансформується або моделюється правова система, зокрема у новостворених європейських демократичних країнах. Водночас у цих країнах спостерігається значний вплив принципу законності, що визначає модель ефективної системи законодавства та національного правопорядку відповідно до усталених поглядів у радянській доктрині.

Ключові слова: принцип верховенства права, фундаментальний принцип правової системи, адміністративне судочинство, Кодекс адміністративного судочинства України, Конвенція про захист прав людини та основоположних свобод, права людини, Європейський суд з прав людини, судове рішення.

Резюме

Пухтецкая А.А. **Об ограниченном толковании принципа верховенства права, закрепленном в дефиниции Кодекса административного судопроизводства Украины и соответствующей судебной практике Европейского суда по правам человека для обеспечения соответствия понимания.**

В статье рассмотрены актуальные правовые аспекты толкования содержания, значений принципа верховенства права в административному судопроизводстве, выявлены значительные различия касательно понимания объема принципа верховенства права в дефиниции, закрепленной в Кодексе административного судопроизводства Украины и судебной практике Европейского суда по правам человека, где, в частности, подчеркнуты важные аспекты его понимания, а именно: обеспечение качества закона, юридическая определенность, обеспечение доступа к судебным учреждениям, права на справедливый суд, обеспечение исполнения судебных решений, невозможность отступа от положений, гарантирующих демократию, верховенство права даже в условиях войны или стихийных бедствий.

Ключевые слова: принцип верховенства права, фундаментальный принцип правовой системы, административное судопроизводство, Кодекс административного судопроизводства Украины, Конвенция о защите прав человека и основоположных свобод, Европейский суд по правам человека, судебное решение.

Summary

Alla Pukhtetska. **On the Rule of Law principle narrow understanding as a definition granted in the code of administrative adjudication of Ukraine & appropriate court practice of the European court of human rights to ensure the necessary scope.**

Author reviewed actual legal issues of understanding the essence, role of the Rule of Law principle in administrative adjudication, showed significant discrepancies in understanding the scope of the principle of Rule of Law in the definition, fixed in the Code of administrative adjudication of Ukraine, and the court practice of the European court of human rights, that underlined the necessary significant aspects of it`s understanding providing quality of the law; legal certainty, access to the court, fair trial, obligatory execution of court decisions, inadmissibility of any restrictions of the granted provisions on democracy and Rule of law even during war or another social disaster.

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Key words: the Rule of Law principles, fundamental principle of the legal system, administrative adjudication, Convention on human rights protection and fundamental freedoms, European court of human rights.