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Стаття надійшла до редакції 13.10.2018 р.

UDC 1:316.3+340.12

DOI: <https://doi.org/10.32461/2226-3209.4.2018.152940>

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THE RULE OF LAW: MODERN SCIENTIFIC DISCOURSE AND PRACTICAL REALIZATION IN UKRAINE

The purpose of the article is to investigate in theoretical and practical aspects of the peculiarities of the formation of the rule of law in modern Ukraine. **The methodology** is based on a complex combination of general scientific (analysis, synthesis, analogy, etc.), philosophical (dialectical, hermeneutical) and special legal (regulatory and analytical, comparative legal) methods. **The scientific novelty** of the work lies in the systemic disclosure of institutional and non-institutional factors for the development of the rule of law in Ukraine, highlighting the problematic issues that arise at the present stage of national state-building. **Conclusions.** The scientific discourse about the features of the realization of the essential features of the rule of law in modern Ukraine unfolds in the following areas - ensuring quality of judicial and law enforcement activities, clear separation of powers between the branches of government and its structures (in order to avoid duplication, dual subordination), raising the level of legislative work in the Ukrainian Parliament, adherence to the principles of the rule of law in all areas of public life no and so on. Generally, it can be stated that in modern Ukraine the rule of law is only being born, and the compliance with the principles of its functioning in domestic legal relations is not yet systemic. The development of the institutions of the rule of law is an integral part of the entire political system in the country. That is why there is a need to reform the judicial branch of the government, law enforcement agencies, lawmaking procedures, taking into account the best foreign examples. One of the ways to improve the quality of legislative work is the creation of bicameral parliament in Ukraine, which should ensure more thorough consideration of the draft laws, representation of the regions, and which will serve as a forum for finding a compromise on the strategic directions of the country's development. As the experience of the countries with stable democratic traditions shows, for the development of the rule of law, it is not enough to adopt quality laws; important is their perception and implementation by all subjects of social relations, which have a developed legal awareness and legal culture of democratic quality. To raise the level of legal recognition and legal culture of Ukrainian citizens, we propose to create a system of legal education and upbringing that would be supported by the state and civil society. To ensure legal education and upbringing legal policy of the country, a number of consecutive steps should be foreseen.

Key words: the rule of law state; human rights; bicameralism; legal education and upbringing; principles of lawmaking; the rule of law; legal culture.

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Правова держава: сучасний науковий дискурс і практична реалізація в Україні

Мета роботи – дослідити в теоретичному та практичному аспектах особливості становлення правової держави в сучасній Україні. **Методологія** дослідження ґрунтується на комплексному поєднанні загальнонаукових (аналіз, синтез, аналогія та ін.), філософських (діалектичний, герменевтичний) та спеціально-юридичних (нормативно-аналітичний, порівняльно-правовий) методів. **Наукова новизна** роботи полягає у системному розкритті інституційних та неінституційних чинників розбудови правової держави в Україні, виокремленні проблемних питань, що виникають на сучасному етапі вітчизняного державотворення. **Висновки.** Науковий дискурс з приводу особливостей реалізації сутнісних ознак правової держави в сучасній Україні розгортається за такими напрямками: забезпечення якісної діяльності судових та правоохоронних органів, чіткий розподіл повноважень між гілками влади та її структурами (унікнення дублювання, подвійного підпорядкування), реальне забезпечення прав і свобод громадян, підвищення рівня законотворчої роботи в українському парламенті, дотримання принципів правової держави в усіх сферах суспільного життя тощо. Загалом можна констатувати, що в сучасній Україні правова держава лише народжується, а виконання принципів її функціонування у вітчизняних правовідносинах ще не набуло системного характеру. Розвиток інститутів правової держави є невід'ємним складником усієї владної системи в країні. Саме тому є необхідність у реформуванні судової гілки влади, правоохоронних органів, процедур законотворення з урахуванням кращих закордонних зразків. Одним зі шляхів покращення якості законотворчої роботи є створення в Україні двопалатного парламенту, який має забезпечити більш ретельний розгляд законопроектів, представництво регіонів, слугуватиме полем знаходження компромісу щодо стратегічних напрямів розвитку країни. Як показує досвід країн зі сталими демократичними традиціями, для розбудови правової держави недостатньо прийняття якісних законів – важливе їх сприйняття і виконання всіма суб'єктами соціальних відносин, які мають розвинути правосвідомість та правову культуру демократичного ґатунку. Для підвищення рівня правосвідомості та правової культури українських громадян ми пропонуємо створити систему правового виховання, яка б підтримувалася державою та громадянським суспільством. У правовій політиці країни варто передбачити низку послідовних кроків для забезпечення правовиховної роботи.

Ключові слова: правова держава; права людини; бікамералізм; правове виховання; принципи законотворчості; верховенство права; правова культура.

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Правовое государство: современный научный дискурс и практическая реализация в Украине

Цель работы – исследовать в теоретическом и практическом аспектах особенности становления правового государства в современной Украине. **Методология** исследования базируется на комплексном сочетании общенаучных (анализ, синтез, аналогия и др.), философских (диалектический, герменевтический) и специально-юридических (нормативно-аналитический, сравнительно-правовой) методов. **Научная новизна** работы заключается в системном раскрытии институциональных и неинституциональных факторов развития правового государства в Украине, выделении проблемных вопросов, возникающих на современном этапе отечественного государственного строительства. **Выводы.** Научный дискурс об особенностях реализации сущностных признаков правового государства в современной Украине разворачивается по следующим направлениям – обеспечение качественной деятельности судебных и правоохранительных органов, четкое распределение полномочий между ветвями власти и ее структурами (во избежание дублирования, двойного подчинения), реальное обеспечение прав и свобод граждан, повышение уровня законотворческой работы в украинском парламенте, соблюдение принципов правового государства во всех сферах общественной жизни и пр. В целом можно констатировать, что в современной Украине правовое государство только зарождается, а соблюдение принципов его функционирования в отечественных правоотношениях еще не имеет системного характера. Развитие институтов правового государства является неотъемлемой составляющей всей политической системы в стране. Именно поэтому есть необходимость в реформировании судебной ветви власти, правоохранительных органов, процедур законотворчества с учетом лучших зарубежных образцов. Одним из путей улучшения качества законотворческой работы является создание в Украине двухпалатного парламента, который должен обеспечить более тщательное рассмотрение законопроектов, представительство регионов, будет служить полем нахождения компромисса относительно стратегических направлений развития страны. Как показывает опыт стран с устойчивыми демократическими традициями, для развития правового государства недостаточно принятия качественных законов – важно их восприятие и исполнение всеми субъектами социальных отношений, которые имеют развитое правосознание и правовую культуру демократического толка. Для повышения уровня правосознания и правовой культуры украинских граждан мы предлагаем создать систему правового воспитания, которая бы поддерживалась государством и гражданским обществом. В правовой политике страны следует предусмотреть ряд последовательных шагов по обеспечению правовоспитательной работы.

Ключевые слова: правовое государство; права человека; бикамерализм; правовое воспитание; принципы законотворчества; верховенство права; правовая культура.

Relevance of the topic. Formation of the rule of law in Ukraine is one of the most important components of its democratic progress. That is why the scientific discourse on this issue acquires new forms and essential features at the current stage of reforming the Ukrainian state. Inadequate enforcement of existing legal norms, adoption of unreasoned laws, proliferation of legal nihilism in the governing structures and in

social relations, insufficient level of legal culture have led to the urgent need to address to the problems of the rule of law state for determining the optimal ways of state-development process in Ukraine.

Analysis of the research and publications. Scientific discourse on the problem of the rule of law is a polymethodological and multidimensional one. In particular, the study of the nature and essence of the rule of law state involves institutional and non-institutional dimensions. Thus, the domestic researcher D. Geta analyzed the problems of the formation of the rule of law state in modern Ukraine, focusing on the main features of this phenomenon and reflecting on the peculiarities of their implementation in our country [2]. In turn, A. Charnota studies the concept of "a democratic rule of law state" and emphasizes that the application of the principle of the rule of law allows legitimizing new political regimes of a democratic nature and overcoming the crisis in power [12]. The importance of the scientific investigation by O. Solomin for our scientific research is that he considers the principles of the rule of law backgrounding on the norms of the Constitution of Ukraine of 1996 and focuses on their correlation [7].

On the other hand, M. Sellers rightly emphasizes that the existence of the rule of law state requires an independent and professional judiciary, which has the power to impartially interpret and apply laws without fear or influence [15]. T. Klymchuk focuses on the principles of lawmaking and the peculiarities of their implementation in Ukraine, that is extremely important for the development of the rule of law state [4].

A number of researchers are discussing on the content and peculiarities of the implementation of the principle of the rule of law as the basis for the rule of law state existence. In particular, N. Alajarvi claims that the rule of law plays a key role in achieving sustainable development of the country. The rule of law consolidates the development for the sake of peace and security, respect for human rights and rational governance [10]. According to M. Matskevych, the main task of the rule of law state is to protect human freedoms from arbitrariness by officials, state bodies, etc. It is the degree of realization of the rights and freedoms of citizens that defines a state as legal or non-legal [5]. Reflecting on the formation of the rule of law state in Ukraine, M. Durdynets studies the problem of introduction of a bicameral Parliament in our country, stating disadvantages and advantages of this step, taking into account foreign experience [3].

According to A. Hetman, L. Herasina and other authors of the fundamental research on legal education and upbringing, the development of the rule of law state in Ukraine should be based on systematic legal educating activity of state bodies and public organizations, which will ultimately contribute to raising the level of legal culture of the domestic society [6].

Given above concise analysis of scientific literature allowed us to formulate the purpose of the research - to study the theoretical and practical aspects of the formation of the rule of law in modern Ukraine.

Presenting the main material. In order to achieve this goal, we should turn to the main characteristics of the concept the "rule of law" in the modern scientific discourse. According to scientists, the theory and practice of the rule of law are aimed at establishing the principle of sovereignty of people, subordination of the state to society, protection of human and civil rights and freedoms [2, 13].

Continuing the aforementioned logic, the foreign researcher E. Tsiogaru argues that alongside with the evolution of the political organization of society, its main institute, that is the state, has also changed. In his opinion, the state structures during the historical progress liberalized the legal regime of functioning of individuals and legal entities. The state not only expanded the rights and freedoms of citizens, but gradually began to act in the spirit of legal norms, moving away from exercising absolute, uncontrolled power. The evolutionary embodiment of the principle of the rule of law indicated that the state exercises its political power on the basis of legal norms, using the power of an argument, but not an argument of power [11, 87]. That is, the powers of the state as an institution of government evolved under the influence of various factors from the absolute power to the limited, which embodied into the concept of the "rule of law state".

As it is known, the essential features of the rule of law are specified in its fundamental principles. The first is the principle of the rule of law, the governance of law in all areas of public life, in the relations between the state and a citizen. The rule of law state is the state controlled by the law. The main means of such control is the Constitution, which is considered as the legal embodiment of the social contract. The second principle is the legal equality of citizens who are equal before the law, have the same rights and duties, and are equally responsible for violating the current legislation, regardless of their social background, financial status, race, nationality, confession, and other beliefs. The existence of the rule of law also implies the implementation of the principle of the priority of inalienable human rights in relation to the right of any community (class, nation, confession, etc.), the rights of the people in relation to the rights of the state. The continuation of the above-mentioned provision is the principle of guaranteeing and protecting human and citizens' rights and freedoms, creating conditions for their full realization. The next principle of functioning of the rule of law implies the mutual responsibility of the state and an individual. In the rule of law state legal equality of not only the citizens is achieved, but also of the citizens and the state. In particular, this provides for the legal responsibility of the officials for violating the rights and freedoms of a person, the right to dispute in court the wrongful acts of the officials. Today, the citizens of the developed countries can claim their own state not only in national but also in the international courts. In particular, every citizen of the Council of Europe Member State has the right to apply to the European Court of Human Rights. Since 1997, it has also become possible for Ukrainian citizens. Also, in the rule of law the principle of separation of state power into the legis-

lative, executive and judicial, each of which must be relatively independent and counterbalance others [7, 4] is embodied.

Commenting on the importance of the principles of the rule of law, S. Haggard and L. Tiede state that the rule of law includes effective protection of human rights, property, concluded contracts and extends to the main civil and political freedoms that guarantee autonomy and freedom of an individual. However, in the end, such protection depends not only on the quality of laws, but also on the basic institutional mechanisms - checks and balances that restrict the powers of the governmental bodies [14, 406].

The principles of the rule of law are reflected in various national and international legal documents. In particular, the report of the Venice Commission on Rule of Law states that the rule of law is a fundamental value that encompasses a set of formal and material features that foresee a consensus of the rule of law and the law-governed state: legality (including a transparent, accountable and democratic process of passing laws); legal certainty; prohibition of arbitrariness; access to justice (carried out by independent and impartial courts, including judicial review of the administrative acts); observance of human rights; non-discrimination and equality before the law [13].

Application of the above mentioned principles of the rule of law in domestic realities has not become systematic and inevitable, their implementation is only partially implemented. By and large, in Ukraine, the rule of law state is only emerging. Unfortunately, this process is not deprived of significant shortcomings in the activities of the judicial and law-enforcement systems; it is characterized by a low level of protection of human rights, the adoption of laws in view of the principle of "political expediency", the lack of real equality of citizens before the law, etc. It can be affirmed that the development of the rule of law in Ukraine is taking place at extremely slow pace, first of all, according to the qualitative signs. Even the appearance of a significant number of anti-corruption bodies did not give the results expected by the society, that is, systematic overcoming of corruption in highest authoritative bodies, judicial and law-enforcement structures.

Unfortunately, the adoption of new laws and amendments to the existing legal norms does not always correspond to the principles of systematic and scientific, which, in the end, significantly impedes the development of the rule of law in Ukraine. For example, domestic lawyers state that "...today Ukraine's criminal law faced with the real threat of its uncontrolled and unsystematic reformation, the result of which may be not only its further "cluttering by scientifically unfounded and not necessarily caused by the needs of the modern social life provisions, and, in the end, it can lead to a violation of the fundamental principles on which it is constructed, the systemic ties and dependencies of its prescriptions, which, in turn, entails a significant reduction of the effectiveness of criminal law influence on crime" [9, 64].

In general, the concept of the rule of law implies that any passed law must be legal, that is, comply with the natural rights of a person, and not to contradict his fundamental freedoms.

As M. Matskevich emphasizes, human rights are the most prominent state-legal objectification of the concrete historical degrees of freedom. Every person naturally has an inalienable right to determine the volume of the relevant (material or spiritual) goods that do not contradict the interests of other people. Society and the state should promote their implementation. The formation and the development of the institution of human rights enables to reveal the type of civilization, its stages, since the relationship between an individual and the state is an important feature that characterizes the nature of a civilization, as well as the state as the legal or not legal. The catalogue of the contemporary human rights in international legal documents is the result of the accumulation of originally developed standards that became the norms for democratic states. For millennia, the search for the ways of relations between an individual and the government continued. During the development of humanity on the way of freedom, the wish to restrict the power of the state, to protect an individual from the arbitrariness of the state bodies, officials, and the wish to give a person a wider sphere for self-determination [5, 61-62] became increasingly clear.

At the same time, the adoption of adequate laws that comply with the principles of the rule of law is impossible without mastering the foundations of lawmaking activity by parliamentarians, conducting qualitative legal expert evaluations of the draft laws in the scientific environment, taking into account public opinion, etc.

In the context of our research, it is expedient to refer to the point of view of T. Klymchuk, who attributes to the general principles of lawmaking:

- the principle of the rule of law, according to which laws as a product of lawmaking should be adopted on the basis of the Constitution of Ukraine and must comply with it, and no citizen can be outside the just law;
- the principle of preventing the narrowing of the content and scope of human and civil rights and freedoms, which is aimed at preserving the qualitative and quantitative characteristics of human rights in the state;
- the principle of legality, which provides the ensurance of the rights, freedoms and legitimate interests of individuals and legal entities in the process of law-making;
- the principle of humanism, which means the necessity of creating (fixing and protecting) proper social conditions for the implementation and protection of the fundamental rights, freedoms and interests of a person with the help of the laws;

- the principle of democracy, which obliges to reflect in the laws the will of the majority of the population, and in order to achieve this goal to attract the widest of its strata;
- the principle of transparency, which envisages creating the opportunity for the public to freely and openly obtain access to the information on the implementation of law-making activities and the results of monitoring the effectiveness of the legal regulation of the laws in force, etc.;
- the principle of scientific knowledge, which requires from the participants of the legislative process to use scientifically founded approaches to the implementation of the lawmaking process, to take into account the latest achievements of science in determining the social need for the creation of a new law, the amendment or additions to the current one, to determine the effectiveness of the current law, etc. ;
- the principle of morality, which is intended to consolidate the natural connection of legal and non-regulatory means of regulation;
- the principle of systemicity points to the fact that lawmaking is a legal phenomenon, which stays in conjunction with other legal phenomena of the state, its legal system and they are predetermined by them;
- the principle of the preservation of national identity, aimed at ensuring the consideration and expression of the specific interests of each nation, nationality and ethnic group living on the territory of Ukraine, to create conditions for their participation in lawmaking;
- the principle of the observance of international standards, which provides an opportunity to ensure the reception, harmonization and unification of the national law with international legal acts [4, 64-65].

The implementation of the principles of lawmaking in Ukraine is directly related to the effective work of the Parliament, its rational organization, and constant interaction with other authorities. According to the experts, the introduction of bicameralism can be the most effective way to overcome a long-term parliamentary crisis in Ukraine. In this context, the thesis, which sometimes happens in the journalistic and even specialized literature, calls into question: the bicameral parliament is an inherent characteristic of an exclusively federal state. However, on the map of Europe one can find at least 10 unitary countries with the bicameral parliament. They are Ireland, Spain, Italy, the Netherlands, Poland, Romania, France, Croatia, the Czech Republic and Belarus. Considering the gradual democratic progress of the overwhelming majority of these states, we can assume that the introduction of the bicameral parliament became a serious step in this way. That is why the "bicameral" experience of these countries may be useful for further constitutional reform in our country [8, 488-489].

Proponents of bicameralism believe that the bicameralism of the Parliament today is an objective requirement to improve its law-making and legislative activity. The complexity of legislative activity, which is determined by the high level of responsibility of its subjects to the people, as well as the growing requirements of the present day to the quality of the legal technique of normative drafting works, confirms the expediency of the existence of the second chamber of Parliament, which would act as a professional and impartial "editor" of the draft laws adopted by the lower chamber. In many states with bicameral Parliaments, the approval of the law by the upper chamber is a prerequisite for its entry into force (Romania, Italy, the USA, and others). In addition, the upper chamber is a restraining factor for a kind of "democratic extremism" of the lower chamber of Parliament when making amendments and additions to the Constitution and constitutional acts. Senates in most bicameral parliaments of the world are the guarantors of the legitimacy of the constitutional reform [3, 119-120].

Give the due to the purely institutional factors of the development of the rule of law in Ukraine, one should pay attention to the importance of non-institutional factors in this process, in particular, the need to increase the level of legal awareness and legal culture of Ukrainian citizens. Undoubtedly, it depends on the quality of legal attitudes and values of the subjects of legal relationships, depending on the degree of implementation of the existing laws.

Undoubtedly, qualitative changes in the legal culture of our compatriots will help to overcome such a negative phenomenon as legal nihilism. It should be noted that legal nihilism destroys the foundations of the rule of law, especially when the political class, representatives of judicial and law-enforcement agencies are "infected" by it.

As B. Ganba notes, social danger of elitist legal nihilism is as follows:

1) in accordance with the Constitution and the current legislation, the ruling elite is endowed with a wide range of state-authoritative powers, which may lead to (and leads to) the violations of the rights and freedoms of ordinary citizens as a result of corruption, populism and protectionism, etc.;

2) the representatives of the elite during the exercise of state-authoritative powers have the right to take cardinal and deep in volume decisions in the field of law-making, executive-regulatory, control and supervision spheres, and therefore the consequences of the manifestation of legal nihilism here are more dangerous not only for an individual, but also for the society and the state as a whole. Thus, making the conflicting, and sometimes directly opposing laws, entails the neutralization of legal prescriptions or their "selective" application in the own departmental or group interests [1, 107].

Legal nihilism is the basis of such adverse phenomena as bribery, corruption, nepotism, patron-client relations, which do not correspond to the very nature of the rule of law. The problem of overcoming legal nihilism is relevant to various types of social systems, but it is particularly acute when it comes to transition

from one political-legal regime to another. The degree of rooting and distribution of legal nihilism is one of the indicators of the deformed public legal awareness, the presence of anti-values in it.

Elimination of legal nihilism and the maximum practical realization of the principles of the rule of law requires the comprehensive and systematic use of a large number of means, one of the most important of which is legal education and upbringing. Successful overcoming of legal nihilism by legal means is possible only when the state will be able to ensure the inevitability of punishment for the committed offenses, and will seek the purification the law-enforcement and judicial authorities from corruption. In its turn, the formation of a value-based political and legal leverage of the European format during legal-upbringing measures will help to dispel myths about the activity of the authorities, increase the level of effectiveness of interaction of civil society and power structures, increase the real possibilities of local self-government bodies, etc.

According to the authors of the monograph "Legal Education and Upbringing in Contemporary Ukraine", considering the prospects of legal education and upbringing in our country, the following tasks should be highlighted in relation to its optimization: the development of a substantiated state legal policy, and on its basis - the conceptions of legal education of the population; creation of a multi-stage legal education system in the country - an updated legal literacy, including systematic and operational improvement of the professional qualification of lawyers with an emphasis on improving the methodology for the implementation of their educational and upbringing functions; raising general morality of the citizens; differentiated, according to various social, professional and age characteristics of the population, promotion of legal knowledge (in particular, through the mass media); awakening of the interest in the community to legal knowledge and ensuring their availability; application of methods of advertising and public relations; development of family legal education, etc. In the process of organization of legal education and upbringing, it is vital to use the whole complex of actions of the subjects of legal education and upbringing to ensure effective influence on all social and demographic groups. This influence should be, firstly, professional; secondly, the organization of legal education must be provided with proper financing; thirdly, it is necessary to stimulate legislatively the activities of public organizations that would carry out legal education and upbringing of the population; fourthly, the most significant attention in legal-upbringing work should be paid to the youth, especially the least socially protected part of it: to the children from disadvantaged families, children, deprived of parental care, orphans, since it is among the representatives of these young people that the highest level of deviant behavior is observed [6, 397].

Thus, the scientific novelty of the work is in the comprehensive disclosure of institutional and non-institutional factors in the development of the rule of law in Ukraine, highlighting the problem issues in this process at the present stage of the national state-building.

Conclusions. Scientific discourse on the peculiarities of the implementation of the essential features of the rule of law in modern Ukraine unfolds in the following ways: ensuring the quality work of judicial and law enforcement bodies, clear separation of powers between the branches of power and its structures (avoiding duplication, double subordination), real ensuring of the rights and freedoms of the citizens, raising the level of lawmaking in the Ukrainian Parliament, adhering to the principles of the rule of law in all spheres of public life, etc. In general, it can be stated that the rule of law in modern Ukraine is just born, and the implementation of the principles of its functioning in domestic legal relations has not yet become systematic. The development of the institutions of the rule of law is an integral part of the whole political system in the country, that is why there is a need for reforming the judicial branch of power, law enforcement bodies, and procedures of law-making taking into account the best foreign models. In our opinion, one of the ways to improve the quality of legislative work is to create a bicameral parliament in Ukraine, which should provide more thorough consideration of the draft laws, representation of the regions and serve as a forum for finding a compromise on strategic directions of the country's development.

As the experience of the countries with stable traditions of democracy shows, for the developing the rule of law the adoption of qualitative laws is not enough - their perception and fulfillment is essential for all subjects of social relations, which have developed legal awareness and legal culture of democratic quality. To increase the level of legal knowledge and legal culture of Ukrainian citizens, we propose to create an effective legal education and upbringing system that would be supported by the state and civil society. In the legal policy of the country, it is necessary to provide some consecutive steps to ensure legal education and legal upbringing work.

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Стаття надійшла до редакції 17.10.2018 р.