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# ЮРИСТ АХБОРОТНОМАСИ

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ҲУКУКИЙ, ИЖТИМОИЙ, ИЛМИЙ-АМАЛИЙ ЖУРНАЛ



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# ЮРИСТ АХБОРОТНОМАСИ

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# ЮРИСТ АХБОРОТНОМАСИ ВЕСТНИК ЮРИСТА LAWYER HERALD

## ҲУҚУҚИЙ АМАЛИЁТ ВА ХОРИЖИЙ ТАЖРИБА

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### PRACTICAL ASPECTS OF THE CONCEPT OF THE RULE OF LAW

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#### ANNOTATION

In the article, the rule of law is positioned as a universal principle of ensuring human rights, the main value of modern society. The history of formation, legal nature, the content of the rule of law as a principle, a legal phenomenon and a conceptual approach to modern human rights have been studied. Besides, the foreign experience of the implementation of the rule of law has been analyzed in the context of the CIS countries, as well as universal and regional international organizations and researched mechanisms for ensuring the rule of law. The principle of the rule of law is presented as the only effective means of ensuring the inviolability of democracy, as well as one of its main features, and its provision and control is a guarantee of ensuring human rights to the extent that decent living conditions are created for every person. The article also analyzes the value of the Rule of Law Index of the World Justice Project (WJP) on the example of the Republic of Uzbekistan.

**Keywords:** rule of law, constitutional rights, the rule of law index, limitation of government institutions' competence, absence of corruption, order and security, protection of fundamental rights, transparency of government institutions, compliance with laws, civil justice, criminal justice.

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**HUQUQ USTUVORLIGI KONSEPSIYASINING AMALIY JIHATLARI****АННОТАЦИЯ**

Maqolada huquq ustuvorligi inson huquqlarini ta‘minlashning umuminsoniy tamoyili, zamonaviy jamiyatning asosiy qadriyati sifatida keltiriladi. Huquq ustuvorligining shakllanish tarixi, huquqiy tabiati, tamoyil va huquqiy hodisa sifatida, shuningdek, zamonaviy inson huquqlariga konseptual yondashuv sifatidagi mazmuni o‘rganiladi. Bundan tashqari, MDH davlatlari, universal va mintaqaviy xalqaro tashkilotlar doirasida huquq ustuvorligini tatbiq etishning xorijiy tajribasi tahlil qilinib, uni ta‘minlash mexanizmlari ko‘rib chiqiladi. Huquq ustuvorligi prinsipi demokratik daxlsizlikni ta‘minlashning yagona samarali vositasi hamda uning asosiy belgilaridan biri sifatida namoyon bo‘lib, uning ta‘minlanishi va nazorat qilinishi har bir inson uchun yaratilgan munosib turmush sharoiti darajasini ta‘minlash kafolatidir. Maqolada, shuningdek, O‘zbekiston Respublikasi misolida Jahon Adliya loyihasi (WJP) huquq ustuvorligi indeksining ahamiyati tahlil qilinadi.

**Kalit so‘zlar:** huquq ustuvorligi, konstitutsiyaviy huquqlar, huquq ustuvorligi indeksi, davlat institutlari vakolatlarini cheklash, korrupsiyaning yo‘qligi, tartib va xavfsizlik, asosiy huquqlarni himoya qilish, davlat institutlarining shaffofligi, qonunlarga rioya qilish, fuqarolik odil sudlov, jinoy odil sudlov.

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**ПРАКТИЧЕСКИЕ АСПЕКТЫ КОНЦЕПЦИИ ВЕРХОВЕНСТВА ПРАВА****АННОТАЦИЯ**

В статье верховенство права позиционируется как универсальный принцип обеспечения прав человека, главной ценностью современного общества. Изучены история становления, правовая природа, содержание принципа верховенства права, правового явления и концептуального подхода к современным правам человека. Кроме того, проанализирован зарубежный опыт внедрения верховенства права в странах СНГ, Евросоюза, США и исследованы механизмы обеспечения верховенства права. Принцип верховенства права представлен как единственное эффективное средство обеспечения неприкосновенности демократии, а также как одно из его основных черт, а его обеспечение и контроль являются гарантией обеспечения прав человека в той мере, в какой достойные условия жизни созданы для каждого человека. В статье также анализируется значение Индекса верховенства права Всемирного проекта правосудия (WJP) на примере Республики Узбекистан.

**Ключевые слова:** верховенство права, конституционные права, индекс верховенства

права, ограничение компетенции государственных институтов, отсутствие коррупции, порядок и безопасность, защита основных прав, прозрачность государственных институтов, соблюдение законов, гражданское правосудие, уголовное правосудие.

The rule of law is a universal principle of ensuring human rights and is becoming the main, basic value for the development of a modern democratic civil society. Increasingly, the concept of “rule of law” is being introduced in the system of legal conceptual apparatus of many countries, including the Republic of Uzbekistan. More recently, even lawyers were unable to distinguish between the concepts of “rule of law” and “supremacy of the law”. “Supremacy of the law” refers to rule of legal acts, i.e. written norms. Now everyone knows clearly that the supremacy of law is one of the components of several principles of ensuring the rule of law.

In 2005 the UN Secretary-General Kofi Annan noted: “it is necessary to get rid of need and fear, but that is not enough. All people have the right to be treated with dignity and respect”, – in his report called “In Larger Freedom: Towards Development, Security and Human Rights for All” (A/59/2005), [paragraph 27]. The guarantee of ensuring such dignified treatment and respect for people is the full enjoyment of human rights, and the rule of human rights for their protection” [1].

A legal democratic state is a state in which the rule of law is implemented. Insufficient certainty of the content of the category of the rule of law is largely due to the controversial nature and the absence of unambiguous answers to key questions that can give an idea of this phenomenon. What is the legal basis and content of the rule of law? What does law mean in this case and over what types of acts and levels of regulation does it have rule? What is meant by ensuring the rule of law and what are its mechanisms? Is it advisable to single out and assess the rule of law as an independent legal phenomenon for the development of legal doctrine and practice?

It is known that the doctrine of rule of law as a kind of system of views on the structure and development of legal reality has been formed over several centuries, while historically its “homeland” is considered to be the system of common Anglo-Saxon law, where its content was firstly defined, which subsequently allowed to establish the rule of law as fundamental constitutional principle of English law. Traditionally, the first doctrinal source of ideas about the rule of law is the work of the English scientist A.V.Dicey on the fundamentals of state law in England. He conceptually substantiated the meaning and essence of the rule of law, highlighting such components of this phenomenon as preventing the administration from abusing its power, subordinating all subjects of the country to English laws and courts, judicial protection of human rights and freedoms [2].

Modern theorists of English constitutional law have enriched the concept of the rule of law focusing on the limitation of public power through law, particularly in determination of the coherence of the courts’ activity only by law not by legal acts and on the special significance of the judiciary in protecting human rights and freedoms. At the same time, great attention is paid to the relationship of the rule of law with the universally recognized principles of international law and fundamental human rights guaranteed by the Universal Declaration of Human Rights of 1948 and the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950.

The rule of law is a universal principle. “The need for universal provision and compliance with the rule of law both at the national and international levels” was recognized by all UN member states in the World Summit Outcome Document (§ 134) in 2005 [3]. Likewise, as stated in the Preamble and in Article 2 of the Treaty on European Union (TEU) [4], the rule of law is one of the basic values shared by the European Union and its members [5]. In 2014 in its document named “New Principles for Strengthening the Rule of Law”, the European Commission recalls, “the rule of law is steadily becoming the dominant organizational model of modern constitutional legislation and international organizations governing the implementation of public authority”. Not surprisingly, an increasing number of states refer to the rule of law in their national constitutions [6].

The UN has proclaimed the rule of law as a universal basic principle. At the regional level, it was done by the Organization of American States, in particular, in the Inter-American Democratic Charter, and by the African Union, in particular in its Constituent Act. References to the rule of



law can also be found in various documents of Arab League. The rule of law is mentioned in the Preamble of the Charter of the Council of Europe as one of the three “principles that create the foundation of true democracy”, along with personal and political freedom. Article 3 of the Charter states that a prerequisite for the accession to the Organization as a member state is to express state’s respect for the rule of law. Thus, the rule of law, along with democracy and human rights, has become and is one of the three intertwining and overlapping core principles of the Council of Europe. The close relationship between the rule of law and a democratic society is emphasized in various formulations of the European Court of Human Rights, for example: “a democratic society that recognizes the rule of law”, “a democratic society based on the rule of law”, and more generally: “the rule of law in a democratic society”. Securing these three principles - respect for human rights, pluralistic democracy and the rule of law - is considered the single and central goal of the Council of Europe.

The rule of law is systematically mentioned in the main political documents of the Council of Europe, as well as in various conventions and recommendations. In particular, it is referred to as an element of common heritage in the Preamble to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The rule of law is referred to as a basic principle of European democracies in Resolution Res (2002) 12 establishing the European Commission for the Effectiveness of the Administration of Justice (CEPEJ) and is referred to as a priority in the Statute of the Venice Commission. At the same time, none of the documents of the Council of Europe provides a definition of the rule of law. The Council of Europe has also not established any specific monitoring mechanisms on the rule of law.

Despite this, on a number of occasions the Council of Europe has taken action to promote and strengthen the rule of law through its institutions, in particular the European Court of Human Rights (ECHR), the European Commission on the Effectiveness of the Administration of Justice (CEPEJ), the Advisory Council of European Judges (CCJE), Group of States against Corruption (GRECO), Monitoring Committee of the Parliamentary Assembly of the Council of Europe, the Commissioner for Human Rights and the Venice Commission. In its 2011 report on the rule of law, the Venice Commission examined the rule of law in the light of Parliamentary Assembly Resolution 1594 (2007), which indicated the need to ensure the correct interpretation of the term “rule of law”, “Rechtsstaat” and “Etat de droit” or “prééminence du droit” in the spirit of the principle of legality and due process [7].

At its 86th plenary meeting (March 2011), the Venice Commission approved the Rule of Law Report (CDLAD (2011) 003rev). In this report, the main elements of the Rule of Law, Rechtsstaat and Etat de droit were identified. An annex to the report contained the first draft of the checklist for assessing the rule of law in a given State. According to natural law theory, the rule of law requires that all regulatory legal acts and all activities of state power serve to protect dignity, freedom and human rights [8].

The Venice Commission analyzed the definitions proposed by various authors representing different legal systems and state organizations, as well as different legal cultures. The Commission concluded that the concept of the rule of law implies a clear and predictable legal system in which every citizen has the right to dignified, equal and reasonable treatment in accordance with the legal acts from all persons in power, and also has the opportunity to challenge their decisions in independent and impartial tribunals in a fair trial. The commission warned against a purely formal approach to the concept of the rule of law, requiring only that the actions of an official be authorized by legal acts. “Rule by force of legal acts”, or “Rule by legal acts”, or even “Justice by legal acts” - all these are a distortion of the concept of the rule of law [Parliamentary Assembly of the Council of Europe, Proposal for the Adoption of a Resolution by Mr. Golovaty et al., Principle of the Rule of Law, Doc. 10180, § 10. In this context, see also OSCE Copenhagen Document, par. 2: “[the participating States] believe that the rule of law does not simply mean formal rule of law ensuring the regularity and consistency of achieving and ensuring a democratic order, it means justice based on the recognition and full acceptance of the supreme value of the human person, which is guaranteed by the institutions that provide the foundation for its fullest expression. WJP Rule of Law Index 2020].

The concept of the rule of law implies that norms must be published, stable and predictable in their application. An important requirement is the availability of the justice system and its



independence from the executive and legislative branches of government. Rationally, the rule of law does not assess the fairness of the norms themselves, but rather establishes the procedural attributes that a legal system should have. Today, the rule of law is a global goal of the international community, the achievement of which is possible only through international integration due to globalization and technological progress, which contribute to the growth of interaction among states at the international and regional levels.

The World Justice Project (WJP), an international independent nonprofit organization, first published the Rule of Law Index in 2010. The organization promotes the rule of law - a principle that recognizes the priority of law over the state and ensures accountability of all its individuals and institutions.

The Rule of Law Index ® World Justice Project is the world's leading source of original, independent rule of law data. Covering 128 countries and jurisdictions, the index relies on national surveys of over 130,000 households and 4,000 legal practitioners and experts to measure how the rule of law is perceived and implemented globally [9].

The rankers assess (128) states and jurisdictions on eight key indicators:

1. Limitation of government institutions powers.
2. Absence of corruption.
3. Order and safety.
4. Protection of fundamental rights.
5. Transparency of government institutions.
6. Compliance with laws (legal acts).
7. Civil justice.
8. Criminal justice.

Uzbekistan ranked 94 in 2019 [10] out of 126 and 12 out of 13 in the Eastern Europe and Central Asia region. The compilers of the index note that the situation with the rule of law in the country has improved, which allowed it to move up 2 positions in the world ranking. In the region, the place of Uzbekistan has not changed. The overall score of Uzbekistan is 0.46.

In 2020, Uzbekistan rose to 92<sup>nd</sup> place out of 128 states [11], which is a good indicator, since the country has risen 2 levels higher over the year. In 2021, Uzbekistan has already climbed to 85<sup>th</sup> place out of 139 countries, climbing another 7 positions in a year. Within the regional framework, Uzbekistan ranked 10<sup>th</sup> out of 14 in the region of Eastern Europe and Central Asia.

The WJP ranks countries on several factors, including absence of corruption, order and security, fundamental rights, civil justice, and more. We have the lowest indicators for government transparency and the absence of corruption, and the highest indicator is order and security, according to this criterion, we are in 11<sup>th</sup> place worldwide.

The rule of law ensures sustainable economic growth for societies, promotes accountability of governments around the world, and encourages respect for fundamental human rights. The principle of the rule of law is fundamental and systemic in the system of law principles. Refusal in any sphere of state-power activity from submission to law is essentially the power's oblivion of the interests of society, its desire to rise above society, to consider a citizen as an object of its activity, not as an equal subject in relations with the state. This is inconsistent with the rule of law, entails the danger of arbitrariness, excludes the reality of legal reforms, including judicial reform, and potentially carries the threat of destruction of the state itself.

The rule of law extends the dual promise that all are subject to the law, and all enjoy equal protection under the law. In addition, any sphere of a society is no exception, be it is education, healthcare (including reproductive rights) [12], industry, sports and intellectual properties. The human rights principles of equal human dignity and non-discrimination highlight this international commitment to equality before the law. However, alarmingly high rates of gender-based discrimination and violence are being observed in practice, and that women and girls face profound barriers to accessing justice. As noted by the CEDAW Committee, gender stereotypes, stigma, harmful and patriarchal cultural norms, and gender-based violence adversely impact on the ability of women to gain access to justice on an equal basis with men [13]. These gendered harms compromise justice outcomes for victims, witnesses, defendants and prisoners at all stages of the criminal justice system. The guarantee of protection of intellectual activity's results as an inviolable property surely qualifies

as a “sector of vital importance” under the rule of law. Article 8 of TRIPS Agreement also provides that members adopt measures needed to “prevent the abuse of intellectual property rights by right holders [14]. That all previously mentioned make clear that rule of law principle is indispensable part of comprehensive development of any state.

Of course, the Republic of Uzbekistan should develop its national methodology for calculating the Rule of Law index, as well as develop and effectively implement mechanisms to improve the indicators of the factors of this index, especially those factors that have the lowest indicators. It is necessary to monitor all systems that are taken into account, identify deficiencies and take systematic and regular measures to eliminate them.

Thus, the rule of law should be dealt with not only by state structures, but also by every citizen of Uzbekistan, since it is in the interests of each of us to increase the rating of our country.

The Declaration of the High-level Meeting of the UN General Assembly on the Rule of Law at the national and international levels of September 24, 2012[15] reaffirms that human rights, the rule of law and democracy are interrelated and mutually reinforcing and they are universal and indivisible basic values and principles of any modern democratic state.

International standards establish the following basic principles of the concept of the rule of law:

- priority of international law over national;
- priority of human rights and freedoms over state interests;
- priority of law over legal acts, inadmissibility of contradiction of laws to the Constitution of the state;
- the supremacy of legal acts and their effective implementation;
- separation of powers and principles of the relationship among the legislative, executive and judicial branches;
- access to justice;
- protection of personal liberty and dignity, procedural and substantive restrictions on government action against individuals;
- absence of corruption;
- access to the information;
- Independence of the courts as a principle of the rule-of-law state.

One of the main contradictions of modern social development consists precisely in the fact that, having proclaimed a legal state *de jure*, but refusing to obey the law *de facto*, the state will develop along the vector leading to its collapse.

The cornerstone problems of the rule of law, expressed in the implementation of its basic principles, are the most urgent subject of multilateral public discourse: the future of the country and its role in the process of modern development of a multipolar world in the context of its globalization depend on their solution.

The constitutional consolidation of the norms on the rule-of-law state, the principle of the rule of law determine the field of activity of all branches of state power and the methods of their activity. The state should not go beyond the boundaries of the legal field, crossing which the rule-of-law state turns into its antipode. The state cannot use in its activities methods that contradict the principles of the rule of law and the rule-of-law state. The rule of law creates a criterion for assessing the activities of the state, all branches of government - legislative, executive, and judicial. On the basis of this criterion, citizens must assess whether the activities of the state comply with the requirements that the rule of law must meet [16].

Thus, the rule of law is the foundation for the world's communities on which their development depends. Weak rule of law entails such problems as impunity for criminal offenses, lack of provision of medical institutions with the necessary medicines, lack of equality of classes before the law, unjustified curbing of foreign investment. Effective rule of law, on the other hand, helps to reduce corruption, improve public health and education, reduce income inequality, and protect people from crimes of various kinds. Strengthening the rule of law is one of the main goals of government, investors, business and civil society around the world. To ensure effective rule of law, it is necessary not only to know the fundamental features of the rule of law, but also to have an adequate basis for measuring and evaluating it. Therefore, the Rule of Law Index was developed.

The WJP Rule of Law Index® for 2021 shows the weakening of the rule of law around the world. Obviously, the areas most affected by the negative global influence are the limitation of

government powers, civic space, the timeliness of the administration of justice and the absence of discrimination.

In general, it can be stated that the legal positions of the highest judicial bodies, especially constitutional courts, are becoming the most important instrument for ensuring the doctrine of the rule of law and the implementation of legal life. At the same time, there is also a feedback - the influence on the judiciary of the rule of law as the most important doctrinal and legal instrument for the development of judicial discretion and activism, the unification of national judicial and legal practices and the establishment of suprapositive general legal values in them.

The term "rule of law" is included in many national constitutions of countries, such as:

- the Constitution of the Republic of Angola of 2010 year, which contains numerous references to the rule of law, including its Article 2, which calls the rule of law a fundamental principle, and Article 6.2, which states that "state must obey the Constitution and must be based on the rule of law, obeying law and ensuring such subordination [17]";

- the Constitution of Bosnia and Herzegovina of 1995 year, in article 1.2 of which stipulates that "Bosnia and Herzegovina is a democratic state, functioning on the basis of the rule of law and having free and democratic elections [18]";

- the Constitution of the People's Republic of China of 1982 year, article 5 of which provides: "The People's Republic of China exercises power in accordance with the law and establishes a socialist country based on the rule of law [19]";

- the Constitution of the Federal Democratic Republic of Ethiopia of 1995 year, containing in the Preamble that the nations, nationalities and inhabitants of Ethiopia "undertake, subject to the full and free exercise of the right to self-determination, to build a political community based on the rule of law ... [20]";

Acceptance of the idealistic nature and differentiation of the rule of law takes us one-step closer to filling this elusive legal phenomenon with content, but additional efforts are required to achieve this goal. In order to seriously discuss this phenomenon, participants need to have a general understanding of the normative assessment of the conditions required to define the rule of law. Some common insights can be found to some extent in issues of structure, such as the proper conduct of electoral procedures, free and public debate in parliament, and life-long powers of judges. Agreement on the need for such structural elements, however, may not be enough: general agreement on the desirability of certain values will go a long way towards expanding the universality of the rule of law. [The difficulties of introducing value concepts of the rule of law and constitutionalism in legal order, in which these concepts are introduced for the first time in the absence of corresponding values before, are well illustrated in the work: Wojciech Sadurski, Adam Czarnota and Martin Krygiereds, Spreading Democracy and the Rule of Law. - The Impact of EU Enlargement on the Rule of Law, Democracy and Constitutionalism in Post-Communist Legal Orders (2006)].

It is obvious that the concept of "rule of law" has long been reflected and implemented from international treaties and European human rights standards into the national legislation of many countries. And this, of course, is not only a very important theoretical aspect, but also necessary in law enforcement in a modern legal democratic society.

Accordingly, in our opinion, it is very important to include the term "rule of law" in the conceptual apparatus of the national legislation of the Republic of Uzbekistan, as a universal principle of ensuring human rights.

In the Resolution of the President of the Republic of Uzbekistan "On measures to introduce an effective mechanism for determining the state of ensuring the rule of law in the Republic of Uzbekistan" dated January 14, 2021, Presidential Decree № 4951, it is noted that it is necessary to create effective mechanisms for ensuring the rule of law and legality in the regions, studying and assessing the state of the implementation of adopted legislative acts and the timely elimination of identified deficiencies.

Accordingly, it would be advisable to establish a national mechanism for ensuring the rule of law. In this light, we consider it necessary to legislatively expand the powers of the Authorized Person of the Oliy Majlis of the Republic of Uzbekistan for Human Rights (Ombudsman) in monitoring the provision of the principle of supremacy by state bodies and the population.

In conclusion, it should be noted that the doctrine of the rule of law, accepted by legal practice, undoubtedly opens up additional prospects and opportunities for the implementation of international law, the development of the national legal system in the context of ensuring human rights and freedoms and the sovereignty of the individual, optimizing the activities of public authorities and the

limits of their permissible impact on public relations, strengthening the independence of the judiciary.

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