

international organizations). The Strategy stipulates the expediency of creating rules, norms and institutions that are the basis for peace, security, prosperity and, of course, the protection of human rights in the XXI century.

In conclusion, for Ukraine, which has begun its path towards the formation of an optimal model of national security, the most acceptable solution is to adopt the above concepts. Of course, the process of joining NATO is long and presupposes the need to adapt domestic legislation to NATO legislation, but with clear actions and political will, it is achievable for us.

#### **References:**

1. Law of Ukraine «On National Security of Ukraine» of June 21, 2018 2469-VIII. URL: <https://zakon.rada.gov.ua/laws/show/2469-19> (date of application 15.11.2021) (In Ukrainian).
2. Reznikova O.O., Misyura A.O. Ways to modernize the system of national security in the context of building national stability. URL: [http://old2.niss.gov.ua/content/articles/files/111AZ\\_NatRes-fd32c.pdf](http://old2.niss.gov.ua/content/articles/files/111AZ_NatRes-fd32c.pdf) (date of application 15.11.2021) (In Ukrainian).
3. Romanova A.A. The system of ensuring human and civil rights and freedoms in Ukraine / A. A. Romanova // Forum of law. - 2012. - № 2. - P. 599-602. URL: [http://nbuv.gov.ua/UJRN/FP\\_index.htm\\_2012\\_2\\_95](http://nbuv.gov.ua/UJRN/FP_index.htm_2012_2_95) (date of application 15.11.2021) (In Ukrainian).
4. Soskina O.I. Ukraine's accession to NATO - ensuring the national integrity and security of the country. URL: <https://www.en.gov.ua/spvrobtnictvo-ukrani-z-nato/vstup-ukrani-do-nato-zabezpechennya-naconalyno-clsnost-ta-bezpeki-krani> (date of application 15.11.2021) (In Ukrainian).
5. Titko E.V. National and international security in the context of human rights protection in today's conditions / E.V. Titko // Philosophical and methodological problems of law. - 2016. - № 2. - P. 126-139 (In Ukrainian).

**Denys DENISOV,**

*Student of the Educational and Scientific Institute of International Relations of Taras Shevchenko National University of Kyiv*

**Academic advisor:**

**Denys CHYZHOV**

*Ph D in Law, Associate Professor of Constitutional Law and Human Rights of the National Academy of Internal Affairs*

## **THE PRINCIPLE OF THE RULE OF LAW THROUGH THE PRISM OF THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS**

Currently, principle of the rule of law successfully implemented in a vast majority of countries. It is a means of achieving internal goal of law and legal system in general – to ensure the priority of natural human rights [1, p. 18].

In the report of the Venice Commission in 2011 on the basis of analysis of legal systems of European countries in search of common elements, characteristics of both «Rule of Law» and «Legal state» proposed at least six necessary components, such as: 1) Lawfulness, including with a transparent, accountable and democratic process of passing laws; 2) Legal certainty; 3) Prohibition of arbitrariness of decision making; 4) Access to justice, provided by international and impartial courts, including the right to appeal the administrative acts in court; 5) respect for human rights; 6) non-discrimination and equality before the law.

For today, meaning of these components of the studied principle has been disclosed in sufficient detail by the European Court of Human Rights, which is confirmed by numbers of its decisions.

The first component of concept «Rule of Law» is «quality» of legislation, which P.M. Rabinovych characterizes it as meaningful compliance with human rights – at least in the nomenclature that is fixed in relevant international conventions (both «universal» and European); the actual accessibility of the law to people, the opportunity to get acquainted with its text; sufficient clarity, linguistic clarity of the law, which would allow, even with help of legal specialist – to foresee, with a measure of certainty reasonable for the given circumstances, the consequences of the behavior regulated by him) [2, 3].

Such element of studied concept revealed in the decisions of European Court of Justice: «Poltoratsky v. Ukraine» «Mykhailyuk and Petrov v. Ukraine». In these cases, the court stated, that the expression «in accordance with law», first of all requires, that the impugned interference has the basis in national law; it also concerns the quality of relevant legislation and requires, that it be made available to the person concerned, who, moreover, must predict its consequences for himself and also that legislation must comply with the principle of the rule of law [4].

The second element of the principle of the rule of law is legal (juridical) certainty. This requirement is disclosed in the decision of such cases: «Brumarescu v. Romania» «Hristov v. Ukraine» and «Ryabykh v. Russia». In particular, in the judgment in Hristov v. Ukraine, the court noted that the principle of legal certainty was one of the fundamental aspects of the rule of law, according to which in the event of the final resolution of the dispute by the courts their decision, which has entered into legal force, cannot be questioned. Also, in this judgement the principle of legal certainty requires respect for the principle of *res judicata*, that is, respect for the final decision of the court [5].

The third element – prohibition of arbitrariness in decision-making, this constituent element of the rule of law is mentioned in the decisions «Asanidze v. Georgia» «Aleksanyan v. Russia» and others. In particular, the decision in the case «Volkov v. Ukraine» the court emphasized the need to reinstate the plaintiff, and points to the need for sufficient separation of the judiciary from other branches of government, because such independence of judiciary is one of the most important values that support the effectiveness of democracies [6].

The next element of principle of the Rule of Law reflected in the decisions of the European Court of Justice – access to justice, that provided by international and

impartial courts, including the right to appeal the administrative acts in court. In the case «Nikula v. Finland», the court came to firm conclusion that it is the duty of the national courts in general, and of the presiding courts in particular, to manage the process in a way that would ensure the proper conduct of the parties and, most importantly, the fairness of the process, and not left the decision on the legality of statements of the participants in the proceedings to other judicial authorities [7].

Respect for human rights - this constituent element of the principle of the rule of law, as the Court itself notes, is embodied in almost all articles of the Convention, which all Member-States of Council of Europe pledge themselves to abide by [2, p.9] as well as in «Hassan Ilhan v. Turkey» «Hunt v. Ukraine» and others. Thus, in its legal position in Hunt v. Ukraine, the Court concluded that the applicant had not been involved in the decision-making proceedings to the extent that it was sufficient to protect his interests and the state authorities went beyond their discretion and failed to ensure a balance between the interests of the applicant and others [8].

With a regard to non-discrimination and equality before the law as a component of principle of the Rule of Law, the practice of the Court has established that discrimination means treating persons differently, without objective and reasonable justification, in relatively similar situations. Difference in relation to discriminatory, if it does not have an objective and reasonable justification, in other words, if it does not pursue a legitimate aim or if there is no reasonable balance between the means used and the aim pursued [9].

With the choice of the European direction of development of our state, there were changes in the legislation, namely changes were made in the activities of the court and executive authorities. Thus, it has been enshrined in law that the principle of the rule of law is applied taking into account the case law of the European Court of Human Rights.

The decisions of the European Court of Human Rights provide a wide range of interpretations of this principle. This court operates on the basis of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms. The preamble to this Convention recognizes the rule of law as the principle that unites the member states of the Council of Europe. In its decisions, the Court repeatedly refers to the principle specified in the Preamble of the Convention and, considering it one of the fundamental principles of the functioning of the member states, interprets it when deciding cases and reveals its content through the formulation of requirements derived from this principle. However, the principle of the rule of law is not exhausted only by the requirements specified by the European Court of Human Rights, determined in the decision of specific cases, and is constantly being enriched with new content.

In concluding, the rule of law is not to identify it with the law, because the law is only one form of this principle. And by combining the interpretation of the principle of the rule of law submitted by the Constitutional Court of Ukraine and the European Court of Human Rights, it is possible to obtain an objective understanding of this principle. However, the versatility of this principle and the complexity of its perception makes it impossible to derive a universal definition of the rule of law that would be applicable to each case of its application, as stated in the report of the Venice

Commission «On the rule of law» [10], as this principle includes universal social regulators (norms of morality, traditions, customs), ideology of justice, value of good and other civilizational achievements, legal and political ideas, scientific achievements of legal theory and practical legal experience, national and international law.

#### References:

1. Malishev B.V. The principle of the rule of law (theoretical and legal aspect)/ BV Malyshev // Bulletin of the Ministry of Justice of Ukraine.- 2012. - № 8. - P. 14-20 (in Ukrainian).
2. Rabinovych P.M. Rule of law (based on the case law of the Strasbourg Court and the Constitutional Court of Ukraine) / P.M. Rabinovych // Bulletin of the Academy of Legal Sciences of Ukraine. - 2006. - № 2 (45). - P. 3-16 (in Ukrainian).
3. General theory of state and law: textbook. / M.B. Tsvik, O.V. Petrishin, L.V. Avramenko and others. - Kh .: Law, 2009 . - 583 p. (in Ukrainian).
4. Judgment in the case «Kudla v. Poland» Mykhailyuk and Petrov v. Ukraine» [Electronic resource]. — Access mode: [http://zakon2.rada.gov.ua/laws/show/974\\_500](http://zakon2.rada.gov.ua/laws/show/974_500) (date of application: 02.11.2021) (in Ukrainian).
5. Judgment in Christ v. Ukraine Statement № 24465/04) Strasbourg, 19 February 2009. [Electronic resource]. — Access mode: [http://zakon0.rada.gov.ua/laws/show/974\\_443](http://zakon0.rada.gov.ua/laws/show/974_443) (date of application: 01.11.2021) (in Ukrainian).
6. Judgment in the case of Oleksandr Volkov v. Ukraine Statement № 21722/11 [Electronic resource]. — Access mode: [http://zakon0.rada.gov.ua/laws/show/974\\_947/print](http://zakon0.rada.gov.ua/laws/show/974_947/print) (date of application: 01.11.2021) (in Ukrainian).
7. Judgment in the case of Nikula v. Finland [Electronic resource]. - Access mode: [http://zakon0.rada.gov.ua/laws/show/980\\_042](http://zakon0.rada.gov.ua/laws/show/980_042) (date of application: 11.10.2021) (in Ukrainian).
8. Judgment in Hunt v. Ukraine (Application no. 31111/04) Strasbourg, 7 December 2006 [Electronic resource]. — Access mode: [http://zakon0.rada.gov.ua/laws/show/974\\_126](http://zakon0.rada.gov.ua/laws/show/974_126) (date of application: 02.11.2021) (in Ukrainian).
9. Case of «Pichkur v. Ukraine» (Application no. 10441/06) [Electronic resource]. — Access mode: [http://zakon2.rada.gov.ua/laws/show/974\\_984](http://zakon2.rada.gov.ua/laws/show/974_984) (date of application: 17.10.2021) (in Ukrainian).
10. The report of the European Commission «For Democracy through Law» «On the Rule of Law» was approved at the 86th plenary session (Venice, March 25-26, 2011). [Electronic resource] — Access mode: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)003rev-ukr](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)003rev-ukr) (date of application: 17.10.2021) (in Ukrainian).