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## SECTION 2

# CONSTITUTIONALISM AS MODERN SCIENCE

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### THE RULE OF LAW IN THE PARADIGM OF MODERN CONSTITUTIONALISM: PRINCIPLES, MECHANISMS AND CHALLENGES OF IMPLEMENTATION

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#### Summary

The article is devoted to a comprehensive study of the theoretical and conceptual foundations of the rule of law and the problems of practical implementation of its principles in modern conditions. The relevance of the study is due to the presence of a significant gap between the theoretical concepts of the rule of law and their practical implementation in democratic societies. The purpose of the work is to analyze the basic principles of the rule of law, identify factors that hinder their effective implementation, and study the mechanisms of the formation of the rule of law.

The study uses a systematic approach, methods of comparative legal analysis, structural-functional and historical-legal methods. The evolution of the concept of the rule of law from ancient times to the present day is analyzed, the conceptual differences between the concepts of “rule of law” and “rule of law” in the context of various legal traditions are revealed.

Special attention is paid to the study of the triune structure of the principle of the rule of law, which includes ideological-conceptual, normative-legal and practical-implementation components. It was found that the key problem of modern state-building is not the absence of relevant legislation in the field of human rights, but the lack of effective mechanisms for transforming legal norms into real instruments for protecting civil rights.

It is proven that the rule of law is not a static construct, but a dynamic process that requires constant interaction between theoretical understanding, normative consolidation and practical implementation of legal principles. The results of the study indicate the need to develop more effective mechanisms for implementing the principles of legal statehood and the formation of an appropriate legal culture in society. Prospects for further research include studying the impact of digitalization and globalization processes on the transformation of traditional models of legal statehood.

**Key words:** rule of law, rule of law, constitutionalism, human rights, legal culture

#### 1. Introduction

The issue of the rule of law remains one of the central themes of modern constitutional law and state theory, which is due to the need to rethink traditional approaches to the organization of state power in the context of globalization and democratization of social relations. The relevance of studying the principles

and mechanisms of the functioning of the rule of law is due to the presence of a significant gap between the theoretical concepts of rule of law and their practical implementation in modern democratic societies.

Despite the broad constitutional consolidation of the principles of the rule of law in the basic laws of most countries of the world, the problem of creating effective

mechanisms for transforming regulatory provisions into real instruments for protecting citizens' rights and limiting state power remains unresolved. This issue becomes particularly acute in the context of the need to ensure a balance between the formal consolidation of democratic principles and their actual implementation in socio-political practice.

The theoretical foundations of the rule of law have been studied in the works of leading foreign scholars, in particular J. Waldron (2016), B.Z. Tamanaha (2004) analyzes the history, political and theoretical aspects of the rule of law. Modern approaches to understanding the rule of law are presented in the works of C.R. Sunstein (2024), who examines the principles of the rule of law in the American Journal of Law and Equality, and G. Lamond (2014), who studies legal sources and customary law in the context of the rule of law. The European perspective of the rule of law is revealed in the studies of U. Haltern (2018), who analyzes the ways of conceptualizing the European rule of law, and T. Endicott (2020), who explores the relationship between access to justice and the rule of law. Domestic aspects of constitutionalism and human rights are highlighted in the works of D. Byelov, M. Hromovchuk, D. Berlinger (2021), who consider the modern doctrine of constitutionalism and the classification of human rights.

The purpose of the study is to conduct a comprehensive analysis of the theoretical and conceptual foundations of the rule of law, identify problems in the practical implementation of its principles, and study the mechanisms for the formation of effective rule of law in modern conditions.

The objectives of the study are: 1) to analyze the theoretical and conceptual foundations of the rule of law and reveal its essential characteristics; 2) to investigate the problems of the practical implementation of the principles of rule of law and factors that hinder their effective implementation; 3) to determine the structural components and mechanisms for the formation of the principles of rule of law in modern conditions.

The research methodology is based on the use of a systemic approach, which allows us to consider the rule of law as a holistic phenomenon in the interconnection of all its elements. Methods of comparative legal analysis were used to study various concepts of rule of law, the structural-functional method to determine the mechanisms for implementing the principles of rule of law, and the historical-legal method to study the evolution of the concept of rule of law.

The scientific novelty of the study lies in the comprehensive analysis of the triune structure of the principle of the rule of law, which includes the ideological-conceptual, normative-legal and practical-implementation components, as well as in identifying the patterns of interaction between the theoretical understanding, normative consolidation and practical implementation of the principles of the rule of law.

## **2. Theoretical and conceptual foundations of the rule of law**

The construction of a rule of law is a multifaceted process that involves not only the creation of state institutions capable of guaranteeing the rule of law and the protection of civil rights, but also the existence of various political forces, social groups and social strata with their unique needs and characteristics of legal, political, social and economic activity (Waldron, J., 2016).

The scientific consensus in legal doctrine indicates that the construction of a rule of law is a promising task that involves a comprehensive renewal of the economic, political and legal system of society. The main challenge in implementing the rule of law principle is not legislative shortcomings in the field of human rights and freedoms, but the lack of functional mechanisms for their practical implementation. Constitutional guarantees of free medical care, the right to work, free education and other social rights are formally enshrined, but their implementation in a number of democratic states remains problematic (Byelov D., Hromovchuk M. & Berlinger D., 2021, p. 35).

At the current stage of socio-political development, the concept of a "rule of law" has become widely used in scientific discourse and political practice, but its interpretation remains ambiguous. Researchers demonstrate diametrically opposed approaches to understanding this phenomenon: one group of scientists tries to substantiate the thesis that the proclamation of state sovereignty and independence automatically transformed the state into a rule of law, while another group of researchers consistently proves that the formation of a true rule of law is a long-term project, the implementation of which requires significant time resources and systemic transformations.

At the same time, an objective analysis of modern state-legal reality convincingly demonstrates a significant gap between regulatory requirements and their practical implementation. Empirical data and sociological research demonstrate that many constitutional principles and legislative guarantees remain declarative, not receiving proper implementation in the everyday practice of public administration and law enforcement. Therefore, this situation actualizes the need for a critical rethinking of existing approaches to building a legal state and developing more effective mechanisms for implementing legal norms. Special attention needs to be paid to studying the factors that hinder the transformation of formal legal requirements into real instruments for protecting citizens' rights and limiting state power, since this issue is a key challenge for modern state-building (Byelov D., Hromovchuk M. & Berlinger D., 2021, p. 36).

It is undeniable that the rule of law is a sovereign state entity that functions in the conditions of a developed civil society and provides effective legal

protection of fundamental rights and freedoms of the individual with the help of legal instruments. The conceptual basis of such a state is a system of fundamental principles, among which the leading place is occupied by: the principle of the rule of law as the basis of the constitutional system, the doctrine of the division of state power into independent branches, guaranteeing the real provision and protection of human and citizen rights and freedoms, compliance with the principle of legality in the activities of all subjects of legal relations, as well as the formation of a high level of legal culture in society. It is worth emphasizing that the effectiveness of the functioning of the rule of law is determined not only by the formal consolidation of these principles in regulatory legal acts, but also by their practical implementation through a system of state and non-state institutions. Of particular importance is the interaction between state structures and civil society institutions, which ensures the democratic nature of public administration and creates the prerequisites for the real implementation of the principles of legal statehood in socio-political practice (Tamanaha, B.Z., 2004, p. 16).

The concept of a legal state, which has its historical roots in the ancient political and legal tradition and has received powerful development in the period of Modern times, in modern conditions is moving from theoretical constructions to practical implementation. The constitutional consolidation of the principle of legal statehood in the basic laws of many modern states actualizes the problem of filling the category of "legal state" with specific legal content and developing mechanisms for its practical implementation. The conceptual essence of a legal state is revealed through a system of its fundamental principles, and the process of state and legal construction can be successfully carried out only under the condition of effective implementation of certain legal standards and the creation of effective mechanisms for the implementation of the fundamental principles of legal statehood (Sunstein, C.R., 2024, p. 500).

The conceptual approach that provides for a clear distinction between the concepts of "legal state" and "rule of law" on the basis of their genetic affiliation to different legal traditions deserves special theoretical attention. According to this doctrinal position, the concept of "rule of law" is an organic product of the Romano-Germanic (continental) legal family, while the concept of "rule of law" was formed within the framework of the Anglo-Saxon (common law) legal tradition (Lamond, G., 2014, p. 27). Such methodological differentiation, in our opinion, justifies the inadmissibility of the mechanistic identification of the above categories, their subordination of one concept to another or the interpretation of one concept as a component of another. It should be noted that this theoretical position has found wide recognition

in modern European legal science and has received support in the practice of European legal institutions.

The conceptual differences between these concepts correlate with the fundamental features of the respective legal systems: if the Romano-Germanic tradition emphasizes the systematization of legal norms, codification and the primacy of written law, then the Anglo-Saxon model gives preference to judicial precedent and the evolutionary development of legal principles through judicial practice. In fact, such a comparative perspective allows for a deeper understanding of the specifics of each of the concepts and avoids terminological confusion, which often arises when legal categories are uncritically borrowed from different legal traditions without taking into account their historical and cultural context.

### **3. Problems of practical implementation of the principles of the rule of law**

Ensuring the effective implementation of fundamental human rights for all persons under the jurisdiction of a certain state is the prerogative, first of all, of the state authorities, since it is state institutions that have the exclusive competence to provide formal and legal general obligation to those regulatory conditions that are necessary for the full enjoyment of the fundamental rights of each person. In the case when the state uses its potential in this area as effectively as possible and positions the provision of human rights as its priority function, such a state can be qualified as a legal one (Byelov D., 2021, p. 36).

Therefore, in our opinion, a legal state is a state formation characterized by real, rather than declarative, provision of human rights. It is this conceptual formula that emphasizes the fundamental difference between the formal constitutional enshrining of rights and freedoms and their practical implementation in social and legal reality.

The essential characteristic of the rule of law is the transformation of abstract legal guarantees into specific mechanisms for the protection and implementation of individual rights. This involves not only the creation of an appropriate regulatory framework, but also the formation of an effective system of legal institutions, procedures and mechanisms capable of ensuring the practical implementation of constitutional principles in the everyday lives of citizens. This interpretation of the rule of law focuses on the effectiveness of state activity in the field of human rights, which makes the criterion for assessing the legal nature of the state not so much the presence of relevant regulatory provisions as their actual effectiveness and ability to ensure real protection of human dignity in all spheres of public life.

The issue of conceptualization and substantive content of the category "rule of law" became the subject of in-depth scientific research at the beginning of the twentieth century, when a number of fundamental

works devoted to this topic appeared. The rule of law was considered by leading theorists of that time as the most advanced form of state organization, a kind of scientific and practical laboratory in which the conceptual foundations of the future social order are formed. At the same time, a characteristic feature of scientific approaches at the beginning of the last century was the interpretation of the rule of law not as an empirically achievable reality, but as a normative ideal to which humanity should strive. This methodological approach reflected the awareness of the complexity and multifaceted nature of the task of building a true rule of law. The pessimistic assessment of the prospects for the practical implementation of the ideal of the rule of law was based on a deep understanding of the anthropological limitations of human nature. According to this concept, the creation of an authentic rule of law is possible only under the condition of the moral improvement of all humanity to the level of "holiness", which, obviously, does not correspond to the real possibilities of neither the current nor the nearest future period of the development of civilization (Halter, U., 2018, p. 677).

Such a theoretical position, in our opinion, actualizes the question of the ratio of the ideal and the real in the process of state formation, as well as the need to develop pragmatic approaches to the gradual implementation of the principles of legal statehood in conditions of objective anthropological and social limitations. And this, in turn, encourages a rethinking of strategies for building a legal state, taking into account the real possibilities and limitations of human nature.

#### **4. Mechanisms of formation and structure of principles of a democratic state based on law**

It should be emphasized that the actualization of the issues of a state based on law at the present stage of social development is a natural phenomenon that reflects the objective needs of state and legal construction. It is possible to state the formation in modern legal doctrine of a relatively stable scientific consensus on the substantive characteristics and essential features of this phenomenon. At the same time, the conceptual understanding of a state based on law as a specific form of organization and functioning of state power, characterized by a democratic regime of constitutional governance and legality, the principle of the rule of law, a system of separation of state power with mechanisms of mutual control between its branches, mutual responsibility of the state and the individual, as well as the recognition, guarantee and provision of fundamental rights and freedoms of man and citizen, has acquired the status of a fundamental theoretical position in modern jurisprudence (Endicott, T., 2020, p. 380).

At the same time, as the evolution of doctrinal concepts of classical legal positivism (K. Gerber,

D. Dicey, R. Ihering, P. Laband, A. Yesmen) and neo-positivist theories (G. Kelsen) convincingly demonstrated, all attempts to terminologically replace the concept of "rule of law" with the categories of "state of laws" or "state of legality" give rise to extremely complex methodological problems that remain theoretically unsolved, and ultimately lead to a conceptual distortion of the understanding of the role of law in society and the essence of the legal order as such (Lamond, G., 2014, p. 27).

In view of the above, a completely justified practical explication of the definition of the rule of law as a special form of legal organization and the exercise of public and political power in its relations with individuals as subjects of law and bearers of constitutionally recognized and normatively enshrined rights and freedoms of man and citizen is systematic state-building activity aimed at the practical implementation of the fundamental principles of rule of law.

The issue of the formation of the rule of law is characterized by double significance, combining both scientific and theoretical and practical and applied components. On the one hand, the research focus is directed at an empirical assessment of the real level of implementation of the law-regulatory function of state and public institutions, on the other - at a comprehensive analysis of the current state and prospects for the development of rule of law, including the identification of mechanisms, processes and trends that determine and optimize the trajectories of its further development.

It is worth emphasizing that a number of countries did not limit themselves to a declarative declaration of intentions to build a legal state, but carried out a constitutional consolidation of their legal status in the form of a fundamental constitutional norm. The principle of a legal state as a fundamental principle of the constitutional system finds its embodiment primarily in the implementation of the rule of law, the functioning of state power on the basis of its institutional division into legislative, executive and judicial branches, ensuring mutual responsibility of the state and the individual, constitutional guaranteeing and protection of human and citizen rights and freedoms (Tamanaha, B. Z., 2004, p. 130). In our opinion, it is these constitutional provisions that form the regulatory and legal matrix that has determined, determines and will continue to determine the conceptual parameters of the general development of the state system. These principles form the basis for the gradual transformation of formal legal regulations into real mechanisms for the legal regulation of social relations and ensuring the effective functioning of the rule of law in Ukrainian realities.

The conceptual basis of the rule of law is inextricably linked with the establishment of the principle of popular sovereignty and the subordination of state power to the interests of society. The rule of law is an institutional system of bodies and institutions that ensure and protect



the optimal functioning of civil society in conditions of democratic governance. The essential characteristic of such a state is the rule of law, to which power structures at all levels, political parties and public organizations, civil servants and private individuals are equally subordinate. The historical process of the formation of the rule of law statehood is characterized by a common pattern – the progressive movement of humanity towards freedom, which is manifested in conscious efforts to limit state power, force it to strictly comply with legal regulations and protect the honor and dignity of man as the highest social value.

The principle of the rule of law in society is a fundamental principle of the rule of law, which determines all its other principles, in particular the subordination of the state itself and its institutional structures to the law. According to scientific concepts, the rule of law is characterized by qualities inherent in law itself, namely: justice, humanity, and must constitutionally enshrine the inalienable natural rights of each individual. Ensuring the inviolability of human rights, protecting their honor and legitimate interests, creating effective mechanisms for their protection and guaranteeing are one of the cardinal principles of the rule of law, which determines its social legitimacy and moral and ethical justification (Byelova M., Farcash I.-M. & Byelov D., 2022, p. 32).

According to the position of some researchers, the conceptual scope of the principle of the rule of law significantly exceeds the limits of its regulatory and legislative implementation, which necessitates the need for a multi-faceted analysis of this phenomenon. In the structure of the content of the principle of the rule of law, three interrelated components are distinguished:

firstly, the ideological and conceptual component, which includes the formation of certain theoretical ideas and doctrinal positions in the field of legal consciousness, which create a worldview basis for understanding the essence and meaning of the rule of law;

secondly, the normative and legal component, which provides for the institutional consolidation of relevant provisions in current legislation, their formalization through a system of constitutional norms, laws and by-laws, which creates a legal basis for the functioning of the rule of law;

thirdly, the practical and implementation component, which covers the real implementation of the principles of the rule of law in specific areas of social relations through the activities of state institutions, law enforcement practice and social behavior (Haltern, U., 2018, p. 681).

Such a triune structure of the principle of the rule of law, in our opinion, emphasizes its complex nature and the need to ensure harmonious interaction between the theoretical-conceptual, normative-legal and practical-applied levels of its functioning in order to achieve effective legal statehood.

As we can see, this concept, in particular, contains a scheme: the principle of the rule of law arises as a certain idea in the theory of constitutionalism, is fixed in the system of constitutional and legal norms and through them is transformed into social relations. Or vice versa: social relations are concentrated and fixed in the norms of constitutional law, on the basis of which the principles of the rule of law are formulated.

Thus, the scheme of implementation, transformation into life of the principles of the rule of law fully coincides with the mechanism of the emergence and implementation of constitutional and legal norms. In this case, the resolution of the issue of the moment of emergence of the principle of the rule of law is of great importance. There are two main scientific positions on this issue, in particular: constitutional consolidation of the principle of the rule of law (ideas that are not enshrined in the basic law cannot be considered principles of the rule of law); regulatory influence on law enforcement practice can also be exercised by such legal ideas-principles of the rule of law that are not enshrined in the constitution.

It seems appropriate to emphasize that the conceptual basis of the principle of the rule of law is objective public interests and needs that are formed and transformed regardless of the subjective will of the legislator. The key role in identifying and articulating such public needs belongs to legal practice, which by its immanent nature is designed to quickly adapt to dynamic changes occurring in the legal sphere.

Undoubtedly, the process of emergence and formation of a principle as a scientific concept or guiding principle of legal practice is characterized by duration and multifacetedness, legislative consolidation is only the culminating stage of this complex evolutionary process. It is worth noting that scientific discussions and practical verification of the adequacy of the principle of the rule of law to real social relations do not stop even after its incorporation into the text of the basic law, and often receive an additional incentive for further development. Thus, the fact of normative consolidation of the idea in an act of higher legal force is an indicator of the existence of a specific principle of the rule of law, it is this constitutionally consolidated principle that further serves as a starting point and methodological guideline for the further development of both legal science and law enforcement practice. Such dialectical interaction between theoretical understanding, practical testing and normative consolidation ensures the dynamic development of the principles of the rule of law in accordance with the evolution of social relations and the legal needs of society.

## 5. Conclusions

The analysis shows that the rule of law is a complex multifaceted phenomenon that combines theoretical concepts, regulatory and legal foundations and practical

implementation mechanisms. The key characteristic of the rule of law is not just the formal consolidation of democratic principles in constitutional legislation, but their real implementation through an effective system of human rights protection, ensuring the rule of law and the functioning of mechanisms for mutual control of the branches of power.

The fundamental problem of modern state-building remains a significant gap between the declarative provisions of constitutions and their practical implementation. Empirical studies convincingly demonstrate that many legal guarantees are formal in nature, not providing real protection of citizens' rights. This situation highlights the need to develop more effective mechanisms for transforming legal norms into effective instruments of social regulation.

Understanding the rule of law as a dynamic process, not a static construct, is of particular importance. The triune structure of the principle of legal statehood, which includes ideological-conceptual, normative-legal and practical-implementation components, emphasizes the need to ensure harmonious interaction between theoretical understanding, legislative consolidation and practical implementation of legal principles.

The prospects for building a legal state are determined by the ability of society and state institutions to ensure effective interaction between formal legal regulations and the real needs of citizens, creating conditions for the gradual transformation of normative ideals into the everyday practice of democratic governance. This requires a comprehensive approach that combines constitutional reforms, institutional building and the formation of an appropriate legal culture in society.

Prospects for further research in this area include an in-depth study of the mechanisms for the effective implementation of the principles of the rule of law in different national contexts, the development of innovative methodological approaches to assessing the quality of legal protection for citizens, as well as a comparative analysis of successful practices in building a rule of law in different legal traditions. Special attention should be paid to the study of the impact of digitalization and globalization processes on the transformation of traditional models of the rule of law, as well as the development of new indicators and criteria for assessing the effectiveness of the functioning of legal institutions in modern conditions.

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## ПРАВОВА ДЕРЖАВА В ПАРАДИГМІ СУЧАСНОГО КОНСТИТУЦІОНАЛІЗМУ: ПРИНЦИПИ, МЕХАНІЗМИ ТА ВИКЛИКИ ІМПЛЕМЕНТАЦІЇ

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### Анотація

Стаття присвячена комплексному дослідженню теоретико-концептуальних засад правової держави та проблем практичної реалізації її принципів у сучасних умовах. Актуальність дослідження обумовлена наявністю значного розриву між теоретичними концепціями правової державності та їх практичною імплементацією в демократичних суспільствах. Метою роботи є аналіз основних принципів правової держави, виявлення факторів, що перешкоджають їх ефективному втіленню, та дослідження механізмів формування правової державності.

У дослідженні використано системний підхід, методи порівняльно-правового аналізу, структурно-функціональний та історико-правовий методи. Проаналізовано еволюцію поняття правової держави від античних часів до сучасності, розкрито концептуальні відмінності між поняттями «правова держава» та «верховенство права» в контексті різних правових традицій.

Особливу увагу приділено дослідженню триєдиної структури принципу правової держави, що включає ідеологічно-концептуальну, нормативно-правову та практично-імплементаційну складові. Виявлено, що ключовою проблемою сучасного державотворення є не відсутність відповідного законодавства у сфері прав людини, а брак ефективних механізмів трансформації правових норм у реальні інструменти захисту громадянських прав.

Доведено, що правова держава являє собою не статичну конструкцію, а динамічний процес, який вимагає постійної взаємодії між теоретичним осмисленням, нормативним закріпленням та практичною реалізацією правових принципів. Результати дослідження засвідчують необхідність розробки більш ефективних механізмів імплементації принципів правової державності та формування відповідної правової культури в суспільстві. Перспективи подальших досліджень включають вивчення впливу цифровізації та глобалізаційних процесів на трансформацію традиційних моделей правової державності.

**Ключові слова:** правова держава, верховенство права, конституціоналізм, права людини, правова культура.