
GLOBALIZATION OF THE RULE OF LAW: EXPERIENCE OF RUSSIA AND THE EU COUNTRIES

Sergey Kashkin and Paul Kalinichenko

Moscow State Academy of Law

1. Introductory Remarks

The Great Idea of the Rule of Law or *Der Rechtsstaat* (the Legal State) has its roots in European political and legal concepts of the 18th–19th centuries. The progenitor of this concept is the great German philosopher Immanuel Kant. Although some practical elements providing for the Rule of Law got the comprehension earlier in the works of other thinkers. The European liberalists of the 19th century detailed basic postulates of the Rule of Law concept. There were created ideological and theoretical premises for the realization of the Rule of Law in practice.

The 20th century became the age of the practical realization of this idea. The Rule of law was established in Constitutions of the developed countries around the world as one of the most important principles of organization of state power. The appearance of new sovereign states and triumph of democracy at the end of the last century promoted the fortification of practical basis of the Rule of Law not only in economically and politically developed countries, but in many new states forming developing market economies.

The successful practical realization of the Rule of Law concept in the last century allows us to peek behind the horizons of the further development of this humanistic concept. It helps to define the further practical steps on its realization in modern globalizing world at the beginning of the 21st century. The future of the idea of the Rule of Law is connected not only with a fortification of impact of this idea on the state construction, but with a positive development of the forms of integration between peoples, as well as with a reflection of the basic elements of the Rule of Law in the mechanisms of integration and cooperation.

2. The Rule of Law as a Constitutional Idea

The Idea of the Rule of Law aims at creating efficient instruments for control of the use of state power, to a creation of the best available system for organization of the civil society, to a formation of social-political system, which will be free from tyranny, suppression of the dissidence, abuses of power and corruption.

The Rule of Law concept includes a number of components, which allow to achieve goals of civil control over using of the political power in practice.

One of such elements is the Primacy of Law, as overall duty to be subordinate to legal prescriptions existing in a state without exception. It concerns both ordinary people and high officials. The State authorities should be sublegislative.

The Primacy of Law also means an establishment of the supreme juridical power for acts adopted by legislative bodies of the state. All other normative acts must be subordi-

nated to laws; their contradiction with laws excludes their legal effect. The main legal document of a state is the Constitution, which is an act covering the basic political relations of the society.

An essential element of the Rule of Law is the respect for the human rights, a recognition of human rights and their inviolability by the state. It presumes a real entailment of the human rights, a state obligation to protect the human rights and freedoms, a creation of the conditions for the development of private area of personal freedom and self-expression under mutual responsibility between the State and the individual.

For this purpose the Rule of Law includes not only a list of human rights, but also principles of their realization and guaranties. The implementation of human rights is impossible without such principles and guaranties.

The realization of the Rule of Law concept is free from any ideology. No ideology can be established as the state ideology. Ideological diversity is a most important premise of the development of the civil society and the Rule of Law.

The Rule of Law is impossible without economic diversity. Equality of all forms of property and development of the open market economics should be provided. Herewith, a private property must be burdened by a social function.

Political diversity is very much the same. The Rule of Law excludes subordination of the political system to the state or to the ruling party. No party can pretend to monopolize the political system. Dominant political parties have no right to abuse its position, and are obliged to provide for the equal access to political life of the society for all other political parties.

The Rule of Law is impossible without a separation of powers, which is the main instrument of control of the using of state power. Separation of state powers to legislative, executive and judicial power under the efficient mechanism of checks and balances creates the guaranty from abuse of state power and spreading the state violence. Through democratic electoral system people have a possibility to control authorities and where it is necessary to correct the actions of state bodies.

The state activity must be transparent for people under accessible and free information on all measures taken by the state authorities and officials. The Rule of Law is connected *inter alia* with a good governance concept, which is a concept of open and efficient management in a modern democratic state¹.

The above specified elements providing for the Rule of Law are reflected in Constitutions of all democratic States. It is reflected in the oldest Constitution – the Constitution of the USA, as well as in the modern Constitutions – the Constitution of Croatia, the Constitution of Russia, the Constitution of Finland or the Constitution of Switzerland.

The Constitution of Russia 1993 has completely perceived the Rule of Law concept: the Primacy of Law (Article 15[1–3]), respect for the human rights (Article 2), ideological and political diversity (Article 13), economic diversity (Article 8), separation of powers (Article 10).

In accordance with Article 1 of the Constitution 1993 Russia is declared a legal state. This fact ideologically and politically puts Russia in one group with highly developed countries of the world, which obtain membership in the G 8, the Organization of Economic Cooperation and Development, as well as the European Union.

¹ The World Rule of Law Movement and Russian Legal Reform / Ed. by F. Neat and H. Nielsen. – Moscow, 2007. – P. 62.

3. The Rule of Law as an Integrational Idea

Constitutionalization of the Rule of Law created the possibility for development of this concept at the level of national countries. However, the needs of the modern world create all the premises for globalization of this concept in the 21st century.

Globalization of human rights has already taken place since adoption of the Universal Declaration on Human Rights 1948. Accordingly, the most important component of the Rule of Law – the respect for the human rights has already become the global principle of the interaction between the countries and peoples.

Modern development of the processes of integration between different countries predestines spreading of the elements of the Rule of Law over the borders of national states. It is also a demand of the economic development.

It is confirmed by the process of realization of the Rule of Law within the European Union, which includes now 27 European states devoted to the ideals of Democracy and the Rule of Law. It is reflected in their national Constitutions.

Moreover, the Rule of Law, liberty, democracy, respect for human rights and fundamental freedoms are formulated as the common values of peoples of Europe (Article 6 of the Treaty on European Union 1992), departure from which is inadmissible and will have negative consequences for any Member State (Article 7 of the Treaty on European Union 1992).

The Treaty establishing a Constitution for Europe 2004 perceived this concept, complementing that the European Union intends to promote their values within the framework of the Common Foreign and Security Policy. The Treaty of Lisbon inherited this idea from the Constitution.

The European Union founded on economic integration of the Member States, on principles of free trade, open market and constitutional economy. Today the EU fully incorporates all the elements of the Rule of Law in its organization and activities.

1. The primacy of the EU law in correlation with legal orders of the Member States is the most important principle of the activity of the European Union. Herewith it is provided for supreme juridical power of the provisions of the Constitutional Treaties of the EU. The departure from provisions of these Treaties is inadmissible both for the EU bodies, and for the Member States.

2. As noted above, the respect for the human rights and fundamental freedoms is the most important principle of the EU activity. In accordance with Article 6 of the Treaty on the European Union 1992, The Union respects fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

A great achievement of the European Union is working out and approval of a list of the fundamental human rights – a Charter of the European Union on Fundamental Freedoms 2000. This document reflects the specific modern approach to realization of the human rights founded on their universal and balanced nature. Charter of the European Union on Fundamental Freedoms is planned to be given legal value by The Treaty of Lisbon 2007.

3. The European Union respects the national identities of its Member States and contributes to the development of cultural, religious and language diversity of the European peoples. This diversity is brightly reflected in the EU motto: 'United in diversity'.

The European Union provides for political diversity by provisions of the Constitutional Treaties of the EU concerning political parties at the European level and the Regulation of the EU on such parties and their financing.

4. Elements of the separation of powers are distinctly tracked in the organization, activity and interaction between Institutions of the EU.

The Council of the European Union and European Parliament share the functions of the legislative power, like two chambers of the parliament of the federal state. The European Commission carries out the functions of the supreme executive authority. The Court of Justice of the European Communities and other judicial bodies of the EU obtain the functions of the judicial power.

The principle of separation of power, however, is not established in the Constituent Treaties *de jure*. The European Union is not a state.

Obviously, the Rule of Law conceptually approximates the legal order of the European Union, the legal orders of the Member States and the Russian legal system. The Rule of Law, Liberty, Democracy, Respect of the human rights are common values, which unite Russia and other European countries.

The question, whether the Rule of Law and other shared values will become the main trend of internal and external policies of Russia, depend on its people.

Shaping the common legal space in Europe should be based on the Rule of Law and contain its basic elements as the common principles of law.

The Rule of Law concept could be implemented not only at the level of a national state, but also at the level of the organizations of integration.

Maintaining of the Rule of Law, as an important value of the European cultural-civilizational type is directly connected with formation of the European Law and shaping of the Common European Legal Space.

Perhaps, the Rule of Law will be reflected in the Constitutional acts of other regional organizations of integration with universal competency as a further step of their development in the near future.

It fully pertains to the Commonwealth of Independent States (C.I.S.). A sufficient mistake of its creators, which caused a modern crisis of this organization of integration, was ignorance in its statutory provisions of the ideas of adherence to common values of liberty, sovereignty and democratic ideals on the basis the Rule of Law and common cultural heritage of the republics of the former USSR.

The C.I.S. will be able to get a 'new breath' in the 21st century if it declares the ideas of the Rule of Law and creates a new basis for political, economic, social and cultural prosperity of the peoples of its countries.

4. The Rule of Law as a Global Concept

As in the case of human rights, the Rule of Law is destined to be globalized. The International Law must cease to be a hostage of the international policy. The international policy must completely obey the provisions of the International Law and unconditionally subordinate to law.

Globalization of the Rule of Law will definitively create the ban to political machinations and any aggressive behavior at the international level, will significantly reduce the corruption in international bodies, will help to make our world more equitable and will definitively exclude the threat of a new world war.

As in the case of human rights, maintaining of the Rule of Law subsequent to the human rights at the global level will be a logical result of further development of humanistic ideals of our civilization.