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The Rule of Law Principle in the Customs Law of Ukraine and the European Union. A Comparative Analysis

Abstract

The paper's goal is to present a proposal for discussion that would update the methods used in Ukrainian customs law science to interpret the meaning and relationship between legality and rule of law, as well as determine how these approaches fit into the operations of the country's customs authorities. The paper's goal required the use of a number of scientific cognition methods, such as historical and legal method; dialectical method; comparative method; systemic and structural method; hermeneutical method; method of analysis; method of synthesis; method of generalization, etc. The rule of law is highly valued in Ukrainian laws, law enforcement processes, and legal doctrine. However, its legal regulation in Ukrainian legislation and doctrinal legal analysis of its content and correlation with other principles of law, in particular the principle of legality, are carried out from the standpoint of legal positivism without taking into account the principles of the natural law concept of law understanding. The absence of a systematic approach to the normative and legal consolidation of the principle of the rule of law in the legislation of Ukraine led to the emergence of various options for a formal

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definition of its content, which significantly complicated its real knowledge. In view of the above, it is recommended to focus on developing a coherent approach to the interpretation of the content and correlation of the principles of legality and the rule of law, taking into account the principles of the natural law concept of law understanding, according to which they are correlated as part and parcel.

KEYWORDS: Council of Europe; Venice Commission; Customs Code of Ukraine; rule of law; legality

1 | Introduction

For nearly three decades, Ukrainian legislation, law enforcement practice, and Ukrainian legal doctrine have recognized the rule of law as one of the foundations of Ukrainian domestic and foreign policy. During this period, the importance and multidimensionality of the rule of law was manifested in various approaches to the interpretation of its essence as a principle of law^[1], a phenomenon that includes a number of other principles^[2], a common value^[3], a common heritage^[4] ideas and doctrines^[5], etc.

The official interpretation of the content of the rule of law as a principle of law is enshrined in the decision of the Constitutional Court of Ukraine in case No. 1-33/2004 of November 2, 2004, No. 15-rp/2004^[6], in Art. 6 of

¹ Verkhovna Rada of Ukraine. Law of Ukraine No. 2411-VI on the Principles of Domestic and Foreign Policy (2010). <https://zakon.rada.gov.ua/laws/show/2411-17#Text>.

² A.M. Kuchuk, „The rule of law as an axiological component of the national system of law” *Legal Scientific Electronic Journal*, 3 (2023): 566-569.

³ OJEU, Association Agreement between the European Union and Its Member States, of the One Part, and Ukraine, of the Other Part, Official Journal of the European Union L no. 161 (2014): 3-2137.

⁴ European Convention on Human Rights, Convention for the Protection of Human Rights and Fundamental Freedoms (Strasbourg: Council of Europe, 1950), https://www.echr.coe.int/Documents/Convention_ENG.pdf.

⁵ Holovatyi, S.P. The Rule of Law: Idea, Doctrine, Principle. Thesis dissertation of Doctor of Law. Kyiv: Legislation Institute of The Verkhovna Rada of Ukraine, 2008.

⁶ Constitutional Court of Ukraine, „Decision in the case on the constitutional petition of the Supreme Court of Ukraine on the compliance of Article 69 of the Criminal Code of Ukraine with the Constitution of Ukraine (constitutionality)”, 2004. <https://zakon.rada.gov.ua/laws/show/v015p710-04#Text>.

the Code of Administrative Proceedings of Ukraine of November 6, 2005^[7], in Art. 8 of the Criminal Procedure Code of Ukraine of April 13, 2012^[8], in Art. 4 of the Law of Ukraine On Civil Service of December 10, 2015^[9], etc.

Reference to the provisions of Art. 8 of the Constitution of Ukraine which recognizes and operationalizes the principle of the rule of law in Ukraine is reflected in numerous decisions^[10], rulings^[11] and resolutions^[12] of the judicial authorities of Ukraine.

The study of the rule of law in the Ukrainian legal system encompasses various theoretical and applied aspects, as explored in the scientific works of experts from diverse branch sciences^{[13][14][15][16][17][18]}. Such works are also available in the Ukrainian customs law science. In their content,

⁷ Verkhovna Rada of Ukraine. Code of Administrative Proceedings of Ukraine (2005). <https://zakon.rada.gov.ua/laws/show/2747-15#Text>. 2005

⁸ Parliament of Ukraine, The Criminal Procedure Code of Ukraine (2013). <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

⁹ Verkhovna Rada of Ukraine, Law of Ukraine No. 1401-VIII „On Amendments to the Constitution of Ukraine (on Justice)” (2016b). <https://zakon.rada.gov.ua/laws/show/1401-19#Text>.

¹⁰ Constitutional Court of Ukraine, „Decision of the Constitutional Court of Ukraine in the case on the constitutional petition of the Supreme Court of Ukraine on the compliance of Article 69 of the Criminal Code of Ukraine with the Constitution of Ukraine (constitutionality) (case on the imposition of a lighter sentence by the court)”, 2021. <https://zakon.rada.gov.ua/laws/show/v015p710-04#Text>.

¹¹ Criminal Court of Cassation of the Supreme Court, „Ruling No. 521/22061/21” (2022). <https://reyestr.court.gov.ua/Review/107938441>. Donetsk District Administrative Court. Ruling No. 200/2515/21-a, (2021). <https://reyestr.court.gov.ua/Review/98270701>. Ternopil City District Court. Ruling No. 607/24943/19. (2019b), <https://reyestr.court.gov.ua/Review/86750946>.

¹² Khmilnytskyi City District Court of Vinnytsia Region. Resolution No. 3/149/504/19, (2019a). <https://reyestr.court.gov.ua/Review/82372817>.

¹³ S. Holovatyi et al., „The Rule of Law Principle: Problems of Interpretation and Application in Administrative Law” *Almanac of Law*, 3 (2012): 77-82.

¹⁴ Kolpakov, et al., „Implementation of the rule of law principle in administrative proceedings through the prism of applying the judge’s discretion” *Legal Scientific Electronic Journal*, 2 (2022): 202-208.

¹⁵ O.S. Oliinyk, „Principles of Criminal Law in the World of ECHR Practice” *Law and Society*, 4 (2019): 254-260.

¹⁶ V.M. Tertyshnyk, *The rule of law and ensuring the establishment of truth in the criminal process of Ukraine* (Dnipro: Lira LTD, 2009).

¹⁷ O. Tkachuk, D. Luspenik, „The rule of law is the new ‘old’ principle of civil proceedings: Correlation with the principle of legality” *Word of the National School of Judges of Ukraine* 3 no, 20 (2017): 50-66.

¹⁸ V. Horodovenko, „Implementation of the rule of law principle in civil proceedings in the context of justice reform” *Law of Ukraine*, 3 (2018): 65-78.

researchers consider the rule of law as one of the principles: state customs policy^[19] legal regulation of customs regimes^[20]; proceedings in cases of violation of customs rules^[21], and ensuring the rights of citizens by customs authorities^[22], etc.

In lists of principles studied, scholars typically include the principle of lawfulness in addition to the concept of the rule of law. Despite the fact that in Ukrainian legal doctrine scholars increasingly agree that the principle of legality is outdated and unnecessary and is completely absorbed by the rule of law^[23], representatives of the Ukrainian customs (administrative) law science continue to advocate other approaches to their correlation. One such example can be found in the textbook *Administrative Law of Ukraine* edited by Bytyak^[24] et al., which recognizes the rule of law, justice and the rule of customs law, along with a number of other principles, as the basic principles of customs regulation. Another such example is presented in the textbook *Administrative Law of Ukraine (General Part)* prepared by a team of authors from Lviv Polytechnic National University. In this textbook the rule of law, along with eight other principles, are considered the initial foundations (principles) of legality as a legal regime in the state^{[25][26]}.

Without going into the aforementioned doctrinal approaches, it is clear that the Venice Commission believes that the elements of the rule of law are: 1) Legality, including transparency, accountability and democratic

¹⁹ S. Ivanov, „Principles of state customs policy in Ukraine: concepts, content and classification criteria. Entrepreneurship” *Economy and Law*, 10 (2018): 179-185.

²⁰ R.I. Lemekha, „Theoretical and methodological principles of customs regimes in Ukraine” *Law and Society*, 5 (2020): 76-83.

²¹ T.B. Shapoval, „Concepts, types and principles of proceedings in cases of administrative offense” *Legal Scientific Electronic Journal*, 8 (2022): 368-370.

²² V. YU. Kvashin, „To the description of the principles of ensuring the rights of citizens by the customs authorities of Ukraine” *Scientific Bulletin of Public and Private Law*, No. 1 (2019): 194-199.

²³ S. Holovatyi, „The rule of law does not work” *Law of Ukraine*, 11 (2019): 39-82.

²⁴ Yu. Bytyak, V. Harashchuk, O. Dyachenko, O.T. Zima, V.V. Zuy, I.M. Kompaniets, V. YA. Nastyuk, N.B. Pysarenko, A.P. Skrypnyk, M.M. Tyshchenko, F.D. Finochko, O.B. Chervyakova, M.G. Shulga, *Administrative Law of Ukraine* (Kyiv: Yurinkom Inter, 2007).

²⁵ O.I. Ostapenko, M.V. Kovaliv, S.S. Yesimov, L.S. Hulak, H.YU. Lukianova, O.V. Nikanorova, M.S. Tsvok, *Administrative law of Ukraine (general part)* (Lviv: SPOLOM, 2021).

²⁶ O.M. Yaroshenko, O.V. Moskalenko, L.Y. Velychko, V.S. Kovrygin, „Property Civil Law Liability and Material Liability of Employees for Damage Caused to an Employer: On the Basis of Civil Law of Ukraine” *Asia Life Sciences*, 2 (2019): 735-748.

lawmaking. 2) Legal certainty. 3) Prohibition of arbitrariness. 4) Access to justice in independent and impartial courts, including judicial review of administrative acts. 5) Observance of human rights. 6) Non-discrimination and equality before the law. 1) Lawfulness, including a transparent, accountable and democratic process for enacting law. 2) Legal certainty. 3) Prohibition of arbitrariness. 4) Access to justice before independent and impartial courts, including judicial review of administrative acts. 5) Respect for human rights. 6) Non-discrimination and equality before the law^[27].

In a similar way, the principle of legality is mentioned among the components of the principle of the rule of law in Art. 3 of the Law of Ukraine „On Lawmaking” of August 24, 2023, namely: the principle of legality, the principle of legal certainty, the principle of preventing abuse of power, the principle of equality before the law and non-discrimination, and the principle of access to justice. However, it is important to remember that the list of essential components of the rule of law is not exhaustive, according to the guidelines in the aforementioned article^[28]. As a result, the Ukrainian Constitutional Court’s case law, for instance, recognizes proportionality as a component of the rule of law and as a norm^[29].

Lemekha^[30] emphasizes that the three essential and interconnected elements of the rule of law within the legal regulation of customs regimes are the following: the rule of human rights and freedoms; the rule of international law over national law; and the rule of the Ukrainian Constitution over the requirements of other laws and regulations. Thus, based on the results of the analysis of scientific and educational literature on administrative

²⁷ Venice Commission, Report on the Rule of Law (Venice: Venice Commission, 2011). [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)003rev-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)003rev-e).

²⁸ Verkhovna Rada of Ukraine, Law of Ukraine No. 3354-IX „On Law-Making Activities” (2023). <https://zakon.rada.gov.ua/laws/show/3354-20#Text>.

²⁹ Constitutional Court of Ukraine. Decision of the Constitutional Court of Ukraine in the case on the constitutional petition of the Board of the Pension Fund of Ukraine regarding the official interpretation of the provisions of Article 1, parts one, two, three of Article 95, part two of Article 96, paragraphs 2, 3, 6 of Article 116, part two of Article 124, part one of Article 129 of the Constitution of Ukraine, paragraph 5 of part one of Article 4 of the Budget Code of Ukraine, paragraph 2 of part one of Article 9 of the Code of Administrative Procedure of Ukraine in systemic connection with certain provisions of the Constitution of Ukraine. (2012). <https://zakon.rada.gov.ua/laws/show/v003p710-12#Text>.

³⁰ Lemekha, „Theoretical and methodological principles of customs regimes in Ukraine”, 76-83.

and customs law, it can be concluded that there is no consensus among Ukrainian scholars on the understanding of the content of the rule of law principle as the basis for the activities of the customs authorities of Ukraine, particularly, in terms of its correlation with the principle of equity.

The article's goal is to propose a discussion that would update the methods used in Ukrainian customs law science to interpret the meaning and relationship between legality and rule of law. It also aims to determine how these approaches fit into the operations of the country's customs authorities.

2 | Methodology

It was necessary to conduct the investigation in multiple stages using a variety of general scientific and particular scientific approaches in order to achieve the article's suggested aim.

At the first stage, the history of the normative consolidation and interpretation of the rule of law within the framework of the Council of Europe, and later the Venice Commission, was studied using historical, logical and dialectical methods. Regarding the normative consolidation of the rule of law and its usage in legal regulation, the author examines the activities of the United Nations, the Organization for Security and Cooperation in Europe, and the European Union. The majority of focus has been put on describing the development of the rule of law idea within Ukrainian legislation and how public authorities and legal scholars have interpreted its content in relation to the legality principle.

At the second stage, the author used the methods of analysis and synthesis to study the legal acts of Ukraine and current international agreements of Ukraine in terms of enshrining the principles of legality and the rule of law in their provisions, and also examined doctrinal approaches to their understanding and correlation.

At the third stage, using comparative and hermeneutical methods, the author analyzes the customs legislation of the European Union and Ukrainian legislation, in particular, on customs matters, with regard to the legal framework for the general and special principles of activity of public authorities and their officials based on the principles of the rule of law and legality. The article analyzes the scientific research of domestic scholars

on the interpretation of the content and correlation of the principles of the rule of law and legality in the activities of public authorities and their officials in general, as well as customs authorities of Ukraine in particular.

At the last stage of the study, the use of generalization, induction, and deduction methods helped to summarize the results of the study and formulate its conclusions.

3 | Results

3.1 Interpretation of the rule of law principle in the context of legal positivism which prevails over the natural law concept of understanding law

As a rule of direct effect, the provisions of Part 1 of Art. 8 of the Constitution of Ukraine, regarding the fact that the principle of the rule of law is recognized and operates in Ukraine^[31], from the moment the Constitution of Ukraine enters into force, they apply to the activities of all public authorities of Ukraine.

However, an analysis of the laws of Ukraine that regulate the activities of certain public authorities of Ukraine has shown that in their content the Verkhovna Rada of Ukraine often additionally emphasizes the obligation of such activities to be carried out on the basis of the rule of law, according to which a person, his or her rights and freedoms are recognized as the highest values and determine the content and direction of the state's activities. Articles of certain legal acts of Ukraine also state that the application of the rule of law should be based on the case law of the European Court of Human Rights.

The above examples are enshrined in Art. 3 „Principles of the Cabinet of Ministers of Ukraine” of the Law of Ukraine on the Cabinet of Ministers of Ukraine of February 27, 2014^[32], Art. 3 „Principles of the Prosecutor's Office”

³¹ Verkhovna Rada of Ukraine, Constitution of Ukraine (1996). <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

³² Verkhovna Rada of Ukraine, Law of Ukraine No. 794-VI on the Cabinet of Ministers of Ukraine (2014). <https://zakon.rada.gov.ua/laws/show/794-18#Text>.

of the Law of Ukraine on the Prosecutor's Office of October 14, 2014^[33], in Art. 8 of the Criminal Procedure Code of Ukraine of April 13, 2012^[34], in Art. 6 „Rule of law” of the Code of Administrative Proceedings of Ukraine of November 6, 2005^[35] Art. 6 „The Rule of Law” of the Law of Ukraine on the National Police of July 2, 2015^[36], etc.

Nevertheless, other rules in Ukrainian legislation indicate that courts must follow the law, the country's Constitution, its laws, and treaties that the Verkhovna Rada of Ukraine has ratified while determining cases. In the same articles (for example, Art. 10 „The rule of law and the legislation under which the court decides cases” of the Civil Procedure Code of Ukraine of March 18, 2004 and Art. 11 „The Rule of Law and Sources of Law Applied by the Court” of the Commercial Procedure Code of Ukraine of November 6, 1991), along with a reminder of the need to apply the case law of the European Court of Human Rights as a source of law, also emphasizes the need to apply the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and its Protocols, ratified by the Verkhovna Rada of Ukraine^{[37][38][39]}.

This raises several questions. First, how does the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and its protocols differ from other treaties ratified by the Verkhovna Rada of Ukraine, which are specifically mentioned in the articles of the above laws of Ukraine? Secondly, for what purpose do articles of various laws of Ukraine additionally emphasize the need to apply the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and the protocols and practice of the European Court of Human Rights as a source of law, if the

³³ Verkhovna Rada of Ukraine, Law of Ukraine No. 580-VIII on the National Police (2015a). <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

³⁴ Parliament of Ukraine. The Criminal Procedure Code of Ukraine. (2013). <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

³⁵ Verkhovna Rada of Ukraine, Code of Administrative Proceedings of Ukraine (2005). <https://zakon.rada.gov.ua/laws/show/2747-15#Text>.

³⁶ Verkhovna Rada of Ukraine, Law of Ukraine No. 580-VIII on the National Police (2015a). <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

³⁷ Verkhovna Rada of Ukraine, The Code of Civil Procedure of Ukraine (2004). <https://zakon.rada.gov.ua/laws/show/1618-15#Text>.

³⁸ Verkhovna Rada of Ukraine, Ukraine Code of Commercial Procedure (1992). <https://zakon.rada.gov.ua/laws/show/1798-12#Text>.

³⁹ Karol Karski, Bartosz Ziemblicki, „Commercial Companies as Applicants Before the European Court of Human Rights” *International Community Law Review*, No. 5 (2021): 503-525.

relevant rule applies to the activities of courts based on the provisions of the Law of Ukraine on the Execution of Judgments and Application of the Practice of the European Court of Human Rights from the moment this law comes into force^[40]? Third, why does this additional reminder of the need to apply the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and its Protocols and the case law of the European Court of Human Rights differ in the articles of different laws of Ukraine?

One of the possible answers to the above questions can be considered the inability of many representatives of public authorities of Ukraine to approach the understanding of law not only on the basis of legal positivism, but also taking into account, and possibly on the basis of supremacy, the natural law concept of legal understanding. In view of this, the above examples of attempts to formally define the content of the rule of law in the articles of Ukrainian laws only complicate its actual cognition. From the very beginning, any such attempts are doomed to failure. There are several explanations for this. Specifically, legal positivism is the foundation for the creation of a universal formal interpretation of the concept of “rule of law” which forms and develops from norms of behavior principally derived from natural law. It barely considers the principles of its natural understanding. Any school, theory, or idea for comprehending the law of a given state does not have a single, widely recognized definition of law. Therefore, any creation of such an interpretation would require some time. In this regard, it is appropriate to cite the provisions of the decision of the Constitutional Court of Ukraine in case No. 1-33/2004 of November 2, 2004, No. 15-rp/2004, in which, unlike the above laws of Ukraine, the principle of the rule of law was interpreted as: „[...] the rule of law in society. One of the manifestations of the rule of law is that law is not limited to legislation as one of its forms, but also includes other social regulators, including moral norms, traditions, customs, etc. that are legitimized by society and determined by the historically achieved cultural level of society^{[41][42]}”.

When interpreting the concept of the “rule of law” it is important to keep in mind that, in accordance with Art. 9 „Legislation of Ukraine” of the Law

⁴⁰ Verkhovna Rada of Ukraine, On the Execution of Decisions and Application of the Practice of the European Court of Human Rights (2006). <https://zakon.rada.gov.ua/laws/show/3477-15#Text>.

⁴¹ Verkhovna Rada of Ukraine, The Code of Civil Procedure of Ukraine (2004). <https://zakon.rada.gov.ua/laws/show/1618-15#Text>.

⁴² Elżbieta Karska, Karol Karski, „Judicial Dialogue in Human Rights: Introductory Remarks” *International Community Law Review*, No. 5 (2019): 391-399.

of Ukraine on Law-Making Activity of August 24, 2023, the legislation of Ukraine should be understood as an interconnected and streamlined system of normative legal acts of Ukraine and current treaties. It's important to emphasize that the treaties that are currently in force and those that have been ratified by the Ukrainian Verkhovna Rada have been recognized as being part of Ukrainian law^[43].

It should be emphasized in this context that Ukraine has previously recognized treaties, for which the Verkhovna Rada of Ukraine did not offer consent to be bound. Relevant examples can be seen in numerous court decisions of various courts of Ukraine^{[44][45][46]}. The International Rules for the Interpretation of Commercial Terms, established by the International Chamber of Commerce in 1953, are one example of how Ukrainian courts have recognized the standards of behavior of international law as part of their practice even though they were not codified in an international treaty^[47].

In addition to those enshrined in the form of treaties, other rules of conduct of international law, regardless of the form of external expression, should be included in the other social regulators legitimized by society and conditioned by the historically attained level of Ukrainian society, which constitute the content of law. The Declaration of State Sovereignty of Ukraine of July 16, 1990, contains the following provisions, that can be used to support this position: „The Ukrainian SSR recognizes the superiority of universal human values over class values, the priority of generally recognized norms of international law over the norms of domestic law”^[48].

As another example, it is appropriate to note the provisions of Part 4 of Art. 265 of the Commercial Code of Ukraine of January 16, 2003, according to which: „The Parties have the right to use well-known international customs, recommendations, rules of international bodies and organizations

⁴³ Verkhovna Rada of Ukraine, Law of Ukraine No. 3354-IX „On Law-Making Activities” (2023). <https://zakon.rada.gov.ua/laws/show/3354-20#Text>.

⁴⁴ The Higher Administrative Court of Ukraine, Decision No. K/800/34648/14 (2014). <https://reyestr.court.gov.ua/Review/40870628>.

⁴⁵ Second Administrative Court of Appeal, Resolution No. 440/4896/19 (2020). <https://reyestr.court.gov.ua/Review/93628768>.

⁴⁶ Kyivskiy District Court of Kharkiv, Decision No. 953/15958/21 (2022). <https://reyestr.court.gov.ua/Review/106744061>.

⁴⁷ Dnipropetrovsk District Administrative Court, „Resolution No. 2a/0470/3371/11” (2011). <https://reyestr.court.gov.ua/Review/17772812>.

⁴⁸ Verkhovna Rada of Ukraine, Declaration of State Sovereignty of Ukraine (1990). <https://zakon.rada.gov.ua/laws/show/55-12#Text>.

to determine the terms of supply contracts, unless expressly or exclusively prohibited by this Code or the laws of Ukraine”^[49].

In accordance with the provisions of Art. 55 of the Constitution of Ukraine, the practice of the European Court of Human Rights, other international judicial institutions, and related bodies of international organizations, of which Ukraine is a member or participant, should all be included as constituent elements of Ukrainian law. Individuals have the right to petition these bodies for the protection of their rights and freedoms after exhausting all domestic legal remedies^[50].

3.2 The principle of legality and the rule of law in the customs legislation of Ukraine

The analysis of the articles of a number of laws (codes) of Ukraine showed that in their content the provisions on the mandatory implementation by the relevant public authorities of the requirements of the rule of law were provided by the legislator in their original versions^{[51][52][53]}. In the articles of many of the analyzed laws, the principles of activity of such bodies, together with the principle of the rule of law, including the principle of legality^{[54][55][56]}.

In some cases, the prescription on the need to be guided by the rule of law was included in the texts of already existing normative legal acts of

⁴⁹ Verkhovna Rada of Ukraine, Commercial Code of Ukraine (2003). <https://zakon.rada.gov.ua/laws/show/436-15#Text>.

⁵⁰ Verkhovna Rada of Ukraine, Constitution of Ukraine (1996). <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

⁵¹ Verkhovna Rada of Ukraine, Ukraine Code of Commercial Procedure (1992). <https://zakon.rada.gov.ua/laws/show/1798-12#Text>.

⁵² Verkhovna Rada of Ukraine, The Code of Civil Procedure of Ukraine (2004). <https://zakon.rada.gov.ua/laws/show/1618-15#Text>.

⁵³ Verkhovna Rada of Ukraine, Code of Administrative Proceedings of Ukraine (2005). <https://zakon.rada.gov.ua/laws/show/2747-15#Text>.

⁵⁴ Verkhovna Rada of Ukraine, Law of Ukraine No. 4495-VI „Customs Code of Ukraine” (2012). <https://zakon.rada.gov.ua/laws/show/4495-17#Text>.

⁵⁵ Verkhovna Rada of Ukraine, Law of Ukraine No. 794-VI on the Cabinet of Ministers of Ukraine (2014). <https://zakon.rada.gov.ua/laws/show/794-18#Text>.

⁵⁶ Verkhovna Rada of Ukraine, Law of Ukraine No. 1697-VII on the Prosecutor’s Office (2015b). <https://zakon.rada.gov.ua/laws/show/1697-18#Text>.

Ukraine. Thus, in 2016 to Part 1 of Art. 129 of the Constitution of Ukraine was amended, according to which the judge, instead of obeying only the law, was obliged to be guided by the rule of law in the administration of justice. In addition, Part 2 of Art. 147 of the Constitution of Ukraine, it was also noted that the activities of the Constitutional Court of Ukraine are based on the principles of the rule of law, independence, collegiality, publicity, validity and binding nature of its decisions and conclusions^[57].

Despite the fact that the changes made in both cases concerned the administration of justice in Ukraine, they were different in nature. Thus, in the first case, amendments were made to Part 1 of Art. 129 of the Constitution of Ukraine to eliminate the inconsistency of its provisions with the provisions of Part 1 of Art. 8 of the Constitution of Ukraine, in terms of the ratio of the categories „law” („legislation”) and „rule of law”.

As for the second case, the decision to amend Part 2 of Art. 147 of the Constitution of Ukraine should be considered controversial. The inexpediency of making such changes can be explained by the fact that, as a state body, the Constitutional Court of Ukraine, in accordance with the provisions of Part 2 of Art. 19 is obliged to act only on the basis, within the powers and in the manner provided for by the Constitution and laws of Ukraine. In particular, its activities should be carried out taking into account the provisions of Part 1 of Art. 8 of the Constitution of Ukraine: “The principle of the rule of law is recognized and operates in Ukraine”.

This raises the question of why the Ukrainian Constitution does not explicitly state that the actions of the President, the Cabinet of Ministers, or the Verkhovna Rada of Ukraine must be grounded in the rule of law. In addition, set out in Part 2 of Art. 147 of the Constitution of Ukraine, the provisions are almost identically reproduced in Art. 2 „Principles of the Court’s Activities” of the Law of Ukraine on the Constitutional Court of Ukraine of July 13, 2017, namely: „The Constitutional Court carries out its activities on the basis of the rule of law, independence, collegiality, transparency, openness, full and comprehensive consideration of cases, validity, and binding nature of its decisions and conclusions”^[58]. In a similar way in Part 1 of Art. 3 „Principles of the Cabinet of Ministers of Ukraine” of the Law of Ukraine on the Cabinet of Ministers of Ukraine of February 27,

⁵⁷ Verkhovna Rada of Ukraine, Law of Ukraine No. 889-VIII „On Civil Service” (2016a). <https://zakon.rada.gov.ua/laws/show/3723-12#Text>.

⁵⁸ Verkhovna Rada of Ukraine, Law of Ukraine No. 2136-VIII on the Constitutional Court of Ukraine (2017). <https://zakon.rada.gov.ua/laws/show/2136-19#Text>.

2014 states that the activities of the Cabinet of Ministers of Ukraine are based on the principles of the rule of law, legality, separation of powers, continuity, collegiality, joint responsibility, openness and transparency^[59].

Regarding the current Customs Code of Ukraine, which was adopted on March 13, 2012, neither the original text nor any of the later amendments made reference to the customs authorities' duty to conduct their business in accordance with the law. However, the term „legality” is repeatedly used in the articles of the current Customs Code of Ukraine, in particular, in its Art. 8 which outlines the principle of customs business of the same name.

It can be assumed that it is precisely because of the absence of the rule of law principle among those listed in Art. 8 of the current Customs Code of Ukraine of the principles of customs administration, in the works of many researchers from Ukraine there are no references to this principle among the principles of customs administration or the principles of customs authorities. However, legality is recognized as a fundamental and important principle of the Ukrainian customs authorities because their operations depend on all customs authorities, their officials, and their employees accurately and impartially observing and implementing the requirements of the Ukrainian Constitution and current legislation. In addition, Komzyuk^[60] asserts that the principles codified in the Customs Code of Ukraine pertain exclusively to the actions of customs authorities and their officials. According to Mushenok and Timashov, the requirement to comply with the law applies to all participants in customs legal relations, namely: customs authorities; individuals crossing the border; participants in foreign economic activity; persons engaged in special activities in the customs sphere; as well as representatives of other state bodies that carry out controlling and other actions within their competence and enter into customs legal relations^[61].

It is important to note that although academics acknowledge that the customs authorities in Ukraine have a duty to completely observe and implement the requirements of the Ukrainian Constitution and current legislation, the lists of customs-related principles that they have proposed

⁵⁹ Verkhovna Rada of Ukraine, Law of Ukraine No. 794-VI „On the Cabinet of Ministers of Ukraine” (2014). <https://zakon.rada.gov.ua/laws/show/794-18#Text>.

⁶⁰ V.T. Komzyuk, „Concepts and types of principles of activity of customs authorities” *Law and Society*, 6 (2013): 198-202.

⁶¹ V.V. Mushenok, V.O. Timashov, „Legal institute of customs control, its principles, types” *Private and Public Law*, 2 (2020): 102-107.

and that are enshrined in Part 1 of Art. 8 of the Constitution of Ukraine for the rule of law are absent.

Another common practice in the works of domestic scientists is the interpretation of the principle of legality based on the provisions of Part 2 of Art. 19 of the Constitution of Ukraine, according to which: „Bodies of state power and bodies of local self-government, their officials are obliged to act only on the basis, within the powers and in the manner provided for by the Constitution and laws of Ukraine”^[62].

The relevant public authorities and their officials are obliged to act not only on the basis of, but also within the powers and in the manner provided for by the Constitution and laws of Ukraine. According to this interpretation, their activities should also be carried out taking into account the provisions of Part 1 of Art. 8 of the Constitution of Ukraine, it should not be limited to legislation as one of the forms of law and should include other social regulators. These are moral norms, traditions, and customs, etc. that are legitimized by society and determined by the historically achieved cultural level of society^[63].

However, representatives of the legal doctrine of Ukraine interpreting the provisions of Part 2 of Art. 19 of the Constitution of Ukraine focus exclusively on the Constitution and laws of Ukraine, which significantly limit the mandatory legal grounds for the activities of state authorities and local self-government bodies, their officials. At the same time, taking into account the definitions of the concept of „Legislation of Ukraine” enshrined in the articles of the Law of Ukraine on Law-Making Activity of August 24, 2023 (Part 1 of Art. 9 „Legislation of Ukraine”) and the hierarchy of normative legal acts of the legislation of Ukraine (Part 2 of Art. 19 „Legal force and hierarchy of normative legal acts”), the Constitution and laws of Ukraine constitute the legislation of Ukraine together with the current treaties of Ukraine. For example, treaties in force in Ukraine, ratified by the Verkhovna Rada of Ukraine, have higher legal force in Ukraine than laws of Ukraine and other regulatory legal acts of Ukrainian legislation and are

⁶² O.M. Yaroshenko, O.YE. Lutsenko, N.M. Vapnyarchuk, „Salary Optimisation in Ukraine in the Context of the Economy Europeanisation” *Journal of the National Academy of Legal Sciences of Ukraine*, No. 3 (2021): 224-237.

⁶³ Constitutional Court of Ukraine. Decision of the Constitutional Court of Ukraine in the case on the constitutional petition of the Supreme Court of Ukraine on the compliance of Article 69 of the Criminal Code of Ukraine with the Constitution of Ukraine (constitutionality) (case on the imposition of a lighter sentence by the court). (2004). <https://zakon.rada.gov.ua/laws/show/v015p710-04#Text>.

binding on the territory of Ukraine. As for other types of treaties in force in Ukraine, they have a higher legal force than subordinate legal acts of Ukrainian legislation and are also binding on the territory of Ukraine^[64].

Consequently, if the current treaties of Ukraine, ratified by the Verkhovna Rada of Ukraine, have a higher legal force on the territory of Ukraine than the laws of Ukraine, it can be concluded that state authorities and local self-It can be concluded that state and local authorities, as well as their officials, are required to act only in accordance with the Constitution, current treaties of Ukraine, ratified by the Verkhovna Rada of Ukraine, and Ukrainian laws, and within the bounds of their authority. This is because the current treaties of Ukraine, ratified by the Verkhovna Rada of Ukraine, have a higher legal force in Ukraine than the laws of the country.

Nonetheless, this interpretation of the legality principle, which holds that the Ukrainian laws restrict the necessary legal justification for the actions of state, local, and official authorities, does not align with the notion of the rule of law. It is with the aim of eliminating a similar conflict as in 2016, when Part 1 of Art. 129 of the Constitution of Ukraine was amended, according to which the judge, instead of obeying only the law, was obliged to be guided by the rule of law in the administration of justice.

It is also important to note the fact that the changes made to Part 1 of Art. 129 of the Constitution of Ukraine concerned exclusively judges, and the provisions of Part 2 of Art. 19 of the Constitution of Ukraine concern the activities of all state authorities and local self-government bodies, their officials. Therefore, in order to agree on the provisions of Part 2 of Art. 19 of the Constitution of Ukraine with the provisions of Part 1 of Art. 8 of the Constitution of Ukraine, particularly in terms of the ratio of the categories „legislation” and „rule of law”, it should be worded as follows: „State authorities and local self-government bodies, their officials are guided by the rule of law in their activities”.

However, it is not advisable to implement such changes, as they are not in accordance with the provisions of Part 1 of Art. 8 of the Constitution of Ukraine: „The principle of the rule of law is recognized and applied in Ukraine”. In this case, developing a clear interpretation of the relationship and content of the legality and rule of law principles according to which they are correlated as integral parts would be a more logical and appropriate course of action.

⁶⁴ Verkhovna Rada of Ukraine, Law of Ukraine No. 3354-IX on Law-Making Activities (2023). <https://zakon.rada.gov.ua/laws/show/3354-20#Text>.

2.3 The principle of the rule of law in the customs law of the European Union

Significant attention is given to these activities in international law, particularly within the framework of the laws of various international organizations, along with the interpretation of the core principles of the rule of law and their application in the practice of law enforcement within the legal system of Ukraine.

At the universal level of international cooperation, the United Nations pays considerable attention to the rule of law in its activities^[65]. Strengthening the rule of law at the national and international levels is one of the pillars of the „New Vision of the Secretary-General for the Rule of Law” developed by this organization^[66]. Such activities also take place at the regional level. For the European region, its implementation is mainly provided by the Council of Europe^{[67][68][69][70]}, the Organization for Security and Co-operation in Europe^[71] and the European Union.

As a full member of both the Council of Europe and the Organization for Security and Cooperation in Europe, Ukraine faithfully fulfills its obligations to recognize the rule of law and ensure the realization of human rights and fundamental freedoms for all persons under its jurisdiction, and

⁶⁵ United Nations, „United Nations and the Rule of Law” (2024a). <http://www.un.org/en/ruleoflaw/>.

⁶⁶ United Nations, New Vision of the Secretary-General for the Rule of Law (2024b). <https://www.un.org/ruleoflaw/wp-content/uploads/2023/10/Rule-of-Law-New-Vision-English.pdf>.

⁶⁷ Council of Europe, Parliamentary Assembly (2007). <https://pace.coe.int/en/files/17613/html>.

⁶⁸ Council of Europe, „Rule of Law”. <https://www.consilium.europa.eu/en/policies/rule-of-law/>.

⁶⁹ European Convention on Human Rights, Convention for the Protection of Human Rights and Fundamental Freedoms (Strasbourg: Council of Europe, 1950). https://www.echr.coe.int/Documents/Convention_ENG.pdf.

⁷⁰ G. Lautenbach, *The Concept of the Rule of Law and the European Court of Human Rights* (Oxford: Oxford University Press, 2013).

⁷¹ F. Evers, *OSCE Efforts to Promote the Rule of Law* (Hamburg: CORE Centre for OSCE Research, 2010). https://www.files.ethz.ch/isn/141708/CORE_Working-Paper_20.pdf.

cooperates with these international organizations on any issues related to the above-mentioned activities^[72].

The establishment of the rule of law is also important in the framework of Ukraine's cooperation with the European Union (EU) and its member states in the area of justice, freedom and security. This cooperation encompasses the strengthening of judicial and law enforcement agencies, as well as institutions at all levels of governance. Customs has been recognized as one of the priority areas of such cooperation, in particular in terms of gradual harmonization of Ukrainian customs legislation with EU customs legislation^{[73][74]}.

Characterizing the EU customs legislation in general, it should be noted that its structure is formed by various types of hierarchically interconnected legal acts, namely EU founding treaties^{[75][76][77]}; acts adopted by EU institutions international agreements concluded both between EU member states and with third countries^[78]; national regulations of EU member states^[79].

Central to the above types of sources of EU customs law are the EU Customs Code, the Implementing and Delegated Regulations and the EU Common Customs Tariff. At the same time, taking into account the existing hierarchy of legal acts of the EU customs legislation, all the

⁷² Council of Europe, Statute of the Council of Europe (1949). <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=001>.

⁷³ OJEU, „Consolidated version of the Treaty on the Functioning of the European Union”, Official Journal of the European Union C no. 326 (2012): 47-390.

⁷⁴ OJEU, „Consolidated version of the Treaty on European Union”, Official Journal of the European Union C no. 326 (2012): 13-45.

⁷⁵ OJEU, „Regulation (EU) No. 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code”, Official Journal of the European Union L no. 269 (2013): 1-101.

⁷⁶ OJEU, Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part. Official Journal of the European Union L no. 161 (2014): 3-2137.

⁷⁷ OJEU. Commission Delegated Regulation (EU) No 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code. Official Journal of the European Union L no. 343 (2015a): 1-557.

⁷⁸ OJEU. Commission Implementing Regulation (EU) No. 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No. 952/2013 of the European Parliament and of the Council laying down the Union Customs Code. Official Journal of the European Union L no. 343 (2015b): 558-893.

⁷⁹ S.M. Perepolkin, A.V. Mazur, O.O. Marchenko, O.V. Morozov, I.V. Yefimova, „Sui generis of European Union customs law” *World Customs Journal*, No. 2 (2022): 35-55.

above-mentioned legal acts adopted by the EU institutions must comply with the provisions of the EU founding treaties.

The EU Treaty and the Treaty on the Functioning of the EU are two of the key legal acts of the EU customs legislation that pay attention to the rule of law, according to the review of their contents which had been conducted. The EU Treaty, which defines the rule of law as one of the key principles of EU law as well as one of its principles, contains the majority of the relevant provisions. The rule of law is a fundamental principle of the EU, ensuring the effective implementation of EU law, the smooth operation of the market, the establishment of a zone of justice, freedom, and security without internal borders, and more.

Thus, having a dual legal nature, the rule of law as a legal value of EU law determines its content, purpose, and essence in general. The rule of law is the basis of all EU law, and thus is one of the main means of explaining legal reality, including in the field of customs^[80]. Perhaps for this reason, as well as taking into account the existing hierarchy of legal acts of the EU customs legislation, there is no practice in the EU to re-enshrine in legal acts of the EU bodies the obligation of the EU customs law subjects to be guided by the rule of law in their activities, as is the case in Ukrainian legislation. A shift in perspectives on the rule of law as a principle of positive law and law as a socio-cultural phenomenon in general would result from the continued development of the doctrinal understanding of the rule of law as one of the values of law.

4 | Conclusion

Considering the aforementioned points, it can be concluded that the provisions outlined in Part 1 of Art. 8 of the Constitution of Ukraine on the recognition and operation of the rule of law in Ukraine, as well as the affiliation of the Constitution of Ukraine to the legislation of Ukraine on customs matter, it is unnecessary to re-enshrine in the content of the current Customs Code of Ukraine the obligation of the customs authorities to be

⁸⁰ K. Gorobets, „The rule of law as a value-normative phenomenon” *Philosophy of Law and General Theory of Law*, 2 (2013): 207-213.

guided by the rule of law, as this principle is already inherently established in broader legal frameworks.

However, the absence of a reference to this principle in Art. 8 of the current Customs Code of Ukraine, alongside other principles of customs administration, could potentially be seen as problematic. In addition, this inconsistency appears to contradict the established practice of the Verkhovna Rada of Ukraine, which is to re-enshrine the provisions of Part 1 of Art. 8 of the Constitution of Ukraine, which stipulates the obligation of relevant public authorities to adhere to the principle of the rule of law in their activities. As previously mentioned, this practice should be acknowledged as more beneficial than harmful for the integration of the rule of law into the Ukrainian legal system, even though it greatly complicates the understanding of the fundamentals of the law in the context of the development of legal theories in Ukraine. This is particularly evident when members of Ukraine's public authorities, including customs authorities, apply the principle of „only what is expressly permitted by law” to the current Customs Code of Ukraine, forgetting that the country's customs legislation includes more than just the Customs Code of Ukraine and that legislation is just one form of the law.

Therefore, given the approach to the interpretation of the rule of law principle and its correlation with the principle of legality proposed in this paper, it is proposed to restate clause 3 of part 1 of Art. 8 of the Customs Code of Ukraine as follows: „the rule of law and the presumption of innocence”. In the future, the gradual harmonization of Ukrainian customs legislation with the EU customs legislation may also contribute to changes in the approach to understanding the rule of law in Ukrainian law not only as a principle of positive law, but also as one of its fundamental values.

Additional scholarly discussion regarding the theoretical and practical dimensions of the recognition and functioning of the rule of law in Ukraine is still necessary for the advancement of national legal science, specifically the study of customs law, as well as for the everyday functions of Ukraine's law enforcement agencies, which include the customs field.

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