

LEHEZA, Y.; ZABOLOTNA, L.; BOCHAROV, D.; LEMEKHA, R.; SIRKO, R. Legal regulation of the implementation of the basic principles of law in the context of the development of a democratic society

## **LEGAL REGULATION OF THE IMPLEMENTATION OF THE BASIC PRINCIPLES OF LAW IN THE CONTEXT OF THE DEVELOPMENT OF A DEMOCRATIC SOCIETY**

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### **ABSTRACT**

The purpose of the research is to reveal relationship between legal progress and fundamental principles of law in the context of their implementation at different levels of the legal system. Main content. The importance of justice, freedom, equality and humanity as an instrument of legal progress is shown. It is proven that fundamental principles of law act as the limits of the development of the legal system, and these limits ensure legal progress. Methodology: The methodological basis of the research is presented as comparative-legal and systematic analysis, formal-legal method, interpretation method, hermeneutic method as well as methods of analysis and synthesis. Conclusions. The article is aimed at studying the essence and characteristics of fundamental principles of law in the context of the legal system. development The author states

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that legal progress depends on the extent fundamental principles of law are presented and implemented in the legal system. Fundamental principles of law flow into each other. We can say that it is namely interaction and synergy of principles that strengthens legal progress.

**Keywords:** legal progress; fundamental principles of law; justice; equality; freedom; humanism.

## **REGULAÇÃO JURÍDICA DA IMPLEMENTAÇÃO DOS PRINCÍPIOS BÁSICOS DE DIREITO NO CONTEXTO DO DESENVOLVIMENTO DE UMA SOCIEDADE DEMOCRÁTICA**

### **RESUMO**

O objetivo da pesquisa é revelar a relação entre o progresso jurídico e os princípios fundamentais do direito no contexto de sua implementação em diferentes níveis do ordenamento jurídico. Conteúdo principal. Mostra-se a importância da justiça, liberdade, igualdade e humanidade como instrumento do progresso jurídico. Está comprovado que os princípios fundamentais do direito atuam como limites do desenvolvimento do ordenamento jurídico, e esses limites asseguram o progresso jurídico. Metodologia: A base metodológica da pesquisa apresenta-se como análise jurídico-comparativa e sistemática, método jurídico-formal, método de interpretação, método hermenêutico, bem como métodos de análise e síntese. Conclusões. O artigo visa estudar a essência e as características dos princípios fundamentais do direito no contexto do ordenamento jurídico. Desenvolvimento. O autor afirma que o progresso jurídico depende da medida em que os princípios fundamentais do direito são apresentados e implementados no ordenamento jurídico. Princípios fundamentais do direito fluem uns para os outros. Podemos dizer que é nomeadamente a interação e sinergia de princípios que fortalece o progresso jurídico.

**Palavras-chave:** progresso jurídico; princípios fundamentais do direito; justiça; igualdade; liberdade; humanismo.

### **1 INTRODUCTION**

Modern society's search for a basis for development is undoubtedly faced with the question of what norms and rules should be, meaning norms and rules intended to determine the shape of the society in the future. Finding an answer concerning direction of the the legal system development is also a significant problem.

From time to time societies go through crises. However, it remains essential whether this or that society has managed to cope with certain economic, technical or social problem (set of problems) the respective crisis was caused by. In this context it is important to determine the place of law in overcoming the respective crisis. That is why research of legal progress in the context of researching fundamental principles of law acquires special importance. After all, not

only these principles themselves determine what the law will be like and the prospects for its development. In our opinion, another statement is also fair, and namely: legal progress achievements in the relevant legal system (or in a certain part of it) ensure the maximum possible implementation of fundamental principles of law.

## 2 METHODOLOGY

The research is based on the works of foreign and Ukrainian researchers on methodological approaches of understanding principles of law as a universal normative framework.

The essence of methodological approaches of understanding universal human principles of law as a universal normative framework was determined by the use of the gnoseological method; the conceptual apparatus was deepened and the essence of concepts of universal human principles of law as a universal normative framework was defined thanks to the logic-semantic method. Constituent elements of methodological approaches to understanding universal human principles of law as a universal normative framework were investigated by means of using the system-structural method. The structural-logical method was used to define the basic directions for optimization of methodological approaches to understanding universal human principles of law as a universal normative framework.

## 3 LITERATURE REVIEW

Research of the legal system and its separate components is one of the key directions of modern general theoretical jurisprudence. The search for tools that would help to improve the legal system or means of learning about the legal system arouses a lively scientific interest. In this regard, the category of “legal progress” is one of the subjects of scientific knowledge. After all, this category can act both as a tool for improving the legal system and as a means of learning about legal reality (BUDDHA *et al.*, 2022).

Note, for example, that S. Pohrebnyak refers to the following fundamental principles of law: justice, equality, freedom, humanism and the rule of law as a derivative from them (POHRREBNIAK, 2008). It is on this choice of fundamental principles of law that we will focus on.

Within the framework our investigation, attention should be also paid to the point of

view of A. Karas, who precisely emphasizes interrelation between legal progress and the original principles of law. Thus, when analyzing legal progress, he notes the need to “accurately assess its starting positions”, while regarding the goals of legal progress, he emphasizes that they “may only include generally recognized standards” in the form of a system of legal values, “which develops and absorbs achievements of the world legal culture” (KARAS, 2011). Despite the fact that he pays the main attention to the legal values as the aims of development of the legal system, we believe that this position, in turn, confirms interrelation of legal progress with the principles of law (initial principles) (BEZPALOVA *et al.*, 2021).

Thus, the purpose of this article is to study relationship between legal progress and fundamental principles of law.

#### 4 RESULTS AND DISCUSSION

S. Pogrebnyak defines fundamental principles of law as “the system of the most general and stable requirements enshrined in the law, which are a concentrated expression of the most important essence and values inherent in this system of law and which determine its nature and directions of further development” (POHRREBNIAK, 2008). The phrase “determine its nature and directions of development” is the most important for our research. It is obvious that, according to S. Pogrebnyak, it is comprehension of fundamental principles of law and completeness of their implementation that peculiarities of the legal system progress depend on.

In order to understand interrelation between legal progress and fundamental principles of law, it is worth noting that formation and development of the legal system (as well as formation and development of legal progress) are connected both with the formation of basic principles of the legal system and approval of these principles, as well as with establishment of limits of the state’s arbitrariness, strengthening of person’s legal guarantees and reinforcement of anthropologization of law, which was manifested by placing human interests in the center of the legal map with the help of the principle of humanism. In this regard, the rule of law is a key issue with its idea of limiting arbitrariness and the problem of human dignity as a criterion for activity of the state (BOYAROV *et al.*, 2021).

Thus, fundamental principles of law are not only the limits of the legal system, but also the goal and a guideline for legal system development. Or, in other words, they set the vector (direction) of legal progress (KYRYCHENKO *et al.*, 2021). How does this happen?

Understanding of legal progress in the context of fundamental principles of law is

impossible without mentioning the views of the well-known philosopher and legist, J. Vyko. Within the framework of his concept of the historical cycle, J. Vyko shows how within the limits of the proposed by him the natural law stages there is a gradual improvement of the quality of law for that. He assesses natural law from the point of view of the criterion of mind. For J. Vyko, the first stage is related to people's ideas that society depends on the divine will, the second stage is related to the rule of force due to human inability to "obey mind", and the third stage is related to the law formulated by "developed human mind", which is expressed through justice and equality (VYKO, 1994).

At the same time, it is the level of legal freedom of persons who possessed civil rights that also allows us to distinguish different stages of formation of a person's legal status:

- 1) the one where all but a few were rightless;
- 2) the one where civil rights belonged to certain groups of the population, while others were practically rightless;
- 3) the one where "due to equality of the nature of the mind (the true human nature) all are equalized under the laws" because everyone was born free in free people's states (KYRYCHENKO *et al.*, 2021).

In this case the progress of legal status is closely related with the maximized realization of such fundamental principles as freedom and humanism through the provision of legal protection to all categories of population.

Finally, he considers humanism as a criterion for development of judicial activity - from judicial ordeals through a court that puts above all observance of the legal procedure, even to the detriment of the case, to a court based on "the laws of mercy in everything that is required by universally equal utility of reasons".

Let's consider legal progress from the perspective of justice.

Regardless of whether we focus on substantive, procedural, or formal justice, when recognizing justice as a fundamental principle of law, we must ensure that it is achieved. Moreover, justice acts as a criterion of legal law, provides an opportunity to critically evaluate the quality of law and the procedure for its adoption (RADBRUKH, 2004).

Assessment of the quality of law in terms of fairness gives an opportunity to rethink and modify the law in such a way that this requirement is met. The principle of justice is even more important at the ideological level of the legal system. It is so due to the fact that it is with the

help of legal consciousness and legal ideology that we evaluate conformity of jurisprudentially significant actions with the requirements of justice. And, as it has already been mentioned, the understanding of justice within the legal system is developing alongside with it. Thus, the “principle of talion”, or ordeal, as a means of ensuring justice is replaced by new, more complex mechanisms of ensuring justice. At the same time, it is worth noting that violation of the principle of justice by the state (as well as, to varying degrees, other fundamental principles, such as freedom or equality) leads to revolutions, uprisings, riots and other social cataclysms, interrupting the evolutionary path of the society development. This, in turn, has the effect of simplifying the legal system, its degradation or, in other words, legal regress.

As for law enforcement, implementation of justice in specific legal relationships remains one of the most difficult issues of the modern jurisprudence, given that the concept of justice for each party in a relevant legal case largely depends on the legal position it occupies and requirements of this party. It is the judge who has the duty to find a solution that is as close as possible to ensuring the principle of justice. Thus, legal progress of the legal system at the level of law enforcement depends on the ability of the judicial system to implement justice as accurately as possible in as many cases as possible. In this situation, “due” is given to a person by an irrelevant to this person public entity specifically designated for this purpose, providing for the establishment of justice as a basis for improvement of the legal system (LEHEZA *et al.*, 2018).

When considering the principle of freedom in the context of legal progress, it is obviously worth noting that according to P. Feierabend, only freedom is a principle that does not hinder scientific progress (FEIERABEND, 1986). Freedom is not only the basis for the growth of civilization. But freedom also, to a certain extent, coincides with the law, in particular when the law appears in the form of rules thanks to which people are freed.” In this context, legal progress is determined by the extent to which human arbitrariness towards others is replaced by limitation of arbitrary encroachment upon another person’s freedom. It is in this trend of the legal system that dependence of legal progress on the degree of freedom in the society reaches its maximum (LEHEZA *et al.*, 2021).

The principle of equality, on the one hand, acts as a basis for formal equality of all before the law and the court, and on the other hand it is a mechanism of protection against discrimination.

V. Nersesiants noted that the idea of law unfolds through embodiment of the progressive evolution of the content, scope, scale and measure of formal (legal) equality, when this principle

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is considered as a general principle of law. He noted that different stages of the historical development of the law are characterized by their individual content of formal (legal) equality, in other words its content evolves (NERSIANTS, 2002). Thus, we observe the situation when the society is in the process of granting equal rights to an increasing number of people. If in the early stages of historical development a state was based on distinguishing one person or a group of persons and granting them special rights in contrast to other members of the society, then the formation of a democratic state essentially requires equalization of fellow citizens in their rights and duties. At the same time, the society can provide appropriate means of support to those who need such support (so-called “positive measures”) to eliminate some injustice. The role of equality for legal progress is of particular importance (LEHEZA *et al.*, 2020). In history there were attempts to ensure equality of results, which was opposed to formal equality (the USSR, North Korea). However, this approach does not sufficiently take into account that people are different. As a result, the law as a means of ensuring an equal scale is destroyed, and the legal system regresses. Presence of a legal means of ensuring formal equality is replaced by authorization of relevant officials to ensure equality of results through the mechanism of redistribution of material goods. In practice, over time, this leads to emergence of privileged groups of population that receive these results contrary to the principle of equality of results (LEHEZA *et al.*, 2022).

Humanism as a fundamental principle of law is revealed, in particular, through the concept of human dignity. For humanism, a human acts as the highest value, although negative features of this human are also taken into account. Humanism, as a social movement, has set the task of guaranteeing a better life of a person through his/her development. Despite the fact that humanism acts as a “profound and constantly acting factor of pan-European civilization”, its significance began to be fully revealed only after World War II, when the need to protect human dignity was enshrined in international legal documents, and later in national constitutions and laws (LEHEZA *et al.*, 2022). Development of humanism involves both respect for a person in himself/herself and respect for a person in another person. It is introduction of the concept of human rights that has become an effective mechanism that has made it possible to transform humanism from the “main trend in the history of the mankind” into a phenomenon of legal reality, of course never canceling the first point (LEHEZA *et al.*, 2022). The principle of humanism, embodied in specific legal norms, ensures progress of the legal system, as it is itself aimed at improving both a person and the human society in the direction of respect for human dignity (LEHEZA *et al.*, 2022).

## 5 CONCLUSIONS

Therefore, legal progress, determining the direction of the legal system development, directly depends on the degree (or extent) of presentation of fundamental principles of law and their embodiment at all levels of the legal system: Ideological level, normative level and functional level.

This approach allows us to consider fundamental principles of law as limits that are set for changes in the legal system, taking into account that compliance with these limits ensures legal progress, and their violation results in regress of the legal system.

It is obvious that further research of fundamental principles of law as factors affecting dynamics of the legal system will make it possible to more deeply understand the essence and content of the legal system as well as to predict desired and undesirable consequences of its development.

Fundamental principles of law flow into each other. We can say that it is namely interaction and synergy of principles listed above that strengthens legal progress.

As for the principle of the supremacy of law, as a derivative from fundamental principles of law, its relationship with legal progress requires a separate study

## REFERENCES

BEZPALOVA, Olha; YUNINA, Maryna; KOROHOD, Svitlana; REZVOROVICH, Kristina; OHANISIAN, Tsahik. Legal regulation of entrepreneurial activity in the national security system. **Entrepreneurship and Sustainability Issues**, [S.l.], v. 8, n. 3, p. 340-355, 2021. DOI: [https://doi.org/10.9770/jesi.2021.8.3\(22\)](https://doi.org/10.9770/jesi.2021.8.3(22)).

BOIAROV, Viktor; LARKIN, Mikhail; KYRYCHENKO, Oleh; PENKOV, Sergey; KRUHLOV, Oleh. Features of the investigation of hooliganism committed by football fans. **Cuestiones Políticas**, [S.l.], v. 39, n. 69, p. 513-529, jul./dic. 2021. DOI: <https://doi.org/10.46398/cuestpol.3969.32>.

BUHA, Volodymyr; IAKUBIN, Oleksii; MAZUR, Tamara; REZVOROVICH, Kristina; DARAGANOVA, Nina. Legal regulation of the institute of control in the field of housing construction in the conditions of armed aggression of the Russian Federation. **Cuestiones Políticas**, [S.l.], v. 40, n. 73, p. 151-171, jul./dic. 2022. DOI: <https://doi.org/10.46398/cuestpol.4073.07>.

FEIERABEND, Pol. **Selected works on the methodology of science**. Moscow, Russian Federation: Progress, 1986.



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KARAS, Anatolii. Correlation of the concepts "value of law" and "legal culture". **State and law**, [S.l.], v. 52, p. 86-92, 2011.

KOLINKO, Tsahik; REZVOROVYCH, Krystyna; YUNINA, Maryna. Legal characteristic of the franchise agreement in Germany. **Baltic Journal of Economic Studies**, [S.l.], v. 5, n. 1, p. 96-100, 2019. DOI: <https://doi.org/10.30525/2256-0742/2019-5-1-96-100>.

KYRYCHENKO, Oleh; KHRYSTOVA, Yuliia; SKOK, Oleksandra; SHEVCHENKO, Taisiia; LITUN, Oleh. Criminal environmental protection: international practices and priorities for improving. **Revista de la Universidad del Zulia**, [S.l.], v. 12, n. 33, p. 102-120, 2021. DOI: <https://doi.org/10.46925//rdluz.33.08>.

KYRYCHENKO, Oleh; SOLDATENKO, Olena; GOROKHOVSKA, Olena; VOLOSHYNA, Maryna; MAKSYMOMA, Larysa. Fraud in the banking system of Ukraine: ways to combat taking into account foreign experience. **Amazonia Investiga**, Colômbia, v. 10, n. 45, p. 208-220, 2021. DOI: <https://doi.org/10.34069/AI/2021.45.09.21>.

LEHEZA, Yevhen; FILIPENKO, Tatiana; SOKOLENKO, Olha; DARAHAN, Valerii; KUCHERENKO, Oleksii. Ensuring human rights in Ukraine: problematic issues and ways of their solution in the social and legal sphere. **Cuestiones políticas**, [S.l.], v. 37, n. 64, p. 123-136, enero/jun. 2020. DOI: <https://doi.org/10.46398/cuestpol.3764.10>.

LEHEZA, Yevhen; SHAMARA, Oleksandr; CHALAVAN, Viktor. Principios del poder judicial administrativo en Ucrania. **DIXI**, [S.l.], v. 24, n. 1, p. 1-11, 2022. DOI: <https://doi.org/10.16925/2357-5891.2022.01.08>.

LEHEZA, Yevhen; YERKO, Iryna; KOLOMIICHUK, Viacheslav; LISNIAK, Mariia. International Legal And Administrative-Criminal Regulation Of Service Relations. **Jurnal cita hukum indonesian law journal**, [S.l.], v. 10, n. 1, p. 49-60, 2022. DOI: <https://doi.org/10.15408/jch.v10i1.25808>

LEHEZA, Yevhen; LEN, Valentyn; SHKUTA, Oleh; TITARENKO, Oleksiy; CHERNIAK, Nataliia. Foreign experience and international legal standards of applying artificial intelligence in criminal proceedings. **Revista de la Universidad del Zulia**, [S.l.], v. 13, n. 36, p. 276-287, 2022.

LEHEZA, Yevhen; ODYNTSOVA, Iryna; DMYTRENKO, Natalia. Teoría y regulación legal del apoyo informativo de los procedimientos administrativos en Ucrania. **Ratio Juris UNAULA**, [S.l.], v. 16, n. 32, p. 291-306, 2021.

LEHEZA, Yevhen; SAVIELIEVA, Maryna; DZHAFAROVA, Olena. Structural and legal analysis of scientific activity regulation in developed countries. **Baltic journal of economic studies**, [S.l.], v. 4, n. 3, p. 147-157, 2018.

LEHEZA, Yevhen; PRYIMACHENKO, Dmytro; MOROZ, Vita; PAKULOVA, Tetiana; SALO, Oleh. Legal status of the territory of Crimea after the accession of Russia. **Revista do Curso de Direito do UNIFOR**, Formiga, Brazil, v. 13, n. 2, p. 28-37, 2022. DOI: <https://doi.org/10.24862/rcdu.v13i2.1632>.

LEHEZA, Y.; ZABOLOTNA, L.; BOCHAROV, D.; LEMEKHA, R.; SIRKO, R. Legal regulation of the implementation of the basic principles of law in the context of the development of a democratic society

NERSESIANTS, Vladyk. **Jurisprudence**: Introduction to the course of the general theory of law and the state. Moscow, Russian Federation: Norma, 2002.

POHREBNIAK, Stanyslav Petrovych. **Fundamental principles of law**: monograph. Kharkiv, Ukraine, Right: National Law Academy of Ukraine named after Yaroslav the Wise, 2008.

RADBRUCH, Gustav. **Philosophy of law**: International relations. Moscow, Russian Federation: [s.n.], 2004.

VYKO, Dzhambattysta. **Foundations of the New Science of the Common Nature of Nations**. Moscow, Russian Federation: [s.n.], 1994.