

Адміністративне право і процес

УДК 342.9

DOI <https://doi.org/10.5281/zenodo.14765924>

Principles of the rule of law in general and in administrative law in particular

Meh Yuliia Volodymyrivna

Doctor of Legal Sciences, Associate Professor at the Department of Administrative Law and Administrative Activities, Yaroslav Mudryi National Law University (Kharkiv, Ukraine), <https://orcid.org/0000-0002-0191-1020>

Kalin Mariia Vitaliivna

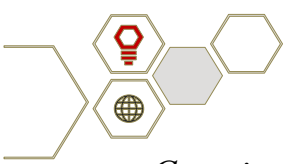
A second – year student majoring in “International Law”, Faculty of International and European Law, Yaroslav Mudryi National Law University (Kharkiv, Ukraine), <https://orcid.org/0009-0006-3136-3551>

Kovdria Valeriia Oleksiivna

A second – year student majoring in “International Law”, Faculty of International and European Law, Yaroslav Mudryi National Law University (Kharkiv, Ukraine) <https://orcid.org/0009-0009-1377-2468>

Прийнято: 18.11.2024|Опубліковано: 29.11.2024

***Abstract.** The article is devoted to the principles of the rule of law. The article examines the historical origins of the rule of law concept, from antiquity, in particular the teachings of Herocles, Plato and Aristotle, to the present day. Particular attention is paid to the influence of the Roman legal tradition, the development of principles in common law systems and the Rechtsstaat doctrine. The specifics of the rule of law in the administrative law of Ukraine are analyzed in particular, the role of the*



*Constitution and the Code of Administrative Procedure of Ukraine. International standards of this principle set out by the Venice Commission are considered, as well as current challenges, such as corruption, decreasing trust in state institutions and the impact of authoritarian trends in the world. **Purpose:** To explore the history of the development of the principle of the rule of law, show why it is particularly important and necessary in the context of administrative law, consider how it affects Ukrainian administrative law, and what challenges it poses to the modern world. **Methods:** The study uses a combination of historical, comparative and legal methods of analysis. **Results and Conclusions:** The rule of law remains a key element for the development of legal systems, guaranteeing justice and protecting human rights. Its implementation requires effective functioning of institutions, harmonisation of legislation with European standards, fighting corruption and building trust in public authorities. In the field of administrative law, this principle promotes transparency, efficiency and accountability of public administration, which is important for Ukraine's democratic development.*

Keywords: *rule of law, administrative law, Rechtsstaat, état de droit, international standards, Constitution of Ukraine, judiciary.*

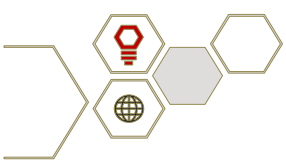
Принципи верховенства права: загальний контекст і особливості застосування в адміністративному праві

Мех Юлія Володимирівна

Докторка юридичних наук, доцентка кафедри адміністративного права та адміністративної діяльності, Національний юридичний університет імені Ярослава Мудрого (м. Харків, Україна), <https://orcid.org/0000-0002-0191-1020>

Калін Марія Віталіївна

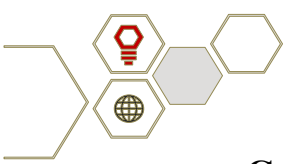
Студентка 2 курсу, спеціальність «Міжнародне право», факультет міжнародного та європейського права, Національний юридичний університет імені Ярослава Мудрого (м. Харків, Україна), <https://orcid.org/0009-0006-3136-3551>

**Ковдря Валерія Олексіївна**

Студентка 2 курсу, спеціальність «Міжнародне право», факультет міжнародного та європейського права, Національний юридичний університет імені Ярослава Мудрого (м. Харків, Україна), <https://orcid.org/0009-0009-1377-2468>

Анотація. *Стаття присвячена принципам верховенства права. У роботі досліджено історичні витоки концепції верховенства права, з античності, зокрема вчення Герокліта, Платона та Аристотеля, і до сучасності. Окрема увага приділяється впливу римської правової традиції, розвитку принципів у системах загального права та доктрині Rechtsstaat. Аналізується специфіка верховенства права в адміністративному праві України, зокрема роль Конституції та Кодексу адміністративного судочинства України. Розглянуто міжнародні стандарти даного принципу, викладені у Венеційській комісії, та сучасні виклики, такі як корупція, зниження довіри до державних інститутів і вплив авторитарних тенденцій у світі. **Мета:** Дослідити історичний розвиток принципу верховенства права, визначити його значення в контексті адміністративного права, розглянути вплив цього принципу на українське адміністративне право та окреслити сучасні виклики його реалізації. **Методи:** У дослідженні використано поєднання історичного, порівняльного та правового методів аналізу. **Результати та Висновки:** Принцип верховенства права залишається ключовим елементом для розвитку правових систем, гарантії справедливості та захисту прав людини. Його реалізація потребує ефективної роботи інституцій, гармонізації законодавства з європейськими стандартами, подолання корупції та зміцнення довіри до державних органів. У сфері адміністративного права цей принцип сприяє прозорості, ефективності та підзвітності публічного управління, що є важливим для демократичного розвитку України.*

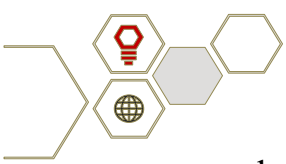
Ключові слова: *верховенство права, адміністративне право, Rechtsstaat, état de droit, міжнародні стандарти, Конституція України, судочинство.*



General statement of the problem and connection with important scientific and practical tasks (Introduction). The concept and principles of the rule of law have been debated over centuries. From its very origins in ancient legal traditions to present times, the rule of law has become an important element of the legal systems of most countries in the world, especially in those where people sought justice, development, and respect for human rights. However, as mentioned in the Venice Commission's 'Rule of Law Checklist', its significance is often regrettably overlooked, with much more attention being paid to other essential components of governance, such as democracy and human rights. Undoubtedly, all three are equally vital in the eyes of both governors and citizens. Nevertheless, there remains much to be discussed regarding the rule of law.

In general, it is clear that the rule of law is a fundamental principle on which modern states are based. As per Prof. A.V. Dicey, “the rule of law means the absolute supremacy or predominance of the regular law as opposed to the influence of arbitrary power and excludes the existence of arbitrariness or even of wide discretionary authority on the part of the government.” (The Law of the Constitution). In simple words, the rule of law implies that no one is above the law and the law is to be obeyed. Rule of law is a complex phenomenon, that consists of some main elements that ensure free access to law and a fair trial for every person, provide guarantees against arbitrariness, and affirm that each of us is equal before the law. All these elements are most effective when functioning together, and it is particularly notable in administrative law where one of the most important goals is to maintain a balance between government and citizens.

Analysis of recent research and publications (Literature Review). The current stage of development of legal science is distinguished by significant attention to the issue of the rule of law, in particular in the context of its historical origins and implementation in the administrative law of Ukraine. Problems related to the rule of law have become the subject of numerous scientific studies by such scholars all over the world as: M. Burnay [3], J. Annas [4], S. Pogrebnyak [5], M. Rosenfeld [8], A. Bedner [9], S. Shevchuk [10], O.S. Gutsova [14], V. Gusev [15], as well as many other



researchers who have devoted their works to the analysis of this principle in the legal system and social life.

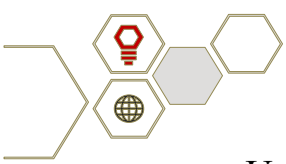
The research of these authors covers a wide range of issues, starting from the historical origins of the concept of the rule of law and its development in antiquity, to modern challenges and prospects for its implementation both at the national and international levels.

Identification of previously unresolved aspects of the overall problem. Today, the world is facing serious challenges to the rule of law. This fundamental principle, which is primarily intended to protect human rights and freedoms, uphold the rule of law and restrain arbitrary power, is unfortunately under threat in many regions. According to the World Justice Project (WJP), more than half of the world's population lives in countries where the rule of law is weakening.

The rise of authoritarianism is one of the key factors that has undermined the rule of law. In Europe, this trend is particularly noticeable in countries such as Poland and Hungary. The independence of the judiciary, freedom of the media and other basic elements of democracy are gradually coming under pressure from political authorities. Of course, the European Union is trying to restrain these processes through sanctions and requirements for compliance with European standards, but their effectiveness is often limited by political games and the polarization of societies.

In the Asia-Pacific region, new challenges are being created by the introduction of disinformation laws, which, despite the declared goal of combating fake news, are increasingly being used to suppress criticism of governments. This phenomenon turns freedom of speech into a privilege available only to the chosen few and strengthens authoritarian practices in the countries of the region.

As for other parts of the world, Latin America demonstrates another dimension of the rule of law problems: political instability and a crisis of trust in state institutions. Mass protests, corruption scandals and frequent changes of leadership in countries such as Peru and Brazil only exacerbate the situation. The rule of law here often becomes hostage to political interests, and justice is an instrument of the struggle for power, which, as we know from our own experience, never leads to anything good.

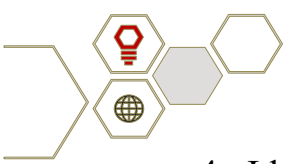


Unfortunately, the rule of law in Ukraine is often violated, or rather, it is not sufficiently implemented... One of the key reasons is the low level of political and legal responsibility of employees of all branches of state power, when even decisions that are of great importance to the state, are adopted without proper justification. The consequence of this is also low trust between citizens, state institutions and officials and ultimately the prosperity of bureaucracy, which primarily reduces the effectiveness of management. It is also imperative to acknowledge the pervasive influence of corruption on the rule of law, as it is a key factor that directly undermines this fundamental principle. In the context of Ukraine, this issue is of particular concern, as it consistently dominates discourse whenever the country is referenced. Even now, during the period of martial law, which creates additional challenges for the legal system, the authorities and not only continue to develop corruption on an even larger scale. And irresponsibility and bureaucracy are sometimes even justified by this state. It is also important to note that certain rights of citizens may be restricted during martial law, which may become a problem for their protection and fair justice. Thus, we shall take into account the rising problems if we aim for a prosperous future for our country.

Formulation of the purpose of the article (setting of tasks). The study of the principle of the rule of law, its historical origins, significance in the context of the administrative law of Ukraine, as well as the analysis of modern challenges to its implementation is the main purpose of the article.

Thus, the article aims to:

1. Cover the historical development of the concept of the rule of law, starting from antiquity and up to the present day, with an emphasis on the influence of the Roman legal tradition and the doctrine of Rechtsstaat.
2. Outline the features of the implementation of the rule of law in its Ukrainian administrative law, including its normative consolidation in the Constitution of Ukraine and the Code of Administrative Procedure.
3. Analysis of international standards in the field of the rule of law, defined by the Venice Commission, and their significance for Ukrainian legislation with European norms.



4. Identification of modern challenges, such as the fight against corruption, overcoming bureaucracy and increasing trust in state institutions.

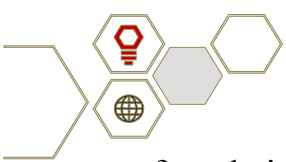
Presentation of the primary research material (Research results).

1.1 Rule of law, origins

As we have already established, the concept of the rule of law and its underlying principles have been variously interpreted and examined. A similar situation arises when defining the very origins of the rule of law. While different opinions exist among legal scholars and practitioners, the vast majority agree that its origins can be traced back to Ancient Greece, where it contributed to the self-definition of the political community of the city-state. While it may raise certain doubts, I am of the opinion that the concept of the rule of law, hypothetically, could have made its one of earliest appearances in the philosophy of Heraclitus' logos, which he considers to be universal order and reason, implying that it governs both nature and human society equally. This notion of inherent reason and order within the world paved the way for later theories about law as not just a 'body of commands', but rather as a conception of a superior, deliberate rational order.

Moreover, the contributions of Plato and Aristotle were much more noticeable in the justification of this idea. Plato, for example, in his last and longest dialogue, *The Laws*, defines the place of law in the development of virtue as he underscores the importance of obedience to law by leading a virtuous way of life. Aristotle in his infamous *Politics* holds a relatively revolutionary position for his time, stating that it is preferable for laws to govern a state than for citizens.

It is widely accepted among scholars that the process of the development of the origins of the rule of law did not end with Ancient Greece, as it was given a still broader scope and practical application in the Roman legal tradition. With the rise of the Roman legal tradition, the development of the rule of law gained a new dimension, where abstract principles of justice and governance were translated into concrete legal frameworks. The codification of the Twelve Tables (451–450 BCE) is considered one of the major milestones, ensuring that the laws were written, publicly accessible, and applied consistently in order to ensure transparency and equality. This was a



foundational step in embedding the idea that legal norms, and not the arbitrary will of rulers, should govern society.

Roman law also introduced the concepts of *jus gentium*, the law of nations, and *lex naturalis*, natural law, which insisted on the universality of justice, aligning with reason and morality. Thus, Cicero, the most prominent philosopher of Rome, insisted that natural law was an unchangeable higher law, regulating the life of all human societies and standing above the written laws. These ideas deeply influenced the subsequent legal traditions and contributed to the broader understanding of the rule of law as a universal principle.

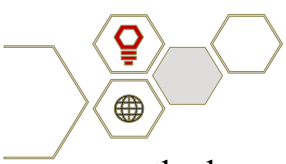
Not all scholars, however, regard the Roman contribution to the rule of law as wholly positive as we do. According to them, the history of Rome - its history of conquest, slavery, and systemic violence - works against the ideals of justice and equality that the rule of law is supposed to protect and profess. Critics also tend to emphasise the contrast between high-flying Roman legal idealism and the real life of Rome as an imperial state: while Roman law may have been theoretically pathbreaking, in practice, it often proved far removed from the principles it laid down.

Nonetheless, it took several centuries and more before the rule of law could be defined and applied within the framework we understand today.

1.2 rule of law (common law)

Despite the fact that, while Greek and Roman contributions to the emergence and development of the rule of law were, to no doubt, significant, it is typical to recognise that what would later constitute the rule of law as we know it today has its roots in common law legal system. Naturally, England is considered the place where the modern rule of law was born, and one of the most prominent moments in its history was the issuance of the Magna Carta in June 1215.

The Magna Carta was the first document in history that clearly established that the king and the government were not above the law. It was a revolutionary charter. The Magna Carta established that a government's authority ought to be derived from the consent and support of the people it governs, laying the groundwork for the concept of accountable governance. It emphasized that all, including the monarch, were under



the law and against the principle of absolute power. While its application in immediate times was only for some social classes, the Magna Carta laid the groundwork to make a case that all people are free and equal before the law.

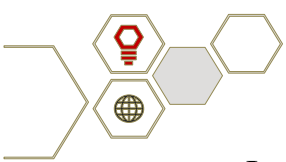
Although these principles had been applied within a narrow framework, they had a lasting impact on the development of constitutional law and the rule of law throughout the world. The Magna Carta's legacy is that it served as the key point for subsequent legal and political developments: the English Bill of Rights, the U.S. Constitution, and international declarations of human rights.

In general, the common law system played a significant role in shaping the modern concept of the rule of law. In contrast to codified systems of law, common law developed organically through the decisions of judges and precedents, so that laws were not only consistent but also adaptable to changing needs within society. The dynamic nature of common law thus allowed the rule of law to grow as a living principle, essentially standing for the very notion that justice itself is not static but evolves over time.

1.3 Rechtsstaat

The German Rechtsstaat, as a philosophical and legal doctrine that prevails in continental Europe, is considered to emerge from written constitutions, contrasting with the common law tradition where the rule of law “is made in courtrooms”. The term was coined only at the very end of the eighteenth century to capture a new phenomenon, the modern State with its monopoly of force. That state was the subject of this concept, and the source of law simultaneously. The Rechtsstaat is ruled by law and is a law itself.

Ideas of Rechtsstaat are typically attributed to Immanuel Kant. Even though he did not use the word Rechtsstaat directly, his philosophy is considered to have contributed significantly to the development of its principles. Kant insisted that state practices should be in conformity with universal moral laws and that the legal system should further the cause of justice while protecting the autonomy of the individual. His notion of a 'republican government', based on the rule of law and on the separation of powers, squares with the essentials of Rechtsstaat.



It should be mentioned, however, that it was no other than Robert von Mohl who is regarded as the one who popularized the term "Rechtsstaat," who explicitly defined the Rechtsstaat as a state governed by legal principles. His doctrine is intrinsically hostile to arbitrary rule, going so far as to include even the state under legitimate subjection.

In practice, the Rechtsstaat purports to ensure legal certainty, equality before the law, and protection of the fundamental rights of individuals by written constitutions and codified laws. Further, it enshrines machinery for judicial review, with every assurance of the compliance of legislation and executive actions to constitutional dictums.

1.4 état de droit

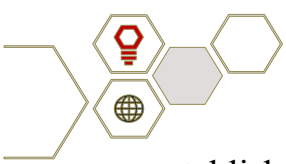
The French approach to the issue of the rule of law can be foreseen in the French Revolution of 1789 which put an end to centuries of monarchic power within France, followed by the subsequent Declaration of the Rights of Man and the Citizen (1789).

The concept of *État de Droit* comes as a direct translation of the German Rechtsstaat but not quite so. Some scholars even suggest that French theoretical thinking about the *État de Droit* at the end of the nineteenth century developed in part as a response to the Rechtsstaat. This is not surprising, given the anti-German feelings remaining after the defeat of France in the Franco-Prussian War of 1870. The French thinkers also felt that the concept of Rechtsstaat had served to justify the German political regime, in which the bureaucracy enjoyed far greater powers than Parliament.

Fundamental to this kind of concept is the assumption that a large proportion of the implementational or constitutional responsibilities of the judiciary involves the enforcement of power and balance of power of constitutions. Here the state is not only under laws but is bound to uphold and enforce constitutional guarantees for the purpose of providing justice and check on errant governors.

2. rule of law in the context of Ukrainian administrative law

Relying upon fundamental ideas and values of Rechtsstaat and *état de Droit*, the notion of the rule of all has been and is evolving into a universal concept in the majority of legal systems. In Ukraine, in particular, the principle of the supremacy of law is stated at the legal official level in the Constitution of Ukraine. Article 8 specifically



establishes that this principle is recognized and operates in our country, that the Constitution of Ukraine has the highest legal force, and laws and other regulatory legal acts are adopted on its basis and must comply with it. "The norms of the Constitution of Ukraine are norms of direct action. Appeal to the court to protect the constitutional rights and freedoms of man and citizen is guaranteed directly on the basis of the Constitution of Ukraine." This article perfectly emphasizes the fact that this principle is observed, or at least should be. A peculiarity is also that the Constitution of Ukraine does not allow the narrowing of the content or scope of the rights and freedoms of citizens even during emergency situations, or such as we are currently facing and living in - during martial law, which emphasizes the importance of the principle of the rule of law even in crisis conditions.

In the sphere of administrative law, this principle is, in my view, fundamental. Indeed it signifies the primacy of human rights and freedoms, as well as the values of justice and humanism, in the operations of state authorities and local self-government bodies.

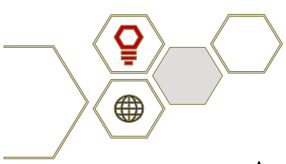
Ukrainian legislation clearly establishes that no one can be deprived of the right to legal protection, even if there is no law that directly regulates certain legal relations. This provision is especially important in the context of administrative justice, where the principle of the rule of law plays a key role, as confirmed by the provisions of the Code of Administrative Justice of Ukraine (CAS of Ukraine).

Article 6 of the CAS of Ukraine defines this principle through four main provisions:

First, when resolving cases, the court is guided by the principle of the rule of law, according to which a person, his rights and freedoms are recognized as the highest values and determine the direction of the state's activities.

Second, the right to appeal to an administrative court to protect human rights and freedoms is guaranteed directly on the basis of the Constitution of Ukraine, which we have already mentioned earlier.

Third, refusal to consider an administrative case due to incompleteness, ambiguity, contradiction or absence of legislation regulating the disputed relations is prohibited.



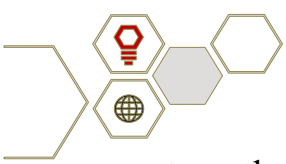
And of course, the last, the court applies this principle taking into account the practice of the European Court of Human Rights, because this is what makes the legal system of Ukraine more open to European legal traditions. And most importantly, it stimulates Ukrainian legislation to modernize and harmonize with European standards.

All these provisions emphasise the key role of the principle of the rule of law in ensuring human rights and freedoms in Ukraine.

3. international standards of the rule of law.

Modern understanding of the rule of law encompasses not only a doctrinal or positivist approach, rather it is implied that the principle is flexible in its nature. Nonetheless, there is a need “for universal adherence to and implementation of the Rule of Law at both the national and international levels”. This is why The Venice Commission as a body of the Council of Europe proposed a checklist that contains international standards of the rule of law. Since Ukraine is on its successful way to European integration, we think it is necessary to take into account all these provisions for the sake of aligning Ukrainian legislation and ideology with the view of modern Europe. The checklist contains the following benchmarks: legality, legal certainty, prevention of abuse (misuse) of powers, equality before the law and non-discrimination, access to justice and fair trial.

Legality is a principle ensuring that any action taken by the state is authorized by legislation. Laws should be publicized, intelligible, and applied equally. As an example, under legality, retrospective laws are forbidden, as is any kind of arbitrary judgment from the state. Ukraine may place additional emphasis on using simpler legal language and on increased transparency regarding the legislative process. Legal certainty means predictability of the application of the law so that individuals are aware of what legal consequences their actions will have. This principle is crucial for a favorable business climate and foreign investments. Ukrainian reforms should focus on less vagueness in the laws and consistency in judicial decisions over time. Mechanisms for preventing the abuse of power are crucial, as they ensure the system of checks and balances among all branches of government, independent oversight bodies and accountability. Regarding Ukraine, this benchmark should be met by



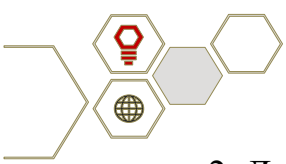
strengthening institutions like the National Anti-Corruption Bureau and ensuring their independence. Equality before the Law and Non-Discrimination is responsible for that nobody stands above the law, irrespective of their rank or position, and discrimination should be void of both law and practice. And access to Justice and Fair Trial would involve making sure that everyone has equal opportunities to seek justice and be heard in a fair manner. Ukraine may wish to address issues such as improving access to legal aid, reducing court backlogs, and ensuring judges are impartial and not subject to external pressures.

In our opinion, being aware of such requirements is particularly important and useful these days.

Conclusions. To sum up, the issue of the rule of law remains one of the most significant and debated principles of governance, the importance of which should not be overlooked. In our article, we tried to show how the notion of the rule of law has been evolving and changing since we believe that understanding its historical roots, national contexts, and contemporary problems is crucial in today's rapidly changing world. The rule of law ought to be an integral part of any country's government, as it ensures the stable development of society and the legal system. In the process of evolution of the state and law, this principle acquires even greater significance, as it becomes the basis for ensuring justice, legality and protection of citizens' rights. The rule of law is especially relevant in administrative law, where it serves as a guarantor of transparency, efficiency and accountability of public administration, strengthening trust in state institutions.

Список використаних джерел

1. Венеційська комісія. Доповідь про правовладдя, ухвалена Венеційською комісією на 86-му пленарному засіданні (Венеція, 25–26 березня 2011 року) // CDL-AD(2011)003rev2.- [Електронний ресурс].- Режим доступу: [https://www.venice.coe.int/webforms/documents/default.aspx?pdf=CDL-AD\(2011\)003rev2-ukr](https://www.venice.coe.int/webforms/documents/default.aspx?pdf=CDL-AD(2011)003rev2-ukr) [дата звернення: 21.02.2022].



2. Дайсі, А. Вступ до вчення про право Конституції. Анатомія лібералізму. Політико-правничі вчення та верховенство права. - [Місто видання]: [Видавництво], 2008. - 678 с.
3. Burnay, M. The rule of law: origins, prospects and challenges // Chinese Perspectives on the International Rule of Law. - Cheltenham: Edward Elgar Publishing, 2018. - P. 1-24.
4. Annas, J. Virtue and law in Plato and beyond. - Oxford: Oxford University Press, 2017. - 280 p. - DOI: 10.1093/oso/9780198755746.001.0001.
5. Pogrebnyak, S. S. Історичні витoki верховенства права // Вісник Харківського національного університету імені В. Н. Каразіна. - 2008. - № 7. - С. 15-23.
6. Krygier, M. Rule of Law and Rechtsstaat // International Encyclopedia of Social and Behavioral Sciences. - 2015. - Vol. 20. - P. 780-787. - DOI: 10.1007/978-3-319-05585-5_4.
7. Кант І. Критика практичного розуму [текст] / І. Кант ; [пер. з нім., примітки, післямова І. Бурковський]. - К. : Юніверс, 2004. - 239 с. - (Філософська думка).
8. Rosenfeld, M. The Rule of Law and Legitimacy of Constitutional Democracy // Southern California Law Review. - 2001. - Vol. 74. - P. 1307-1352.
9. Bedner, A. An Elementary Approach to the Rule of Law // Hague Journal of the Rule of Law. - 2010. - № 2(01). - P. 48-74.
10. Шевчук, С. Доктрина верховенства права та конституціоналізму: історична генеза співвідношення // Право України. - 2010. - № 3. - С. 45-61.
11. Конституційне право України: підручник / Т. М. Слінько та ін.; за ред. Т. М. Слінько. - Харків: Право, 2020. - 592 с.
12. Козюбра М. Принцип верховенства права і конституційна юрисдикція / М. Козюбра // Вісник Конституційного Суду України. - 2000. - № 4. - С. 24-32.
13. Waldron J. Is the Rule of Law an Essentially Contested Concept (in Florida) / J. Waldron // Law and Philosophy. - 2002. - Vol. 21. - P. 137.



14. Гуцова О.С. Принцип верховенства права в адміністративному праві України / О.С. Гуцова // Юридичний науковий електронний журнал. - 2020. - № 7. - С. 258-260. - Режим доступу: http://www.lsej.org.ua/7_2020.

15. Гусев В. І. Кант: філософське обґрунтування ідеї миру / В. І. Гусев // 2000.- С. 8–16. - Режим доступу: <https://ekmair.ukma.edu.ua/server/api/core/bitstreams/8d297d4b-17f2-4023-ba44-a037e53d6eab/content>.