



Research Article

RULE OF LAW AS A MAIN TOOL OF ENSURING HUMAN RIGHTS: THE EXAMPLE OF UZBEKISTAN

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ABSTRACT

The article discusses the principle of rule of law, scientific approaches towards it, theory and international norms on rule of law. It focuses on guaranteeing human rights through implementation of rule of law principle. Special attention is given to the practice of Uzbekistan, its reforms in human rights sphere in recent years, national mechanisms in providing human rights and implementing rule of law in the country. A number of national laws were analyzed in terms of legal establishment of the rule of law principle, initiatives and the position of the country in international arena was reviewed. It attempts to make several proposals to address a number of problematic issues on this matter.

KEYWORDS

Rule of law, rule by law, human rights, ranking, legislation, law enforcement, judicial reforms, enhanced access to justice.

INTRODUCTION

The rule of law is a uniquely abstract idea based on philosophical and ethical concepts. One of its main tenants is that all people, whether at the lowest level of citizenship, whether at the highest, sovereign or government ruler, are all equal before the law. This means that no one is above the law and everyone should be equally treated under the same laws everywhere since they have the same rights, regardless of one's position in society or the local community.

While the concept of "rule of law" is being introduced in legal systems of many countries around the world, the importance of this natural law concept is gaining more attention by authorities. Until recently, most part of government officials, including legal expertise were confused "rule of law" concept with "supremacy of the law", i.e. they had no idea on distinction between them.

"Supremacy of the law" means rule of legal acts, i.e. written norms whereas rule of law refers to rule of fundamental rights of human being¹. Sometimes, "supremacy of the law" is interchanged with "Rule by Law", a concept that finds the governing authority to be somehow above the law, and has the power to create and execute law convenient for them which has effect on larger freedoms of people. To put in brief, rule by law is a method that authorities use their rule-making right to shape the behavior of people, it usually has the end goal of psychologically or forcefully persuading people to agree with policy decisions.

Now it is irrefutable that the concept of "The rule of law" embraces human rights principles. As it is stated in the preamble of the Universal Declaration of Human Rights (1948) that the best way to protect human rights is through the rule of law, even though this concept does not have anything to say about what laws contain but it requires that laws and legal processes are accessible, clear, able to be followed, and fair so that all people are equal before the law. To date, however, the relationship between rule of law and human rights is not covered fully in scientific works and was paid relatively little attention to. Neither the International Covenant on Civil and Political Rights, nor International Covenant on Economic, Social and Cultural Rights, the other two main pillars of the "international bill of rights," mentions rule of law. Nor do most other early rights treaties, general assembly statements or committee reports or comments appeal to rule of law, references to rule of law now regularly appear in general assembly resolutions, committee reports, regional workshop platforms and other human rights instruments though.²

Despite limited empirical evidence which supports the assertion that rule of law leads to more rights and wellbeing, "Rule of law" is associated with key determinants in rights performance such as economic development, good governance, democracy and political stability. This already means that rule of law is one of the prerequisites for better performance of human rights measures and other indicators of wellbeing, promoting human rights entails promoting rule of law as well. As Sergio Vieira de Mello, U.N.

¹ GAFUROVA N., ALMOSOVA SH. PRACTICAL ASPECTS OF THE CONCEPT OF THE RULE OF LAW // Юрист ахборотномаси – Вестник юриста – Lawyer herald. № 6 (2021) P. 84-91.

² Peerenboom, Randall. (2005). Human Rights and Rule of Law: What's the Relationship?. Georgetown Journal of International Law. p-36.



Human Rights Commissioner suggested, rule of law will be a “touchstone for us in spreading the culture of human rights”³.

MAIN PART

The rule of law is a system in which the separation of the legislative, executive and judicial branches of government guarantees the freedom of each and every one of us. Citizens must be able to enforce their rights where necessary, and access to an independent and competent court is crucial in this respect. It must not be possible to dismiss judges if they hand down a ruling which displeases the executive.⁴

Gafurova N.E. asserts that one of the main contradictions in modern social development lies precisely in the fact that, having de jure proclaimed a legal state, but de facto refusing to abide by law, the state develops along a vector leading to its collapse⁵. She suggests that the concept of the rule of law implies that rules should be published, stable and predictable in their application. An important requirement is the accessibility of the justice system and its independence from the executive and legislative branches of government.

It is widely accepted that rule of law has close relationship with democracy and good governance. However, according to Randall Peerenboom, rule of law and liberal democracy do not need to go hand in

hand. He states: “Rule of law is possible in non-democratic states, and in democratic but non-liberal states. As rule of law is a matter of degree, rather than a dichotomous variable, significant legal reforms that enhance rule of law are possible in non-democratic states.”⁶ Geert Corstens claims that there was no secret behind American or Western democracy and firmly believes that “following the law is a matter of custom, of habit, of widely shared understandings as to how those in government and members of the public should [...] act when faced with a court decision they strongly dislike.”⁷ Thus, a discussion of different approaches to defining the conditions for rule of law enables us to take the view that to build a state governed by the rule of law, where the law is more than words on paper, the actions of the government are truly related to the rule of law and citizens have the opportunity to effectively exercise the rule of law in courts requires time, integrity and an unceasing commitment.

When it comes to Uzbekistan, since it was one of the post-Soviet states, where rule of law was not familiar to governments, where rule by law was dominated in decision-making process which was expressed as “supremacy of law” and it was established in every normative act as a main principle, the concept of “rule of law” is a new phenomenon of last decade to its legal conceptual frame. If have a look at short history of this ever-increasing tendency in implementation of this concept into legal system of Uzbekistan, or the

³ Peerenboom, Randall. (2005). Human Rights and Rule of Law: What's the Relationship?. Georgetown Journal of International Law. p-4.

⁴ Аллаберганова Н., Камалова Д. Процессуальные гарантии адвоката //Общество и инновации. – 2021. – Т. 2. – №. 4/5. – С. 63-68.

⁵ Гафурова Н. ВЕРХОВЕНСТВО ПРАВА КАК УНИВЕРСАЛЬНЫЙ ПРИНЦИП ОБЕСПЕЧЕНИЯ ПРАВ

ЧЕЛОВЕКА //Review of law sciences. – 2020. – Т. 2. – №. Спецвыпуск.

⁶ Peerenboom, Randall. (2005). Human Rights and Rule of Law: What's the Relationship?. Georgetown Journal of International Law. 36. p-6.

⁷ Geert Corstens. Human Rights and the Rule of Law. CJC DL 2014/03. P-10. https://cadmus.eui.eu/bitstream/handle/1814/32732/CJC_DL_%202014_03.pdf?sequence=1&isAllowed=y



countries of Central Asian region in a big picture, the attitude towards the role of law as an arm of politics in governing authorities was and is being a main obstacle to fully realize “rule of law” concept as a value of a perfect society and a determining indicator of legitimacy. It is clearly seen that inherited legal system in which strict adherence to stated law and specified principles of due process have not become a part of the legal cultural concepts in these countries, legal reforms were required to involve some ideological changes as well.

Despite the independence acquired in the beginning of 1990s and proclaimed democracy, domination of positive law theory over natural law theory of jurisprudence (as it was in Soviet Union law that was rooted in pre-revolutionary Russian law and Marxism-Leninism) continued to exist till the time when academic circles and legal professionals gradually started to understand that some rights can freely emerge with just birth and exist without enforcement by the state. It should be noted that, of course, one can not compare the period of validity of the legislation of the Russian Empire and the Soviet Union. It must be agreed that even before 1917, one of the main issues was the status and importance of judicial practice. Moreover, the Soviet period cannot be considered as a time of dominance of identical ideas from 1918 to 1991. In the early period of the formation of Soviet legislation, until the early thirties of the 20th century, the idea of revolutionary legal consciousness was put forward. In the so-called “Decree on the Court” №1 of November 22 (December 5), 1917, paragraph 5 stated that “Local courts decide cases in the name of the Russian Republic and are guided in their decisions and verdicts by the laws of overthrown governments only

in so far as they have not been canceled revolution and do not contradict the revolutionary conscience and revolutionary sense of justice.” In fact, it was an attempt to replace the idea of natural law with the idea of revolutionary legal consciousness, although the absence of clear conceptual boundaries is obvious. This approach undoubtedly led to judicial arbitrariness. The paradox of historical development lies in the fact that after the practice of the 1930s, a specific hard-core Soviet positivism took root in the Soviet system, which attaches great importance to the formal interpretation of the law. Such a situation could not lead to the formation of the idea of a rule of law state and the development of human rights in general. The citizen had only the rights given by the state at its discretion in the law.

This was true of human rights system, there were no background experience and best practice. As the centralization of power in one person or in one party was impossible to be prevented, government was the beneficiary of human rights, accordingly all government officials were servants of the government not individuals whereas Western law claimed the opposite. It is amply illustrated by widespread incidents of punishment by imprisonment for even circulating materials or literature that defame the State and social system.⁸

However, recent years are impressing with high rate of reforms in rule of law implementation and its role in ensuring human rights protection across the country. For instance, Uzbekistan made huge changes in rule of law, thus ensuring and protecting human rights in the country. In 2021 Uzbekistan ranks 85th out of 139 countries in the world according to World Justice

⁸ Алмосова Ш. Защита прав интеллектуальной собственности по Конституции и государственным

программам //Review of law sciences. – 2020. – Т. 2. – №. Спецвыпуск.



Project Rule of Law Index 2021⁹ compared to 2020 rankings, where the country was 14 positions lower. In recent years, Uzbekistan has paid special attention to human rights. To elaborate, in 2018, Uzbekistan held the Asian Human Rights Forum dedicated to the 70th anniversary of the Universal Declaration of Human Rights, bringing together representatives of influential international organizations, international and national experts to discuss issues of protecting human rights and strengthening human potential. Uzbekistan's attention to human rights is reflected in the State Program for the Implementation of the Action Strategy for the Five Priority Areas of Development of the Republic of Uzbekistan for 2017-2021, adopted by the initiative of the President of the Republic of Uzbekistan¹⁰. Uzbekistan has made great efforts in the field of human rights. An example is ensuring freedom of speech and freedom of the media, judicial reform, increased attention to the rights of women, children and youth, the complete abolition of forced and child labor, the closure of the Jaslyk colony¹¹, and ensuring gender equality. Promotion and protection of human rights is one of the key priorities of the state policy in Uzbekistan.

In a short period of time, the international prestige of Uzbekistan has risen to a new level, and its cooperation with other countries has expanded. In particular, on September 19, 2017, President Shavkat Mirziyoyev

proposed from the tribune of the 72nd session of the UN General Assembly to adopt the UN International Convention on the Rights of Youth¹². On September 23, 2020, at the 75th session of the UN General Assembly, the head of state addressed the world community for the first time in his native language, focusing on human rights, gender equality, youth rights, pandemic issues, climate change and poverty, and once again proved that Uzbekistan is focusing on the current world problems.

Another important step towards radical reforms in the field of human rights was the Decree of the President of the Republic of Uzbekistan No. UP-6012 “On Approval of the National Strategy of the Republic of Uzbekistan on Human Rights” dated June 22, 2020¹³. The purpose of the National Strategy for Human Rights is to determine the main tasks and directions for the implementation of state policy to ensure human rights and freedoms in Uzbekistan. The key event for the country was the accession of the Republic of Uzbekistan to the UN Human Rights Council (HRC) in October 2020. The election of Uzbekistan as a member of the HRC is proof that the world community is fully aware of the large-scale reforms in this area as a result of the growing attention to human rights in the country.

⁹ World Justice Project Rule of Law Index. <https://worldjusticeproject.org/rule-of-law-index/country/Uzbekistan> (Date accessed January 16, 2022)

¹⁰ Шерханова У. НЕКОТОРЫЕ ПРОБЛЕМЫ ИМПЛЕМЕНТАЦИИ МЕЖДУНАРОДНО-ПРАВОВЫХ НОРМ ПО ОБЕСПЕЧЕНИЮ ПРАВ ЖЕНЩИН В НАЦИОНАЛЬНОЕ ЗАКОНОДАТЕЛЬСТВО //Review of law sciences. – 2020. – Т. 1. – №. Спецвыпуск.

¹¹ A prison for religious and political prisoners, as well as for those accused of anti-constitutional activities. The climate in this area is very harsh, with extreme cold in winter and hot

summer. After the construction of the prison, the railway was built, it is impossible to reach by any other means, and the area is covered with hundreds of kilometers of desert.

¹² Speech of President Shavkat Mirziyoyev at the 46th session of the UN Human Rights Council. 22.02.2021 <https://president.uz/oz/lists/view/4179> (Date accessed January 14, 2022)

¹³ Decree of the President of the Republic of Uzbekistan No. UP-6012 “On Approval of the National Strategy of the Republic of Uzbekistan on Human Rights.” 22.06.2020. <https://lex.uz/docs/4872357>



Since the area of Rule of Law includes strengthening legislation to respect human rights on a national level, Uzbekistan shows significant changes in providing better life and ending violence. In recent years, in accordance with the purposes and principles of the Universal Declaration of Human Rights, a number of legal acts for the protection of human rights have been adopted. Decree of the President of the Republic of Uzbekistan dated April 22, 2019 No. PP-4296 “On additional measures to further strengthen the guarantees of the rights of the child” introduced the position of the Commissioner for the Rights of the Child (Ombudsman)¹⁴. This, in turn, guaranteed ending child labor, which was practiced in the country for more than 25 years. On February 22, 2021, the President of the Republic of Uzbekistan Shavkat Mirziyoyev made a speech at the 46th session of the UN Human Rights Council. The President stated that, along with the issues of ensuring gender equality, the rights of youth and the development of education, Uzbekistan pays attention to ensuring the rights of persons with disabilities¹⁵. In particular, the president said that the Parliament of Uzbekistan would soon ratify the Convention on the Rights of Persons with Disabilities and proposed the creation of a Regional Council for people with disabilities in order to fully realize their potential. Accordingly, on June 7, 2021 Uzbekistan ratified and became a party to this Convention. This proves that the issue of ensuring the rights of people with special needs is extremely important for Uzbekistan, which is also one of the goals in the United

Nations Sustainable Development Goals - goal number 10 "Reducing inequality".

Ensuring gender equality and empowering all women and girls is the fifth goal in the SDGs. It is worth noting that Uzbekistan has paid special attention to gender equality in the country in recent years. In particular, the Laws of the Republic of Uzbekistan dated September 2, 2019 “On the protection of women from harassment and violence”¹⁶ and “On guarantees of equal rights and opportunities for women and men”¹⁷. For the first time in the national legislation of the country, the Law of the Republic of Uzbekistan “On Guarantees of Equal Rights and Opportunities for Women and Men” introduced the definitions of “direct discrimination on the basis of sex” and “indirect discrimination on the basis of sex”. Article 3 of the Law defines the concept of "gender", according to which gender is a social aspect of the relationship between women and men in all spheres of life and activity, including politics, economics, law, ideology and culture, education and science. It should be noted that when the word "gender" is used in social relations, it is often seen as synonymous with the word "women". The word gender refers to both sexes and applies equally to both men and women. Equality between men and women is one of the main factors in the development of democracy. The law also emphasizes the equality of women and men in family relations, strengthens the principles of voluntary marriage of men and women, the equality of personal and property rights and duties

¹⁴ Decree of the President of the Republic of Uzbekistan No. PP-4296 “On additional measures to further strengthen the guarantees of the rights of the child” dated April 22, 2019 <https://lex.uz/docs/4302031>

¹⁵ Speech of President Shavkat Mirziyoyev at the 46th session of the UN Human Rights Council. 22.02.2021 <https://president.uz/oz/lists/view/4179> (Date accessed January 14, 2022)

¹⁶ Law of the Republic of Uzbekistan No. ZRU-561 "On the protection of women from harassment and violence" dated September 2, 2019. <https://lex.uz/docs/4494712>

¹⁷ Law of the Republic of Uzbekistan No. ZRU-562 “On Guarantees of Equal Rights and Opportunities for Women and Men” dated September 2, 2019. <https://lex.uz/docs/4494873>



of husband and wife, the equality of responsibilities of women and men in the field of domestic work, child care, and strengthens the principle of non-compulsory marriage, and also prevent early marriage. In addition, in 2021, a Dialogue of Women Leaders of the Central Asian Countries and a Regional Women's Business Forum were held.

The words of the law, the words enshrining human rights in the law, acquire practical meaning and become legally enforceable only if there is a proper government structure, including an independent judiciary, to ensure the rule of law. Uzbekistan launched several projects with international organizations and other foreign partners. For instance, the USAID-funded Rule of Law Partnership Project focuses on improving judicial system in the country, mainly aiming to transform courts to the body, which ensures and protects citizen's main rights¹⁸. Launched E-SUD project helped citizens of Uzbekistan, especially to those who live in remote areas, to access courts easily with the help of websites and other online platforms. Moreover, with the help of the project citizens are able to approach Tashkent State University of Law's Legal Clinic for free legal service.

Final yet important aspect of existing judiciary system, the exchange of information with ministries and agencies in the course of court proceedings is carried out mainly in paper form. The existence of such a procedure in itself requires more time for a final decision on the case, preventing the courts from resolving disputes more quickly and causing an

increase in the volume of cases pending before the court. As a result of future digitization of the courts, the range of interactive e-services provided to citizens and entrepreneurs will be expanded, online monitoring of each appeal process will be provided, free access to interactive services will be introduced in courtrooms, as well as openness and transparency of the judiciary special information programs will be introduced, the decision provides for the expansion of the range of interactive services provided by the courts to citizens and entrepreneurs.¹⁹

It is worth noting that in 2020 Uzbekistan adopted the law "On Citizenship of the Republic of Uzbekistan" in new version. This provided stateless persons to get a citizenship of Uzbekistan and fully enjoy their political rights. As a result, more than 50 thousand people residing were provided citizenship of Uzbekistan.²⁰

In addition to all above-mentioned, national mechanism on rule of law in the country has taken another important step in 2021. With the Decree of the President of the Republic of Uzbekistan the government introduced Rule of Law Index of the Regions. In this case, the Rule of Law Index of the Regions is determined on the basis of statistical indicators and the results of public opinion polls in the following areas:

- Compliance with the legislation;
- Ensuring the rights and freedoms of citizens;
- Justice and enforcement of court decisions;
- Law enforcement and security;

¹⁸ Rule of Law Partnership in Uzbekistan. <https://www.usaid.gov/uzbekistan/fact-sheets/rule-law-partnership-uzbekistan> (Date accessed January 15, 2022)

¹⁹ Qodiraliyev S. PECULIARITIES OF THE INTRODUCTION OF MODERN INFORMATION AND COMMUNICATION

TECHNOLOGIES IN THE COURTS //Conference Zone. – 2021. – C. 44-48.

²⁰ Judicial and Legal Reform in Uzbekistan: 10 Important Steps in 2020. <https://www.un.int/uzbekistan/news/judicial-and-legal-reform-uzbekistan-10-important-steps-2020> (Date accessed January 16, 2022)

- Effective control over the activities of local executive bodies;
- Effectiveness of anti-corruption measures;
- Transparency of government institutions²¹.

In spite of the reforms made and various legal acts adopted in human rights protection system and in increasing the role of “rule of law” principle in all spheres of governing activity, there are also some problematic issues, which are waiting to be dealt with. Firstly, the introduction of human rights principles and the supremacy of “rule of law” principle in ensuring them into legislation does not solely mean that the state is “human rights friendly”, as the system of human rights protection is preferably evaluated by their enforcement in practice. Thus, the authors of this article take the position that, enforcement system should not be neglected when reforms are directed to.

Furthermore, activities of the governmental bodies which work on the above-mentioned areas indicated in the government introduced Rule of Law Index of the Regions are not transparent and open. Statistical data on Rule of Law Index in the country is not provided in an open access to citizens. Since the statistics gathering process and public surveys do not fully cover whole population, and target groups remain narrow, there is a doubt in objectiveness of this statistical data. This may open a door to suspects that government officials still tend to make falsifications in providing reports to international organizations. This may lead to create artificial image of the country in international arena. In turn, the proposal would be to provide an

open access to criteria of conducting public surveys within the projects on rule of law sub-factors.

Moreover, even though Uzbekistan made huge changes in 2021, ranking in 85th position out of 139 countries in the world in WJP Rule of Law Index, the country’s position in the Easter Europe and Central Asian region is relatively lower, indicating 10th place out of 14²². When it comes to Central Asian states, Uzbekistan steps aside for Kazakhstan. Along with developed states’ practice of implementation of rule of law principle and its role in ensuring human rights, it is suggested Uzbekistan analyze the practice of neighboring countries as well.

CONCLUSION

All human beings have the right to be treated with dignity and respect. The key to ensuring that people are treated with dignity and respect is the full enjoyment of human rights, and their protection is the rule of human rights. The rule of human rights can be reached by provision of rule of law principle, it means that they are interrelated and without of its absence the other’s existence is impossible.

As for Uzbekistan’s practice of rule of law principle in guaranteeing human rights, mentioning the importance of responsibility for the rule of law and human rights violations is essential to prevent crime, conflict and violence, to build and maintain peace, and to achieve inclusive development, the legal establishment of norms referring to protect human rights and to set up rule of law principle in activities of governing bodies is not enough. The harm of

²¹ Decree of the President of the Republic of Uzbekistan No PQ4951 “On Measures to Introduce an Effective Mechanism to Determine the Rule of Law Enforcement in the Republic of Uzbekistan. 14.01.2021. <https://lex.uz/docs/-5220631>

²² World Justice Project Rule of Law Index. <https://worldjusticeproject.org/rule-of-law-index/country/Uzbekistan> (Date accessed January 16, 2022)



lawlessness is evident all over the world: impunity for injustice and crime, conflicts for neglected complaints, and oppressive, unaccountable governance. We have a system of governance in which all responsible persons, institutions and organizations, public or private, are accountable to the public for public procurement, equal enforcement, independent decision-making and compliance with international human rights norms and standards.

Uzbekistan is making significant efforts to meet these standards. While much has been done to ensure the fairness of economic, social and cultural rights, there are some matters remaining unsolved. There are persistent gaps in access to justice, especially for those who have been discriminated against. Many government decision-making processes remain vague and non-participatory, hampering people's ability to demand and hold accountable. Much remains to be done to ensure that economic, social and cultural rights are legally claimed and resolved. Corruption is a major threat to the entire society, including the judiciary and law enforcement.

All points mentioned make clear that Uzbekistan is in transitional period to really democratic state where human rights are a chief principle of state policy and rule of law is a value in legal culture.

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