Rule of Law and Human Rights: Analysis of International Standards and Case Law

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Abstract

The EU's human rights policies and actions have two main components: protecting the fundamental rights of EU citizens and promoting human rights around the world. One of the aspects that the UN focuses on is the relationship between democracy and human rights, as the organisation upholds the importance of equal political participation of citizens of its states and full respect for human rights, including the recognition, protection and promotion. As defined by the United Nations International Children's Emergency Fund (UNICEF), human rights are norms that recognise and protect the dignity of all people, meaning they apply to everyone, without distinction of race, gender, education, political opinion, sexual orientation or any other type of moral judgement. The realisation of human rights also obliges states to be responsible for protecting these norms and prohibits certain acts that violate them. Human rights can be said to be one of the greatest achievements of mankind. One of the most important human rights documents is the Universal Declaration of Human Rights, signed in 1948 at the UN General Assembly. Consisting of 30 articles, the Declaration formalises all the theoretical developments made earlier on civil, political, social, economic and cultural rights. Another innovation of the Declaration was the inclusion of human rights in the universal character, becoming the rights of all peoples. Thus, for the UN, human rights "are universal legal guarantees that protect individuals and groups from acts and omissions by governments that violate human dignity"[3]. Human rights are fundamental and therefore inalienable human rights, i.e. those rights whose violation would lead to an attack on the very essence of humanity. For this reason, it is important that everyone is aware of and knows about human rights, their content and the forms of protection provided for them, as everyone should be able to enjoy their fundamental rights for the sole purpose of living in peace, without distinction. Human rights, democracy and the rule of law create an environment in which countries can promote development, protect people from discrimination and ensure equal access to justice for all.

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1. Theoretical issues of studying the legal nature of the rule of law and human rights

Rosalyn Higgins, former President of the International Court of Justice, is of the opinion that the term "rule of law" does not exist in international law as such, so it is necessary to first study what this term means for a "domestic" lawyer. She, for her part, believes that the three main principles that should be taken into account are those defined by Albert Venn Dicey in his work Introduction to the Study of Constitutional Law (1885): 1) absolute supremacy or the rule of law as opposed to the influence of arbitrary power; 2) equality before the law, or the equal subordination of all classes to the law as administered by ordinary courts; and 3) constitutional law, the latter

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[3] Benevides, Maira Vitoria. *Democracia e direitos humanos – reflexões para os jovens.* Revista Democracia e Direitos Humanos, 2014, https://www.cchla.ufpb.br/redhbrasil/wp-content/uploads/2014/04/DEMOCRACIA-E-DIREITOS-HUMANOS.pdf.

being the result of the rights of individuals as defined and enforced by the courts[4].

Thus, in its external relations, the European Union seeks to support democracy and human rights in accordance with the fundamental principles of freedom, democracy and respect for human rights and fundamental freedoms, as well as the rule of law. The EU is committed to mainstreaming human rights into all its policies and programmes, and has various human rights policy instruments for targeted action.

According to Geranna Lautenbach: "The rule of law should have two main functions. On the one hand, it should function as a legal check on the government... The second function of the rule of law is to coordinate social interaction; the rule of law facilitates the contract between citizens and rules"[5].

The first approach to the concept of the rule of law, which avoids a discussion of its substantive content, is to propose a functional definition that allows for a lowest common denominator. Thus, the rule of law can be understood as a norm that binds both rulers and ruled. For this purpose, the standard must take a certain form, it must be public, forward-looking, generally consistent, stable and clear.

The function of the rule of law is its ability to impose limits on power. Basically, this means that state authorities must comply with the law, but also that there are limits to what they can do through legal process[6].

One of the challenges faced by the international community in building the rule of law is the dilemma that often arises in the actions of states where decisions taken oscillate between legitimacy and legality.

The rule of law refers to the principle of governance according to which all persons, institutions and organisations, public and private, including the state itself, are accountable to laws that are publicly promulgated, uniformly enforced and independently adjudicated, and that are in accordance with the norms and standards of international human rights law. It also requires measures to ensure that it adheres to the principles of the rule of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, elimination of arbitrariness, procedural and legal transparency[7].

Article 2 of the Treaty on European Union (TEU): EU values. The fundamental values of the Union are "human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities". In its external relations, the European Union seeks to support democracy and human rights in accordance with the fundamental principles of freedom, democracy and respect for human rights and fundamental freedoms, as well as the rule of law. The EU seeks to mainstream a human rights perspective in all its policies and programmes, and has various human rights policy instruments for targeted action, including funding specific projects through its funding instruments.

Legal certainty as a component of the rule of law (rule of law) means first of all the requirement of clarity of the grounds, purposes and content of regulations, especially those that are addressed directly to man. A person must be able to foresee the legal consequences of their behavior. Experience shows that the absolute certainty of such consequences is unattainable due to a number of circumstances - the peculiarities of language, which formulates the rules of law, their generality, the inability to predict in them all the real situations and so on. The law, which seeks to regulate people's actions and determine the consequences of such actions through excessive rigidity of wording, is rapidly becoming “fossilized”, that is, obsolete. The law must be able to keep up with

[4] Higgins, Rosalyn, *The Rule of Law: Some Sceptical Thoughts*, „Themes & Theories”, Nueva York, Oxford University Press, 2009, vol. 2, p. 1330.

[5] Lautenbach, Geranne, *The Rule of Law in an International World: Looking for the Right Questions*, High Level Expert Panel Report, La Haya, Hague Institute for the International Law, 2005, p. 75.

[6] Tamanaha, Brian, *A Concise Guide to the Rule of Law*, Florence Workshop on the Rule of Law, Neil Walker, Gianluigi Palombella, eds., Hart Publishing Company, 2007, p. 15.

[7] The Rule of Law and Transitional Justice in Conflict and Post–conflict Societies (Report of the Secretary General), UN Doc. S/2004/616, 3 de agosto de 2004, para. 6.

changing circumstances[8].

José Afonso da Silva is working on the concept of legal certainty, linking it to the concept of the security of the law itself, a legal value that requires the positivity of the law, while legal certainty is already a guarantee. which is the result of this positive[9]. This is how positive constitutional law, translated into the Constitution, defines the contours of the legal security of citizenship.

The EU's country strategies for human rights and democracy follow a bottom-up approach, aiming to integrate the EU's human rights guidelines and priorities into a single, coherent policy document. They are tailored to each country and set targets for a period of three years.

The EU regularly includes human rights issues in its political dialogue with third countries or regional organisations. It also holds human rights dialogues and consultations with around 60 countries.

M.-J. Redor wrote that if we try to determine the content and scope of numerous texts and declarations that tend to promote the rule of law, we will see that it is not only about the subordination of the state as a specific legal entity to the law. The rule of law in this sense is achieved when its bodies are subject to judicial control mechanisms, which are essentially the responsibility of the administrative judge and the constitutional judge. In this regard, the introduction of the review of the constitutionality of laws transforms a state governed by the rule of law into a state governed by the rule of law[10].

This restrictive conception persists mainly in some constitutional law studies, although the rule of law is often synonymous with democracy, which is not necessarily the case. Other dimensions of the concept have also been fully absorbed by a vision of the rule of law that demonstrates its requirements for all social relations: "A society knows that the rule of law exists when the relations between its members are organised in accordance with rules that define the rights of each individual and provide the necessary guarantees for the observance of those rights[11]. This is probably the definition that best reflects the contemporary meaning of the concept, except that it is enriched by a dimension - ensuring respect for rights - that is generally absent from the concerns of those who call for the deepening and broadening of the rule of law.

Friedrich A. Hayek aptly noted: "As soon as a person clearly formulates principles, he begins to think about their validity and accuracy"[12].

From an institutional point of view, the only real characteristic of the rule of law that is essential for its implementation is the existence of bodies empowered to make rules, disseminate them and monitor their validity. Thus, the rule of law does not require any significant change in the legal order in Western societies. The tools are there. Only a few special adjustments are recommended to make the system more productive. New institutions are created, regulations are issued, judicial control is strengthened: nothing that would call into question the very structure of the legal order[13]. The rule of law, on the other hand, places much greater demands on the legal order, which must be absolutely rational. This is one of its fundamental dimensions, as the validity of each rule provides it with its legitimacy. Thus, the rule of law is based on a strictly hierarchical legal order, with which it is ultimately confused, so sacred is the rule of law.

According to A.M. Kolodiy, the principle of the "rule of law" exists outside of legal acts in the form of justice, equality, and freedom existing in society. That is, the principle of the "rule of law" is in the legal consciousness and is generally understood and is considered to be used for self-

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[8] Oksana Shcherbanyuk, Vitalii Gordieiev, Laura Bzova. *Legal nature of the principle of legal certainty as a component element of the rule of law*. „Juridical Tribune - Tribuna Juridica". Volume 13, Issue 1, March 2023. p. 21-31.

[9] Cármen Lúcia Antunes Rocha. *Constituição e Segurança Jurídica: Estudos em homenagem a José Paulo Sepúlveda Pertence.* Belo Horizonte: Fórum, 2004. p. 17.

[10] M-J. Redor, *De l'État légal à l'État de droit*, Economica, PUAM, 1992.

[11] B. Stirn, *Les sources constitutionnelles du droit administratif*, LGDJ, 1995, 2° éd., p. 13.

[12] F. Hayek, *Droit, législation et liberté*, PUF, 1980, vol. 1, p. 77.

[13] B. Luisin, *Le mythe de l'Etat de Droit », paru dans Les Mélanges en l'honneur de François Borella*, édité par les Presses Universitaires de Nancy, 2e trimestre 1999.

regulation of social relations[14]. According to P.M. Rabinovich, the principle of the "rule of law" should not be equated with the principle of the "rule of law", because the rule of law means the rule of legal law, but not that all laws are legal. The scholar also notes that the principle of the "rule of law" must comply with the law, and this is the main indicator of the rule of law[15].

For a better understanding of the legal nature and essence of international human rights standards, the adoption in 1966 of the UN General Assembly Resolution "Establishment of International Human Rights Standards" played an extremely important role, setting out the guiding principles to be taken into account when developing international documents in this area, in particular, they should: "a) be consistent with the existing body of international human rights law; b) be fundamental in nature and based on the inherent dignity and worth of the human person; c) be sufficiently clear to serve as a source of identifiable and enforceable rights and obligations; d) provide, where appropriate, for a realistic and effective implementation mechanism, including reporting systems; e) enjoy full international support"[16].

The EU promotes human rights through its participation in multilateral bodies such as the Third Committee of the UN General Assembly, the UN Human Rights Council, the Organisation for Security and Cooperation in Europe (OSCE) and the Council of Europe. The EU also actively promotes international justice, for example through the International Criminal Court.

In light of the growing evidence and awareness of human rights abuses occurring in global value chains, the Commission presented a proposal for a directive on corporate sustainability due diligence in February 2022. The directive would impose a legal obligation on companies to identify and, where appropriate, prevent, address or mitigate adverse human rights and environmental impacts of their operations. In June 2023, the Parliament adopted amendments to the Commission's proposal in plenary, while inter-institutional negotiations are still ongoing.

Every year, the Third Committee considers about 70 proposals for human rights resolutions, which, after discussion and approval, are submitted to the General Assembly for final adoption. Italy actively participates in the negotiations in the Third Committee and plays a recognised leading role in numerous campaigns (including in support of a general moratorium on the death penalty and against female genital mutilation).

All human rights instruments contain guarantees of non-discrimination and equality, whether they are UN, Council of Europe, EU or OSCE standards. At the United Nations level, the International Convention on the Elimination of All Forms of Racial Discrimination entered into force in 1969 and is overseen by a body of experts, the Commission on the Elimination of Racial Discrimination.

Respect for human rights is the principle of relations between a person and the state, as well as between individuals, according to which human rights are the highest value, their observance and enforcement is the duty of the state, human rights are inviolable, a person can use his or her rights freely at his or her discretion, but without prejudice to the rights of other people and society, and human rights may be restricted only on the basis of the law.

The term rule of law is multifaceted and multidimensional. This makes it a dynamic concept, and therefore it is very difficult to find a specific definition. This is evidenced by the fact that the Venice Commission was not able to define it in its report on the rule of law adopted at the 86th plenary session on 25-26 March 2011 on the basis of comments by its members Pieter Van Dyck (Netherlands), Gretth Haller (Switzerland), Geoffrey Jowell (United Kingdom), Kaarlo Tuori (Finland). The report is based mainly on the analysis of approaches to understanding the rule of law in international legal documents, constitutions and legislation of a number of countries, as well as in the scientific literature. It is noteworthy that Section IV of the Report, which is devoted to the analysis of certain scientific sources, is titled "In Search of a Definition". In the report itself, the

[14] Kolodiy A.M., *Principles of Law: Genesis, Concept, Classification and Implementation*. „Almanac of Law". 2012. Issue 3, p. 42-46

[15] Rabinovych P.M., *Fundamentals of the general theory of law and state: a textbook*. Lviv: Kray, 2007. pp. 341-342.

[16] UN General Assembly Resolution 41/120 of 4 December 1966 URL: http://daccessdds-ny.un.org/doc/RESOLUTION/GEN/NR0/496/28/IMG/NR049628.pdf?OpenElement.

authors did not propose any comprehensive definition, although the conclusions contained therein undoubtedly contribute to a deeper understanding of the rule of law[17].

The principle of the rule of law implies not only the recognition of of fundamental human rights, but also the obligation of the state to respect and by the state. This requirement of the rule of law principle is enshrined in Art. to part 2 of which human rights and freedoms and their guarantees determine the content and their guarantees determine the content and direction of the state's activities, and their establishment and the main duty of the state. It follows that the activities of both of the state as a whole and its bodies, including the legislature, must have a legal character. This provision in its positive form actually formulates another essential requirement of the rule of law - the requirement of legal of law - the requirement of the rule of law. After all, the legal nature of the of the legislature means that the content and direction of of lawmaking should be determined by human rights and freedoms[18].

Lord Bingham does not consider the rule of law as an abstract construct, the requirements of which, as some domestic scholars believe, cannot be used as a basis for court decisions, but rather considers it as an existing constitutional principle, the application of which is mandatory for judges when making court decisions, and, as a sitting judge, demonstrates its practical application by the court using specific examples.

In this regard, the concept of the rule of law formulated by Lord Bingham during his tenure as the highest judicial office reflects not theoretical but modern practical ideas about the content of this fundamental value and is in fact the understanding of this principle by the British judicial system.

In the context of the EU legal system, the rule of law is also generally also generally associated with the principles of democratic governance and respect for human rights and freedoms.

2. International standards of observance of the rule of law and human rights in judicial practice

Countless examples of judicial decisions on human rights-related issues, the very nature of which requires the perception of greater caution and reflection on the lives at stake, we have them on the daily agenda of supreme courts around the world. The topics under consideration are of a diverse nature, and legal expertise should always focus on promoting the highest principles of human value, not only in terms of protecting their basic rights to survive with dignity, but also in favour of their peaceful coexistence.

The diverse, thriving and now universally recognised field of human rights offers many points of reflection and requires constant effort on the part of lawyers, scholars and activists, given the still open challenges that view states as the primary actors in the protection and, at the same time, violation of human rights. In fact, there are many international institutions that promote and protect fundamental rights. However, to date, legally binding documents for states exist only at the regional level, which are then reviewed and/or sanctioned by courts in case of violations[19]. Thus, there is again uncertainty about the existence and effectiveness of international quasi-judicial bodies specifically for the protection of human rights, since, in fact, only at the regional level is there a form of restriction and punishment for states that commit such violations.

In the field of human rights, such complementarity is particularly effective in promoting international justice and multilevel co-operation, reflecting the universal nature of human rights. The quasi-judicial international bodies that complement courts and tribunals, while not producing legally binding decisions for Contracting States, play a fundamental role from a political and social perspective, in addition to the simple doctrinal clarifications that constitute their raison d'être. The case of the UN Human Rights Committee is of particular relevance to the Opinion of 27 January

[17] Rudych F.M., *Political system and institutions of civil society in modern Ukraine: A Study Guide*, Lybid, 2008. 440 p.
[18] Koziubra, M., *The principle of the rule of law and national theory and practice*, Ukrainian Law. - 2006. - № 1 p. 15- 23.
[19] P. Sands, *Treaty, custom and the cross-fertilization of international law*, „Yale Human Rights & Development Law Journal", 1, 85, 1998, p. 85-105.

2021, as it clarifies the responsibility of Contracting States to respect, promote and protect human rights regardless of territorial boundaries, opening up ambitious horizons for international law.

The European Court of Human Rights is the central institution of the European human rights system established by the 1950 European Convention. The main regional supervisory bodies in the Americas are the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. The African Commission on Human and Peoples' Rights is a supervisory body established under the 1981 African Charter. No African treaty provides for the establishment of a human rights court.

Thus, the interplay of rights through their teleological complementarity becomes important in recognising the international standing of individuals, which consolidates the legal personality they have in the domestic sphere, as expressed in Articles 2 and 4 of the Universal Declaration of Human Rights. This capacity is coupled with international oversight of national protection bodies, for example through a system of reports and resolutions adopted at various international summits.

From the content of Article 8 of the Basic Law of Ukraine, the legal positions of the Constitutional Court of Ukraine based on its provisions, as well as international acts that set out the understanding of legal certainty, it is clear that the rule of law requires the legislator to establish clear, understandable, meaningful, predictable legal regulation of social relations to ensure a stable legal status of a person, prevent arbitrary renunciation of obligations assumed by the state, and guarantee adequate protection of legitimate expectations[20].

The Constitutional Court of Ukraine emphasises that the human rights and freedoms guaranteed by the Constitution of Ukraine are not limited to those contained in the text of the Basic Law of Ukraine, as stated in its first part of Article 22: "The rights and freedoms of man and citizen enshrined in this Constitution are not exhaustive". Given the content of the provisions of Article 21 of the Constitution of Ukraine, according to which "all people are free and equal in their dignity and rights", "human rights and freedoms are inalienable and inviolable", the Constitutional Court of Ukraine concluded that human freedom (liberty) is a priori determinative and priority for respect by the state as a whole, state authorities, local self-government bodies, and other subjects[21].

The Constitutional Court of Ukraine is guided by the fact that the constitutional presumption of human freedom necessitates the need to justify any significant restriction of it by the state.

The rule of law is a fundamental principle and the main goal of the rule-of-law state that modern Ukraine is building. Despite different doctrinal approaches to the interpretation of this principle ("elementary", "integral", etc.), it occupies a fundamental place in the constitutional legal framework. The rule of law is one of the main criteria for the constitutionality of laws. Therefore, the state of implementation of the rule of law principle in the legislative activity is of great importance for the legal assessment of the constitutionality of laws[22]. The comprehensive nature of the rule of law principle means that it applies to all areas of state activity, including lawmaking. In this area, the rule of law principle is aimed at adopting legal laws in accordance with a regulated procedure, the content and objectives of which are determined by human rights. This obliges the state to recognise them as attributive properties of the individual, to respect and protect rights and freedoms. The latter are the limits of public authority and its discretion that cannot be overcome by it without risking the loss of its legitimacy.

It is impossible to imagine the rule of law without effective jurisdictional mechanisms for the peaceful settlement of disputes that may arise in the application or interpretation of international law by states... The rule of law will be strengthened by referring disputes between states to different

[20] Decision of the Constitutional Court of Ukraine dated 13 September 2023 No. 7-r(I)/2023 on the case on the constitutional complaint of Kostina Mykola Vasyliovych regarding the compliance with the Constitution of Ukraine (constitutionality) of the provision of paragraph 26 of Section VI "Final and Transitional Provisions" of the Budget Code of Ukraine URL: https://zakon online.com.ua/documents/show/521474758550.

[21] Decision of the Constitutional Court of Ukraine dated 22 June 2022 No. 5-p(II)/2022 on the case on the constitutional complaint of Oleksiy Abramovych regarding the compliance with the Constitution of Ukraine (constitutionality) of paragraph 2 of part two of Article 40 of the Housing Code of Ukraine (regarding discrimination in the exercise of the right to housing).

[22] Tomkina O. O., *Rule of law as a fundamental constitutional principle of legislative activity*. „New Ukrainian Law". 2022. Issue 2. pp. 112-119.

jurisdictions, but even more importantly, by enforcing their decisions. To this end, it is important to promote the recognition of the compulsory jurisdiction of the International Court of Justice, as well as to promote the inclusion of peaceful settlement of disputes provisions in international treaties that refer disputes that may arise out of their application or interpretation to the Court or to another international jurisdiction.

The Constitutional Court of Ukraine, in furtherance of the above legal positions, notes that the principle of the "rule of law" (rule of law) and the requirement to establish and ensure the right of an individual to judicial protection, which is defined as a common law in part one of Article 55 of the Constitution of Ukraine, and in its part two the guaranteed right to appeal to the court against decisions, actions or omissions of public authorities, their officials and employees, implies the obligation of the State, represented by the legislature, to introduce a legal mechanism for the implementation of the right of an individual Such a legal mechanism should ensure the effectiveness of the individual's right to judicial protection, which is manifested in the introduction by law of procedural opportunities for real protection and restoration of violated rights and freedoms, especially in situations where such violation is caused by decisions, actions or inaction of public authorities, their officials and employees[23].

The Constitutional Court of Ukraine notes that according to the provisions of part one of Article 68 of the Basic Law of Ukraine, everyone is obliged to strictly observe the Constitution of Ukraine and the laws of Ukraine, not to infringe on the rights and freedoms, honour and dignity of other people. Failure to comply with these obligations may subject individuals to legal liability on the basis of binding court decisions. Such persons should be responsible for encroachments on the rights and freedoms of others or public order, and compensate for the damage they have caused, but this should not lead to denial of human dignity and violation of the essence of constitutional human rights and freedoms, in particular in the field of social protection[24].

"*Tyrer v. the United Kingdom* (March 1978): In this case, the Court held that corporal punishment inflicted on persons under the age of 18 who had broken the law violated the right not to be subjected to torture and the right not to be subjected to humiliating and degrading treatment or punishment, as guaranteed by Article 3. In the words of the Court itself, "his punishment, insofar as it was regarded as an object at the mercy of the authorities, constituted a violation of one of the main purposes of art. 3, to protect the dignity and physical integrity of individuals". This case is a good example of the raison d'être of the ECHR, where the Court keeps pace with changing social values.

National and supranational courts play a fundamental role in promoting, clarifying and monitoring human rights. It is not enough to enshrine human rights in the Constitutional Charters, the ECHR and the EU Charter; they must be made "alive and vital" through their interpretation and application by the courts.

A review of the interaction between national and European constitutional courts reveals a variety of approaches that can be summarised as follows: a) promotion of supranational law and the jurisprudence of the European courts: in most cases, national constitutional courts play an important role as agents in the promotion and application of European law, understood in a broad sense, especially in the field of fundamental rights. Thanks to the "European" provisions contained in national constitutions, national constitutional courts are also tasked with ensuring compliance with European law, both EU law and the European Convention. They are therefore important actors for the dissemination of European legal culture within their legal system. b. Resistance: A significant

[23] Judgement of 1 March 2023 No. 2-p(II)/2023 on the constitutional complaint of Pleskach Viacheslav Yuriiovych regarding compliance with the Constitution of Ukraine (constitutionality) of the provisions of part one of Article 294, part six of Article 383 of the Code of Administrative Procedure of Ukraine (regarding equality of the parties during judicial control over the execution of a court decision).

[24] Decision of the Constitutional Court of Ukraine dated 22 March 2023 No. 3-p(II)/2023 on the case on the constitutional complaint of Lazurenko Ihor Oleksandrovych regarding the compliance with the Constitution of Ukraine (constitutionality) of the provisions of paragraphs four, five of part two of Article 70 of the Law of Ukraine "On Enforcement Proceedings", paragraphs three, four of part two of Article 50 of the Law of Ukraine "On Compulsory State Pension Insurance" (regarding the guarantee of a pension, which is the main source of subsistence, not lower than the subsistence level).

number of courts still demonstrate a certain distrust of transnational and supranational law and tend to limit to a minimum the number of decisions based on parameters originating from sources other than purely domestic and national.

3. Conclusions

Effective implementation of international human rights norms into national legislation can significantly improve law enforcement practice. First of all, the problem of implementing European human rights standards requires, first of all, resolving the issue of the place of relevant international treaties in the national legal system and their legal force. An effective mechanism of judicial protection of human rights is the most universal democratic instrument of the rule of law.

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