

PRINCIPLES OF LEGAL REGULATION IN UKRAINE AND EUROPEAN EXPERIENCE

Olena Chomakhashvili

Abstract. Ukraine is at the stage of radical reform, primarily in the direction of introducing a "human center" ideology of the activities of public administration and representative bodies of power. And the basis of their activities should be clearly defined principles of legal regulation, which should become the key principles of a qualitative reform of public administration. This determines its place in the theory of social management. The mechanism of regulation is manifested in the fact that it integrates the main elements of regulation; it enables to determine the sequence of the inclusion of each of the elements of management activity in the management process, as well as establishes the ways of interaction between individual elements. An appeal to an analysis of the principles of law and the principles of public administration will be appropriate, which will help to deepen understanding of the principles of administrative and regulatory regulation, since the latter are an integral part of the above-mentioned categories. There are number of factors that influence the formation of the principles of legal regulation, in particular: the level of development of society, its economic, political, social, spiritual and other systems; The nature and purpose of law in society; The place and role of law among other social regulators; Level of development of scientific thought, peculiarities of legal thinking, etc. Quite often, the principles of legal regulation are formed depending on the goals set by the state. It is impossible not to mention the influence of the principles of European administrative space and the principles of European administrative law in the context of the transformation and updating of the principles of administrative law. Particular attention should be paid to the implementation of European principles and standards of good governance in the work of the Cabinet of Ministers of Ukraine in law enforcement practice. This should be reflected in the definition and implementation of the principle of openness, transparency, efficiency and effectiveness, responsibility, legal certainty, and the principle of appropriate governance. The principle of appropriate governance reflects the state of public-relations relationships between public authorities and individuals. Principles and standards of appropriate governance developed by international and European regional organizations have not yet found the necessary introduction in legislative acts of Ukraine, which is mainly conditioned by the lack of scientific principles for the introduction of principles and standards of appropriate governance in the domestic legal system. Actually governance is determining the ability of the state to "serve" citizens. It defines the rules, processes and patterns of behavior through which it ensures the provision of interests, resource management, and the realization of state power in society. From the point of view of practical use in evaluating the functioning of certain social, economic and political systems, governance is seen as a basic indicator of compliance with established norms in society.

Key words: *principles of legal regulation, legal means, determination, legal system.*

Introduction. The desire of the Ukrainian nation to integrate into the European and world community dictates the approach to high standards including all fields and also the field of human rights, an important component of which is the principles of legal regulation. The creation and functioning of the legal system requires the intensification of efforts to investigate the role of law as the main tool of social transformation, an effective means of streamlining public relations. Determination of the importance and social value of law in society led to the need for a comprehensive theoretical analysis of legal regulation as an integral system.

Modern Ukraine is at the stage of radical reform, primarily in the direction of introducing a "human center" ideology of the activities of public administration and representative bodies of power. And the basis of their activities should be clearly defined principles of legal regulation, which should become the key principles of a qualitative reform of public

administration (to which the European tradition will be the executive and local governments). European principles of legal regulation as modern, commonly defined democratic values of European civilization serve as a benchmark for carrying out state-legal reforms in the countries of Central and Eastern Europe. Therefore, the study of their content becomes a priority for the European integration course of the country.

The purpose of this article is to consider doctrinal approaches to understand the principles of legal regulation; to generalize the modern understanding of the European principles of legal regulation, which was formulated under the influence of European integration processes, globalization processes in general, and are the result of scientific and methodological developments of leading European regional organizations aimed at unification ensuring the realization of rights, freedoms and legal interests of man and citizen in the participating countries; to formulate a comprehensive understanding of the content and hierarchical interrelations between the systems of the basic principles of legal regulation and reforms of the legal system. Comprehensive and practical research has been carried out in European countries as well as methodological recommendations for joining the European administrative area of candidate countries for accession to the European Union have been developed, which is of particular interest to Ukraine. Special attention in their works on this issue was given to such foreign researchers as: J. Bulua, P.M. Chevalier, K. Demke, K. d'Orta, J. Furnier, G. Grabbe, J. Hesse, C. Nill, C. Nizzo, J. P. Olsen, J. Ziller and others. Among the domestic scientists-representatives of the science of state administration, constitutional and administrative law one should mention the names of V.B. Aver'yanov, I.A. Hryciak, N.V. Hnidyuk, A.A. Pukhtetska who have devoted their works to the problems of studying the concept and basic principles of legal regulation in the European administrative space.

Doctrinal understanding the principles of legal regulation.

It is worth while emphasizing that legal regulation is the right to social relations through certain legal means, first of all, the rules of law [1, p.218]. Whereas, the set of legal means by which the behavior of subjects of social relations is brought into compliance with the requirements and permits contained in the rules of law, is called the mechanism of legal regulation of social relations [2, p.220]. All relations subject to legal regulation, in their totality, create a sphere of legal regulation. Scope of legal regulation is a set of social relations, ordered on the basis of law [2, p.162]. As for the subject of legal regulation, they are voluntary social relations regulated by law or objectively requiring legal influence. Professor V.V. Galunko believes that the mechanism of administrative-legal regulation (protection) is a means of a unified system functioning of administrative-legal regulation in order to ensure the rights, freedoms and public legitimate interests of individuals and legal entities, the functioning of civil society and the state [3]. Considering the concept of “regulatory mechanism” one should take into consideration that it broadly refers primarily to the social sphere and acts as a means of practical expression of regulation. It is in the mechanism that is embodied the essence of regulation as the organizing action of the subject on the object, as a special kind of activity, designed to bring it in accordance with objective laws. This determines its place in the theory of social management. The mechanism of regulation is manifested in the fact that it integrates the main elements of regulation; it

enables to determine the sequence of the inclusion of each of the elements of management activity in the management process, as well as establishes the ways of interaction between individual elements. An important postulate is that the mechanism of regulation is primarily due to the adoption and implementation of management decisions. Thus, the mechanism of regulation is a set of management tools, through which the adoption of a scientifically sound management solution and achieved its effective implementation. The essence of the management mechanism lies in the fact that, integrating the main elements of management, it serves as an organizational tool, a kind of managerial tool for the adoption and implementation of managerial decisions. In the system of legal regulation, the mechanism should be attributed to the dynamic components of legal regulation, among which the important place belongs to the functions and principles of legal regulation. One should mention it is worth noting in the scientific literature that formed a mixed understanding of "principles of legal regulation", with out pretending to exhaustively cover all possible variants of the interpretation of this category, which is due to a number of factors: firstly, the principle - the category is objectively subjective, its Definition in most cases depends on the subject's sense of justice, the direction of research, the scientific school. Secondly, this definition was formed over a long period of time, its content varied depending on the changes that took place in society and the scientific worldview. And thirdly, different directions in the understanding of the category of «legal regulation» cause a different understanding of its principles, ambiguity in their classification and system.

In scientific literature, under the "principles of legal regulation" they understand the basic principles in accordance with that the legal regulation is carried out [4, p.71]. Interpretation of the notion and essence of the principles of law by representatives of legal science is ambiguous. Scholars use the terms: "principles of law", "legal principles", "norms-principles" quite often as a kind of specialized norms. We suggest considering the transformation of the principles of administrative law on the example of administrative-legal regulation sphere.

In connection with the various approaches to the interpretation of the principles of law, there are several classifications. The first questions of the types of principles of law and criteria for their classification were considered by A. Denisov and S. Alekseev. So A. Denisov suggested to differentiate all the principles into three groups: 1) the principles inherent in one or another part (branch) of law; 2) principles that are characteristic of two or more, but not for all branches of law; 3) principles that are common to all without exception branches of law [5, p.95]. S. Alekseev, in turn, proposed the classification of principles "depending on what their significance for law and, accordingly, what sphere they are spreading" [6, p.105]. O. Lukasheva substantiated the need to differentiate the general principles of organization of society and purely legal principles [7, c.111]. Interestingly, there is a criterion for the classification of the principles of law proposed by R. Livshits and V. Nikitinsky. Yu. V. Pyrizhkov offers the following systematization of the principles of regulation:

- general - the principles of systemicity, objectivity, self-regulation, feedback, publicity, competition, stimulation;
- partial - principles used in various subsystems or social spheres (economic, social, political, spiritual), and principles used in the analysis of various social phenomena, organizations and institutions;

- organizational and technological - the principle of united command, the combination of state, regional and local regulation, concreteness, hierarchy, unicorns, delegation of authority [8, p.70].

N. Nizhnik, O. Mashkov in the paper "The system approach in the organization of public administration" proposed the following systematization of the principles: □ socio-political, reflecting and revealing the social nature of state regulation; □ structural - synthesized through research into the functional and organizational structures of state regulation; principles of state-regulating activity, revealing relations and interconnections of methods, forms, stages and other elements of activity of state bodies in carrying out of their respective functions [9, p.51]. A detailed analysis of the problem of the allocation and systematization of the principles of administrative-legal regulation was carried out by G.Atamanchuk, on the basis of which he proposed the following classification: system-wide, structural, specialized principles [10, p.191]. In our opinion, the principles of legal regulation - these are initial ideas, the initial provisions enshrined in the law, the current legislation, and legal consciousness, which characterize the essence and content of legal regulation, reveal its nature and determine the ways of improvement and practice of application.

In legal literature, the general principles of legal regulation include: the principle of freedom, the formal equality of participants in regulated relations, unity and differentiation of legal regulation, justice. V.M. Sirius distinguishes groups of principles that are characteristic of one or another stage of legal regulation, namely: law-creating - the principles of scientific, democratic, justice, humanism, legality, systemic; Law-organizing - federalism, legality; right-realizing - publicity, etc. [11, p.204]. The distinction between the various principles of legal regulation depends on scientific approaches to understanding the legal regulation. If the process of law-making and law-enforcement is seen as part of the process of legal regulation, then the principles that are used in relation to these types of legal activities will also be characteristic for legal regulation. To the principles of law-making V.I. Chervonyuk relates the principle of humanism, democracy, law, science, competence, resource and other security law-making process [12, p.380 - 383]. This system of principles MG Matusov, O.V. Malco supplements the principles of transparency and efficiency [13, p.299], VM The raw principle of systemicity [14, p.188 - 190].

S. S. Alexeyev highlights the stage of the legal regulation process, namely: the regulation of social relations that require legal mediation; The effect of legal norms, which result in or arise legal relations; The realization of subjective legal rights and obligations, in which the legal regulation reaches its goal, notes that the three stages of the legal regulation process correspond to the following basic elements or parts of the mechanism of legal regulation: the legal norm, legal relations, acts of realization of subjective legal rights and Responsibilities. In addition to the main components, the scientist distinguishes between normative legal acts, legal consciousness and legal culture. The above gives the opportunity to highlight the following principles of constructing a mechanism of legal regulation, such as unity, systematization, regularity of interconnections between the structural components of the mechanism of legal regulation. Along with this, S.S. Alekseyev emphasizes the crucial role of the principle of legality in the mechanism of legal regulation, emphasizing that legality is not a special element of the mechanism of legal regulation, it is the principle of law, and therefore, in our opinion, and the principle of legal regulation, which permeates

itself as law-making and the effect of law, the realization of subjective rights and legal obligations [15, p.36].

Let's pay attention to the most important principles of legal regulation. First of all, these are the principles of freedom and justice. Freedom in the broad philosophical sense is a natural state of a people or an individual who is characterized by the ability to act at his own discretion. In the narrow sense, freedom is the subjective ability of man and citizen to carry out or not to carry out certain actions based on his constitutional rights and freedoms [12, p.441]. The principle of freedom includes the possibility of choosing a kind of occupation, using social services, free use of money savings, etc. The principle of social justice ensures the correspondence between the functional role of the subject in society and his social position, the extent of the work he has spent and the incentives received, remuneration, public recognition, etc.

Freedom of man is historically conditioned by the development of society itself, its most important spheres - political, economic, spiritual, it is fixed by law and brought to every person or organization. The right has a general social essence, serves the interests of every person, and ensures organization, orderliness, stability and development of social ties. Right is not just freedom, but freedom guaranteed from interference, freedom is protected [13, p.119].

Justice is conditioned by the concept of law, is its internal property, the quality of law. By its content and etymology justice (justitia) is determined by the category of law (jus), characterizing the presence in the social space of the legal principle and reflecting its universality, correctness, imperative and necessity. To act on justice means to act lawfully, in accordance with universal and equal claims of law [14, p.8].

Analyzing the libertarian-legal approach to understanding the law V.S. Nersesyants and A.P. Zayetz emphasize that justice has a general basis with the right, but cannot be identified with it. Justice is an evaluation tool, a moral criterion by which the relevant rules are justified or questioned, and, therefore, their validity is confirmed or adjusted in accordance with new ideals of justice [16, p.238].

Along with this, the definition of law on the basis of equality and freedom is cognitively rationalistic, since it focuses on clarifying the essence of law as a phenomenon belonging to a rationally thinking individual, who interacts with the same individuals on the basis of equality [17, p.238 - 239].

Justice is a criterion for assessing various relationships in the life of society: between the role of individuals or social groups and their real social status, the degree of social recognition; between labor and its remuneration; the rights and duties of a person; between committed act and retribution, crime and punishment.

The principle of justice extends to both the real and the imaginary (ideal) state of affairs in society, acts as a proper imperative corresponding to the essence, rights and needs of man [18, p. 604].

European principles of legal regulation

Summarizing the approaches available in European legal sources to the isolation and interpretation of institutional principles, one can distinguish the following basic principles arising from the constitutional principle of the division of state power: the principle of

decentralization; the principle of centralization; the principle of deconcentrating. Other institutional principles are of a generic nature.

European principles regarding the activities of public administration bodies can be presented through four main groups of principles:

1. legal certainty (reliability and predictability);
2. openness and transparency;
3. responsibility;
4. Efficiency and Effectiveness [19].

Conclusions

There are number of factors that influence the formation of the principles of legal regulation, in particular: the level of development of society, its economic, political, social, spiritual and other systems; The nature and purpose of law in society; The place and role of law among other social regulators; Level of development of scientific thought, peculiarities of legal thinking, etc. Quite often, the principles of legal regulation are formed depending on the goals set by the state. It is impossible not to mention the influence of the principles of European administrative space and the principles of European administrative law in the context of the transformation and updating of the principles of administrative law. Particular attention should be paid to the implementation of European principles and standards of good governance in the work of the Cabinet of Ministers of Ukraine in law enforcement practice. This should be reflected in the definition and implementation of the principle of openness, transparency, efficiency and effectiveness, responsibility, legal certainty, and the principle of appropriate governance. The principle of appropriate governance reflects the state of public-relations relationships between public authorities and individuals. Principles and standards of appropriate governance developed by international and European regional organizations have not yet found the necessary introduction in legislative acts of Ukraine, which is mainly conditioned by the lack of scientific principles for the introduction of principles and standards of appropriate governance in the domestic legal system. Actually governance is determining the ability of the state to "serve" citizens. It defines the rules, processes and patterns of behavior through which it ensures the provision of interests, resource management, and the realization of state power in society. From the point of view of practical use in evaluating the functioning of certain social, economic and political systems, governance is seen as a basic indicator of compliance with established norms in society.

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Author's contact details: Olena Chomakhashvili, Candidate of Law Sciences, Associate Professor, Head of the commercial designations department of The scientific and research institute of intellectual property of the NALS of Ukraine, e-mail: 4921171@ukr.net.