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THE PRINCIPLE OF GOOD FAITH AS ONE OF THE PRINCIPLES OF IMPLEMENTATION OF ADMINISTRATIVE PROCEDURAL RIGHTS

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The purpose *of the article is to the study of the principle of good faith as one of the principles of implementation of administrative procedural rights. It is indicated that the problem of forming effective ways to protect the rights, freedoms, legitimate interests of a person and a citizen, as well as a legal entity, has become urgent for Ukraine since its independence.* ***Research methods:*** *the chosen topic of scientific research requires the use of various scientific methods and approaches to obtain high-quality results. Therefore, the following research methods were used to solve the tasks set: analysis; systematic method; analytical method, etc.* ***Results:*** *according to Article 3 of the Constitution of Ukraine, it is determined that the priority task of the functioning of the state is to ensure and protect human rights and freedoms as the main social value. Such a normative and legal provision of the Constitution of Ukraine establishes the substantive functional purpose of the state, determines the direction of implementation of functions and methods of public administration. The definition of a person as the highest social value is the basis for the implementation of the mechanism of responsibility of the state and its institutions to the individual at the appropriate level. The application of the mechanism of state responsibility, in addition to its constitutional consolidation, requires the development of effective structures capable of making such a norm a reality.* ***Discussion:*** *the components of the principle of good faith in administrative proceedings are: 1) prohibition of abuse of procedural rights; 2) the requirement of conscientious fulfillment of procedural obligations; 3) prohibition of contradictory conduct of the parties, or the rule of procedural estoppel; 4) prohibition to impose other unlawful obstacles in the administration of justice. The principle of good faith is a general principle of law that applies to the entire sphere of legal regulation, including the sphere of administrative proceedings.*

Key words: *principle of good faith; principles of administrative justice; principles of law; system of principles.*

Problem statement and its relevance. According to Article 3 of the Constitution of Ukraine, it is determined that the priority task of the functioning of the state is to ensure and protect human rights and freedoms as the main social value. Such a normative and legal provision of the Constitution of Ukraine establishes the substantive functional purpose of the state, determines the direction of implementation of functions and methods of public administration. The definition of a person as the highest social value is the basis for the implementation of the mechanism of responsibility of the state and its institutions to the individual at the appropriate level. The application of the mechanism of state responsibility, in addition to its constitutional consolidation, requires the development of effective structures capable of making such a norm a reality.

Therefore, the protection of human rights, the application of measures of state responsibility for the violation of such rights should not only be declarative constitutional norms, but should be duly guaranteed by appropriate means of public admin-

istration. In this aspect, the institution of administrative justice is one of the main guarantees of the implementation of the mechanism of the state's responsibility to the individual. The functioning of administrative justice is a guarantee of preventing manifestations of bureaucratic arbitrariness and bureaucratic abuse of powers defined by law. And the level of ensuring the rights and freedoms of participants in public legal relations depends on how effective the system of administrative justice is.

Summary of the main research material. As a rule, the definition of procedural principles is provided precisely by taking into account these features as normatively established basic principles that determine the structure of the process, its nature and methods of administering justice in a particular category of cases; as fundamental ideas envisaged by the legislation related to the purpose and objectives of legal proceedings, which reflect the specifics of its stages, institutions, features of the procedural activities of the court and all other participants in the process. With regard to the process, these are the most general rules of conduct of a certain nature, enshrined in the law, addressed to all participants, which are of a generally binding nature, a legal mechanism for implementation and are ensured by means of state coercion.

The principles of judicial proceedings are also the basic rules for the consideration and resolution of court disputes, which are externally expressed in the norms of procedural codes; due to the social and legal conditions of public life, the normative and legal principles that determine the nature, content and construction of administrative proceedings; regulate the procedural activities of the administrative court and other participants in the administrative process.

Since the principles of administrative proceedings take place in judicial practice, they are focused primarily on the court, that is, these principles always represent legal directives for applying to the court. In administrative proceedings (as well as in any other analogue – civil, economic, criminal), the principles determine the most important obligations of the court to carry out law enforcement activities (principles of legality and reasonableness), or to ensure the rights granted to the parties and persons participating in the case (principles of procedural equality of parties, discretion and adversariality).

In the legal literature, there is a peculiar, specific definition of principles as a kind of "skeleton" (in the sense of "basis") of procedural (and not only) branches of law. It is the principles that act as "guarantors" of legal, reasonable and fair justice in the consideration of cases. Only those rules of the relevant procedural code, in case of non-observance or violation of which the results of all judicial activity in the proceedings on a particular case become illegal, are recognized as principles in procedural law. These results are subject to cancellation. In addition, the principles are a value guide for interpreting the rules of justice in their application, as well as eliminating gaps in them.

When studying the principles of administrative justice, their inseparable connection with the law, which has a dual nature, can be traced. Firstly, each principle is enshrined at the legislative level (at the level of the Constitution, the Law of Ukraine "On the Judiciary and the Status of Courts", the Code of Administrative Procedure of Ukraine), and, secondly, the principles in procedural law ensure both the logical unity of all elements of the relevant field and the stability of procedural law as a whole.

The theory of principles in modern legal science contains many provisions of contradictory and inconsistent content, which is why the first articles of codes include a list of provisions that are proclaimed as principles, but not all of them are principles.

According to Article 55 of the Constitution of Ukraine, the priority of the judicial form of protection of human rights and freedoms over other jurisdictional and non-jurisdictional forms is established. The subject of appeal to the court may be decisions, actions or inaction of state authorities, local self-government bodies, individual officials or employees.

The organizational principles of administrative proceedings are the principles that ensure the functioning of the court and its staff (territoriality, establishment of special jurisdiction, unity and instance). The procedural principles of administrative proceedings are aimed directly at determining the basic principles of consideration and resolution of a public law dispute. The procedural principles of

scientists rightly include the equality of participants in a public law dispute, dispositivity and adversariality, the binding nature of a court decision, the provision of appeal and cassation appeal of a court decision as a guarantee of proper protection of human rights and freedoms, etc. [1, p. 64].

An analysis of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms (taking into account the practice of the European Court of Human Rights on its interpretation and application), the Code and doctrinal sources showed that the principles of administrative justice are: the rule of law; Legality; independence and impartiality of judges, equality of all participants in the trial before the law and the court; the adversarial nature of the parties and the freedom to present their evidence to the court and to prove their persuasiveness before the court; publicity and openness of the trial; ensuring the appeal and cassation of court decisions, except in cases established by law; proportionality; binding nature of court decisions; official clarification of all circumstances in the case; legal certainty; predictability of the application of legislation and inadmissibility of excessive formalism; unity of judicial practice; accessibility of justice; validity of court decisions; consideration of the case within a reasonable time; procedural economy [2, p. 135-136].

In view of the above, it should be noted that the principles give the judiciary the qualities of fair justice in administrative cases. And, accordingly, on the contrary, non-compliance with the principles of administrative justice in the administration of justice entails illegality and subsequent cancellation of the court decision. In addition to the fact that they ensure the internal unity of all elements of the administrative process – norms, institutions, proceedings, it is worth noting that they also establish the consolidation of law-making and justice in administrative cases.

The principles of administrative justice play a regulative role in law, due to which they acquire the meaning of general rules of conduct, that is, they have a generally binding legally authoritative nature. The principles of administrative justice are enshrined at the constitutional level. They are guidelines for the development of society, the state and justice in administrative cases in Ukraine [3, p. 63], which is why the correctness and indisputability of their application in practice is a necessity.

The principle of good faith is one of the principles (limits) of the implementation of administrative procedural rights, which should be singled out among other initial principles of administrative proceedings. It is traditional for science to understand good faith not as a principle of administrative proceedings, but as a general obligation of subjects of administrative procedural law to exercise their procedural rights in good faith and perform procedural duties [4, p. 255–259], which is directly related to the legislative consolidation of such an obligation. The obligation to act in good faith is a legal obligation of a universal nature, which extends to almost all subjective rights of participants in legal proceedings. At the same time, some authors point out that it is expedient to distinguish the positive and negative aspects of the procedural obligation to be in good faith [5]. In particular, in a positive sense, good faith is a set of criteria that must be met by the behavior of participants in a trial, and in a negative sense, it means the prohibition of procedural bad faith in the form of abuse of subjective procedural rights [4, p. 256].

In the specialized literature, good faith is also understood as the presumption of right, according to which each participant in the administrative process is considered to act in good faith in the court until the opposite is proven [6, p. 174-178]. Such a construction of the presumption in a broader sense guarantees the protection of persons participating in an administrative case from unjustified bringing to procedural liability.

The signs of the presumption of good faith include the following: 1) applies only to persons participating in the case, and it cannot be applied to other participants in the process; 2) applies not only to the exercise of procedural rights, but also to the performance of procedural duties; 3) it is applied only in cases where the law provides for the legal consequences of unfair behavior, in other cases it has no legal significance; 4) the limit of good faith behavior of the parties to the trial is the abuse of procedural rights; 5) can be refuted, in connection with which the court applies the negative consequences established by law for a person who acts in bad faith in court proceedings [6, p. 177].

Of course, the above approaches to characterizing the nature of the principle of good faith in administrative proceedings are of great importance, but it is advisable to focus on understanding the principle of good faith as a general principle of law, which has its own characteristics in administrative proceedings. In this aspect, the position on the understanding of good faith is appropriate, according to which the principle under study contains requirements that help to remove or mitigate the shortcomings of the abstract and formal nature of law, to bring it closer to the ideals of justice, equality, freedom and humanism, that is, it puts forward requirements to act not only in accordance with the letter of the law, but also in accordance with its spirit [7].

Conscientiousness in the subjective sense is understood as the subject's awareness of his own conscientiousness and honesty in the exercise of his rights and the fulfillment of duties. Good faith in the objective sense implies the need for conscientious and honest behavior of subjects in the performance of their legal duties and the exercise of their subjective rights. In the structure of the principle of good faith, two aspects are distinguished: 1) good faith in the exercise of rights and powers (inadmissibility of abuse of the right, prohibition of circumvention of the law, bona fide error) and 2) good faith in the performance of legal duties [7, p. 207–211].

The analysis of the current procedural legislation indicates that the norms together allow us to conclude that the component of the principle of good faith is the requirement not only for the good faith exercise of procedural rights, but also for the requirement for the conscientious fulfillment of procedural obligations. In addition, the legislator actually establishes the same coercive measures both for cases of abuse of the right and for cases of non-fulfillment of procedural obligations.

In this regard, it is worth talking about the narrow and broad aspects of understanding the principle of good faith in administrative proceedings. According to the narrow approach, the principle of good faith in administrative proceedings actually boils down to the prohibition of abuse of procedural rights. As for the broad approach, it is advisable to point out not only the prohibition of abuse of procedural rights, but also a broader scope of procedural legal personality.

Such doctrinal provisions deserve attention, but are not indisputable, since the principle of good faith in administrative proceedings covers both cases of bona fide exercise of procedural rights and cases of conscientious performance of procedural duties. In addition, it is not necessary to outline cases of unfair "artificial" creation of an advantageous procedural position, since we are talking about cases of manipulation of procedural rights or powers [8].

In addition to the problem of abuse of procedural rights in the specialized literature of foreign countries, the principle of good faith is also mentioned in the context of the so-called "procedural estoppel", as the impossibility of contradictory behavior of the parties in the trial. In particular, in English law, "procedural estoppel" is understood as the denial of such behavior of a party in the process, by which it crosses out what was previously recognized by it. In international law, according to the rule of estoppel, an actor cannot take actions incompatible with his position, which arises from previous conduct or relevant statements [9]. The reproduction of this position is reflected in the current procedural legislation of Ukraine, in particular, in the consolidation in the law of exceptional circumstances under which it is possible to refuse to recognize the circumstances; recognition of the prejudiciality of judicial acts from the point of view of exemption from proving the circumstances established by them; impossibility of reversal of a court decision by the court of appeal in case of violation of the rules of jurisdiction, if the person did not declare the lack of jurisdiction of the case in the court of first instance without valid reasons, etc. [8].

Conclusions. The analysis of procedural legislation and special literature on the issues under study gives grounds to conclude that the components of the principle of good faith in administrative proceedings are: 1) prohibition of abuse of procedural rights; 2) the requirement of conscientious fulfillment of procedural obligations; 3) prohibition of contradictory conduct of the parties, or the rule of procedural estoppel; 4) prohibition to impose other unlawful obstacles in the administration of justice.

The principle of good faith is a general principle of law that applies to the entire sphere of legal regulation, including the sphere of administrative proceedings.

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Володимир Яцуба

ПРИНЦИП ДОБРОСОВІСНОСТІ ЯК ОДИН ІЗ ПРИНЦИПІВ РЕАЛІЗАЦІЇ АДМІНІСТРАТИВНИХ ПРОЦЕСУАЛЬНИХ ПРАВ

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Метою *статті є дослідження питання принципу добросовісності як одного із принципів реалізації адміністративних процесуальних прав.* ***Методи дослідження:*** *обрана тема наукового дослідження потребує застосування різноманітних наукових методів і підходів для отримання якісних результатів. Тому для вирішення поставлених завдань використано такі методи дослідження: аналіз; системний метод; аналітичний тощо.* ***Результати:*** *відповідно до статті 3 Конституції України визначено, що пріоритетним завданням функціонування держави є забезпечення та захист прав і свобод людини як головної соціальної цінності. Таке нормативно-правове положення Конституції України встановлює змістовне функціональне призначення держави, визначає спрямування реалізації функцій та методів публічного управління. Визначення людини найвищою соціальною цінністю є базисом для реалізації на належному рівні застосування механізму відповідальності держави, її інституцій перед особистістю. Застосування механізму відповідальності держави, окрім його конституційного закріплення, вимагає розроблення ефективних конструкцій, здатних втілити таку норму у реальність.* ***Обговорення:*** *складовими принципу добросовісності в адміністративному судочинстві є: 1) заборона зловживання процесуальними правами; 2) вимога добросовісного виконання процесуальних обов'язків; 3) заборона суперечливої поведінки сторін, або правило процесуального естопелю; 4) заборона чинити інші протиправні перешкоди у здійсненні правосуддя. Принцип добросовісності є загальним принципом права, що поширюється на всю сферу правового регулювання, в тому числі і на сферу адміністративного судочинства.*

Ключові слова: *принцип добросовісності; принципи адміністративного судочинства; принципи права; система принципів.*

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