DOI:
УДК 347 (045)

V. V. Yatsuba,
a student of higher education of the third (educational and scientific) level
ORCID ID: https//orcid/org/ 0009-0006-2012-0191

PLACE OF THE PRINCIPLE OF GOOD FAITH IN THE SYSTEM OF PRINCIPLES OF ADMINISTRATIVE JUSTICE

Taras Shevchenko National University of Kyiv
Volodymyrska Street, 60, 01033 City of Kyiv, Ukraine
E-mail: v.yatsuba@ukr.net

The purpose *of the article is to study the place of the principle of good faith in the system of administrative justice principles. The author notes that the problem of developing effective ways to protect the rights, freedoms and legitimate interests of a person and a citizen, as well as a legal entity, has become an urgent issue 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:*** *considering the experience of Ukraine along with the experience of stable democracies, we can say that our country, in comparison, has passed a very short way of introducing and consolidating democratic traditions and values. Over the years of independence, significant steps have been taken in this direction. However, the problem of forming effective means and measures to protect rights, freedoms, and legitimate interests is still relevant for us. Of all the means and measures to protect the rights, freedoms, and legitimate interests of a person, the most effective and reliable today is the judicial method of protection.* ***Discussion:*** *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 administration. 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.*

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

Problem statement and its relevance. 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. Considering the experience of Ukraine along with the experience of stable democracies, we can say that our country, in comparison, has passed a very short way of introducing and consolidating democratic traditions and values. Over the years of independence, significant steps have been taken in this direction. However, the problem of forming effective means and measures to protect rights, freedoms, and legitimate interests is still relevant for us. Of all the means and measures to protect the rights, freedoms, and legitimate interests of a person, the most effective and reliable today is the judicial method of protection [1, p. 4].

Summary of the main research material. 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 administration. 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.

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 significance and essence of the principles of administrative justice in the current conditions of the European integration process should be considered by their correlation with the category of principles of law and principles of public administration.

It should be noted that the principles of public administration are the legally defined starting principles and requirements for the organization of the system of public authorities and local self-government bodies. Such principles include the principle of separation of powers, binding decisions of public authorities, equality of access to public service, priority of human rights and freedoms, the principle of integrity, sustainability of management, etc. In the previous subsections, the effectiveness of the European administrative space is defined, which is manifested in ensuring the implementation of such principles of public administration as the principles of openness, public participation in the adoption and implementation of management decisions, accountability, coherence. It is worth emphasizing that the judicial system is an integral part of the public administration system. The judicial system is a system of public authorities, and its functioning must comply with the general principles of public administration.

Continuous improvement of "human rights" standards for the activities of public authorities, as well as continuous improvement of standards for ensuring a "fair balance of interests" during their interference in the legal capabilities of private individuals are integral components of building a modern democratic, social and legal state [2, p. 9]. Today, there is a separate branch of specialized courts in Ukraine – administrative courts. The main task of such courts is to protect the rights, freedoms, and legitimate interests of a person from violations by public authorities. The Code of Administrative Procedure of Ukraine regulates the procedural form of such legal proceedings. This code has been developed taking into account the latest international standards of justice. Arbitrariness on the part of public authorities can seriously encroach on fundamental human rights and the principles of the rule of law. Administrative proceedings are one of the key elements in the mechanism of their protection [2, p. 9]. The existing judicial practice serves as proof that it is really necessary to improve the provisions of the Code. This, in particular, is evidenced by a large number of explanations of the highest judicial bodies regarding the content of the provisions of the Code of Administrative Procedure of Ukraine.

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.

The above-mentioned normative legal provision of the Constitution of Ukraine establishes the direction for the implementation of functions and methods of public administration, as well as the substantive functional purpose of the state. A person is defined by the highest social value. This is what serves as the basis for the proper implementation of the mechanism of responsibility of the state and its institutions to the individual. The use of such a mechanism is possible with a combination of its constitutional consolidation, respectively, the development of effective ways to translate the enshrined norm into reality.

The protection of human rights, the application of measures of state responsibility for the violation of such rights should be not only declarative constitutional norms. They should be guaranteed by appropriate means of public administration. In this sense, the institution of administrative justice is perhaps the most important guarantee of the implementation of the mechanism's responsibility of the state to the individual. The functioning of administrative justice serves as a guarantor of protection. Such a function makes it possible to ensure the prevention of manifestations of bureaucratic arbitrariness. It also provides manifestations of bureaucratic abuse of powers defined by law. The level of ensuring the rights and freedoms of participants in public legal relations is directly proportional to the level of efficiency of the administrative justice system [4].

In accordance with Part 1 of Art. 2 of the Code, the tasks of administrative proceedings include the protection of the rights, freedoms and interests of individuals, the rights and interests of legal entities in the sphere of public relations. Such protection is carried out in relation to violations by state authorities, local self-government bodies, their officials and officers, and other entities. Namely, in the exercise of administrative functions by the above-mentioned bodies on the basis of legislation, including the exercise of delegated powers.

Administrative Proceedings as a Way to Achieve the Goal of Administrative and Procedural Regulation. Therefore, the issue of the correct procedure for organizing the administrative process is important. The key to the effectiveness of such a process is, first of all, the principles, since they are the main, initial ideas. Since the updated procedural legislation contains a significant number of new provisions, it is extremely important to study the essence and definitions of its main categories, including such as principles [5, p. 60].

First of all, it is necessary to understand the very concept of "principle". This concept, as well as the principle itself, is quite multifaceted, which determines the research by representatives of various fields of knowledge. The term "principle" comes from Latin, which means "basis", "beginning", "main starting position" [5, p. 4]. The philosophical approach to the understanding of the category of "principles" is reduced to the definition as the primary basis of what is the basis for the development of certain facts, science; The moral component of the essence of principles is also noted by philosophers [5, p. 5]. The allocation of the moral component emphasizes the dependence of the implementation of principles on the will of the subject of relations. Thus, Principles are not only the existing objective principles of regulation of social processes, principles are a manifestation of the subjective will of their participants.

In addition, in philosophical works, the category of "principle" is defined as an initial position, a system-forming element or a central concept. It is called the generalization and extension of a certain proposition to all phenomena of the branch from which the principle is abstracted [6, p. 133].

In the legal literature, the principles of law are defined as a reliable support for a court decision, because they are an effective tool, the use of which is necessary to resolve far from theoretical disputes. The principles of law regulate social relations, acting as the legal basis for resolving a case both along with the norms of positive law and independently. The principles of law ensure the unity of legal regulation of social relations and determine the direction of legal regulation of social relations [7, p. 133-134].

Without defining the principles of functioning of any public institution, it is impossible to achieve the effectiveness of its activities. Principles are understood as basic principles, initial ideas, which are characterized by a certain generality,

universality, and the ability to apply in any situation. The implementation of the principles is imperative, the possibility of their application is characterized by universality. Principles can be defined as an abstract reflection of the laws of social reality [1, p. 110–111].

The significance of the principles of law lies in their ability to briefly define the most essential features of law as the main regulator of social relations as a whole [1, p. 128]. Such a mandatory feature of the principles as their legislative consolidation is emphasized in the studies of the majority of scientists – representatives of various branch legal sciences.

In terms of defining the principles of justice, it is advisable to compare them with the principles of any procedural activity. It is worth emphasizing that all procedural norms and institutions form the structure of the legal process in order to ensure the implementation of its main task – decision-making in compliance with the requirements of completeness, objectivity, legality and validity of the circumstances of the case.

Typological principles of law determine the peculiarities of the civilizational development of the state and society in specific historical conditions. Such principles of law are the principle of human-centeredness, provision of a service model for the development of the state, socialization of the state, etc. The introduction of such typological principles of law determines the development of the state and its social institutions.

Administrative proceedings are characterized by the presence of special tasks, the main of which is the protection of human and civil rights and freedoms from the arbitrariness of officials and officers of state authorities and local self-government bodies [8, p. 49]. Sectoral principles regulate specific types of social relations and are often determined at the legislative level.

The characteristic features of the principles of administrative justice include: 1) ideological certainty; 2) normative certainty; 3) democracy; 4) effectiveness; 5) autonomy; 6) consistency [9, p. 5].

The most common classification of the principles of administrative justice is the classification according to the scope of their distribution with their division into: general principles of law; cross-sectoral principles; sectoral principles [9, p. 136].

The general principles, in turn, apply to all branches of national law without exception. At the same time, intersectoral ones operate within several branches of law, and sectoral ones operate within one branch of law. There is also an approach to classifying the principles of administrative justice depending on their functional direction. Within the framework of this approach, general, organizational and procedural principles of administrative proceedings are distinguished.

The general principles of administrative justice include the general principles of the creation and functioning of administrative justice in the social and legal environment (the principle of consistency, legality, democracy, publicity, transparency, expediency, public law conditionality) [10, p. 46].

Considering the classification of the principles of law, its criteria and types, it should be noted that, firstly, the general legal principles of law, which are of a universal nature, find their more specific embodiment in the principles of each branch. Secondly, the basic principles of law are specifically modified in the fields of law and in the areas of law-making, law enforcement and law enforcement. Therefore, in the field of law-making, we can talk about relatively autonomous principles of law-making, and among them law-making, in law enforcement – first of all, about the principles of law enforcement, in law enforcement – about the principles of justice, legal responsibility, etc. Thirdly, it is the basic principles that are differentiated into general social and special legal (systemic and structural), and among the general social ones, the political, economic, social, ideological, and moral foundations of law are quite clearly distinguished.

Hence, it can be argued that it is necessary to distinguish: 1) the principles of legal consciousness; 2) principles of law-making; 3) principles of law-making, including law-making and rule-making; 4) principles of the system of law: a) general legal (basic); b) cross-sectoral; c) sectoral; d) principles of legal institutions; 5) principles of the structure of law: a) general social and legal; b) public and private; c) regulatory

and protective; d) substantive and procedural; e) objective and subjective; 6) principles of law enforcement, including principles of law enforcement; 7) law enforcement principles, and among them, in particular, the principles of justice and legal accountability. The principles of the system and structure of law, which change into the principles of law formation, law enforcement and law enforcement, can be called the principles of legal regulation, while recognizing the special role of general legal (basic) principles [10, p. 43].

All principles of law can be classified depending on the modes of external expression in certain formal legal sources: international normative legal acts and treaties, constitution and constitutional laws, ordinary laws and even subordinate legislation.

Thus, depending on whether the principles of law form the basis of the system of law as a whole, or its individual normative legal totalities (institutions of law, branches of law, etc.), they can be divided according to the scope of action into the following types: general law; cross-sectoral; Industry; Institutional. General legal principles are characteristic of law as a whole, determine the qualitative features of all legal norms of the national legal system, regardless of the specifics of the social relations regulated by them. Interdisciplinary principles are inherent in several related branches of law, and sectoral principles are inherent in a particular branch of law, emphasizing its peculiarity. In turn, institutional ones act within the framework of homogeneous social relations regulated by the norms of an individual institution. The principles of individual institutions of law constitute a completely independent scientific category and act as a concretizing element of the system of general principles of law [11, p. 201].

Cross-sectoral principles apply in several areas of law. An example of interdisciplinary principles of law is the principles of civil justice, criminal justice, economic and administrative proceedings. Such cross-sectoral principles are, in particular, the principle of reasonableness of terms.

In accordance with Part 3 of Art. Article 2 of the Code of Administrative Procedure of Ukraine establishes the sectoral principles of administrative justice: "1) the rule of law; 2) equality of all participants in the trial before the law and the court; 3) publicity and openness of the trial and its full recording by technical means; 4) adversarial nature of the parties, discretion and official clarification of all circumstances in the case; 5) binding nature of the court decision; 6) ensuring the right to appeal review of the case; 7) ensuring the right to cassation appeal of a court decision in cases determined by law; 8) reasonableness of the terms of consideration of the case by the court; 9) inadmissibility of abuse of procedural rights; 10) reimbursement of court expenses of individuals and legal entities in whose favor the court decision was made."

Conclusions. Thus, conventionally, the principles of administrative justice in the system of principles of law belong to sectoral and intersectoral principles. Therefore, it is necessary to talk about the relationship between sectoral and intersectoral principles.

Література

1. Рибченко А.О. Верховенство права як принцип адміністративного судочинства: дис. канд. юрид. наук. Ірпінь, 2013. 196 с.

2. Руденко А.В. Адміністративне судочинство: станов- лення та здійснення: дис. канд. юрид. наук: 12.00.07. Хар- ків, 2006. 210 с.

3. Авер'янов В.Б. Значення адміністративних процедур у реформуванні адміністративного права. *Часопис Київськ. ун-ту права*. 2009. No 3. С. 8–14.

4. Потапенко С.В. Сутність та призначення принципів адміністративного судочинства України. *Право і безпека.* 2010. No 2 (34). С. 60-64.

5. Мілієнко О.А. Принципи гласності і відкритості в адміністративному судочинстві України: теорія, досвід реалізації та адаптації до європейських стандартів: автореф. дис. канд. юрид. наук. Запоріжжя, 2016. 18 с.

6. Перепелюк В.Г. Поняття і принципи адміністративного процесу: питання теорії: дис канд. юрид. наук: 12.00.07. Чернівецький держ. ун-т ім. Юрія Федьковича. Чернівці, 2000. 205 с.

7. Мілієнко О.А. Принципи адміністративного судочинства та їх класифікація. *Право і суспільство.* 2016. No 2. С. 132-139.

8. Смокович М.І. Проблеми розмежування судової юрисдикції та визначення компетенції

адміністративних судів: дис. канд. юрид. наук: 12.00.07. Київ, 2009. 232 с.

9. Стефанюк В.С. Поняття судового адміністративного процесу та його принципи в адміністративному праві. *Вісник Верховного Суду України*. 2003. No 5. С. 49–53.

10. Колодій А.М. Принципи права: ґенеза, поняття, класифікація та реалізація. *Альманах права*. 2012. Вип. 3. С. 42-46.

11. Цвік М.В. Загальна теорія держави і права. Харків: *Право,* 2002. 432 с.

References

1. Rybchenko A.O. Verkhovenstvo prava yak pryntsyp administratyvnoho sudochynstva: dys. kand. yuryd. nauk. Irpin, 2013. 196 s.

2. Rudenko A.V. Administratyvne sudochynstvo: stanov- lennia ta zdiisnennia: dys. kand. yuryd. nauk : 12.00.07. Khar- kiv, 2006. 210 s.

3. Averianov V.B. Znachennia administratyvnykh protsedur u reformuvanni administratyvnoho prava. *Chasopys Kyivsk*. un-tu prava. 2009. No 3. S. 8–14.

4. Potapenko S.V. Sutnist ta pryznachennia pryntsypiv administratyvnoho sudochynstva Ukrainy. *Pravo i bezpeka*. 2010. No 2 (34). S. 60-64.

5. Miliienko O.A. Pryntsypy hlasnosti i vidkrytosti v administratyvnomu sudochynstvi Ukrainy: teoriia, dosvid realizatsii ta adaptatsii do yevropeiskykh standartiv: avtoref. dys. kand. yuryd. nauk. Zaporizhzhia, 2016. 18 s.

6. Perepeliuk V.H. Poniattia i pryntsypy administratyvnoho protsesu: pytannia teorii: dys. kand. yuryd. nauk: 12.00.07. Chernivetskyi derzh. un-t im. Yuriia Fedkovycha. Chernivtsi, 2000. 205 c.

7. Miliienko O.A. Pryntsypy administratyvnoho sudochynstva ta yikh klasyfikatsiia. *Pravo i suspilstvo*. 2016. No 2. S. 132-139.

8. Smokovych M.I. Problemy rozmezhuvannia sudovoi yurysdyktsii ta vyznachennia kompetentsii administratyvnykh sudiv: dys. kand. yuryd. nauk: 12.00.07. Kyiv, 2009. 232 s.

9. Stefaniuk V.S. Poniattia sudovoho administratyvnoho protsesu ta yoho pryntsypy v administratyvnomu pravi. *Visnyk Verkhovnoho Sudu Ukrainy*. 2003. No 5. S. 49–53.

10. Kolodii A.M. Pryntsypy prava: geneza, poniattia, klasyfikatsiia ta realizatsiia. *Almanakh prava*. 2012. Vyp. 3. S. 42-46.

11. Tsvik M.V. Zahalna teoriia derzhavy i prava. Kharkiv: *Pravo*, 2002. 432 s.

Володимир Яцуба

МІСЦЕ ПРИНЦИПУ ДОБРОСОВІСНОСТІ В СИСТЕМІ ПРИНЦИПІВ АДМІНІСТРАТИВНОГО СУДОЧИНСТВА

Київський національний університет імені Тараса Шевченка
вул. Володимирська, 60, 01033 м. Київ, Україна
E-mail: v.yatsuba@ukr.net

Метою *статті є дослідження питання місця принципу добросовісності в системі принципів адміністративного судочинства.* ***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:*** *розглядаючи досвід України поряд з досвідом держав сталої демократії, то можна сказати, що наша країна в порівнянні пройшла цілком нетривалий шлях запровадження і утвердження демократичних традицій і цінностей. За роки незалежності було здійснено значні кроки у цьому напрямку. Проте, проблема формування дієвих засобів і заходів захисту прав, свобод, законних інтересів усе ще залишається актуальною для нас. З усіх засобів і заходів захисту прав, свобод, законних інтересів особи найбільш дієвим та надійним на сьогодні є судовий спосіб захисту.* ***Обговорення:*** *захист прав людини, застосування заходів відповідальності держави за порушення таких прав має бути не лише декларативними конституційними нормами, а мають бути належним чином гарантовані відповідними засобами публічного управління. У цьому аспекті інститут адміністративної юстиції є однією з головних гарантій реалізації механізму відповідальності держави перед людиною. Функціонування адміністративної юстиції є гарантією забезпечення запобігання проявам бюрократичного свавілля та чиновницького зловживання визначеними законодавством повноваженнями. І від того наскільки система адміністративної юстиції є ефективною залежить визначення рівня забезпечення прав і свобод учасників суспільних правовідносин.*

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

Стаття надійшла до редакції 22.04.2024