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Secção I

Investigação Científica*

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The Essence of the Principles of Ukrainian Law in Modern Jurisprudence

A Essência dos Princípios do Direito Ucraniano na Jurisprudência Moderna

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ABSTRACT: The purpose of the research is to highlight methodological approaches to understanding principles of law in the context of modern globalization transformations. Main content. Their ontological, epistemological and axiological nature are revealed, in particular, links of the principles of law with human existence, science and other ways of world perception are being traced. The methodological basis of the research is the dialectical method of scientific knowledge, through the application of this method considered were legal, functional, organizational and procedural aspects of methodological approaches to understanding of principles of law in the context of modern globalization transformations. The classification of the principles of law was singled out and a brief description of their types — universal principles, civilizational principles, and right-family principles and possibilities of separating principles of the national legal system was provided.
KEYWORDS: principles of law; ontological nature; epistemological nature; axiological nature; universal principles.

RESUMO: O objetivo da pesquisa é destacar abordagens metodológicas para a compreensão dos princípios do direito no contexto das transformações da globalização moderna. Revelam-se a sua natureza ontológica, epistemológica e axiológica, em particular, vão-se traçando ligações dos princípios do direito com a existência humana, a ciência e outras formas de percepção do mundo. A base metodológica da pesquisa é o método dialético do conhecimento científico, por meio da aplicação deste método foram considerados os aspectos jurídicos, funcionais, organizacionais e processuais

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das abordagens metodológicas para a compreensão dos princípios do direito no contexto das transformações da globalização moderna. Destacou-se a classificação dos princípios do direito e fez-se uma breve descrição de seus tipos — princípios universais, princípios civilizacionais e princípios de direito-família e possibilidades de separação de princípios do ordenamento jurídico nacional.
PALAVRAS-CHAVE: princípios de direito; natureza ontológica; natureza epistemológica; natureza axiológica; princípios universais.

Introduction

Principles of law are one of the fundamental and, along with legal norms, most commonly used notions of the general theory of law and specialized and interdisciplinary legal sciences. They are mentioned almost in all monographic legal studies. As a rule, special attention is paid to them also in numerous training manuals and textbooks in any sphere of legal knowledge.

Despite this, the problem of principles of law can be classified as one of the most complex, contradictory, and ideologically and methodologically unintelligible problems in the domestic, as well as in the post-Soviet, general theoretical jurisprudence. According to the previous Soviet-positivist tradition, principles of law often continue to be defined as initial, guiding, fundamental ideas (standards) of law, which are enshrined in laws and other normative acts either directly (textual enshrining) or derive from their content (contextual enshrining) and are derived from the system of legislation in a logical and inductive way. Depending on whether or not they are formally enshrined in normative acts distinguished are principles of law and principles of legal awareness, principles of law and legal principles, principles of general social law and principles of legal law, norms-principles related to specialized constitutional norms, and principles of law, etc. Relations of principles of law with values in general and legal values in particular, with science and other forms of reality (morality, religion and art) are not explicitly interpreted. Principles of law (even general ones) are often “tied” exclusively to the characteristics of the national legal system of Ukraine, and their classification covers ideas quite diverse in their nature and purpose (from political, ideological, religious, aesthetic ones to special legal ones).

Lack of proper world-view and methodological understanding of principles of the law negatively affects legal practice, in particular, activities of courts.

The purpose of this article is to highlight methodological approaches to

understanding principles of law in the context of modern globalization transformations.

Principles of law cannot be reduced to outwardly expressed symbolic forms that exist independently of the subject (a person), as well as the law itself, just like the law itself cannot be reduced to a closed, logically non-contradictory system of norms formulated in laws and other state regulatory acts. The ontological nature of principles of law is much more complicated. As rightly stated in the “Conclusions and Recommendations from the Nationwide Legal Discussion” regarding principles of law, this nature cannot be adequately explained based on legal-positivist theoretical positions[6].

Genesis of the principles of law is not related to normative-state expression of will, as is commonly believed according to these positions. These principles (just like the law itself) are a product of human activity. Their formation took place in the process of interaction, communication between people, mutual coordination of their behavior and mutual responsibility for this behavior alongside with formation of the law itself, i.e. “from below”, within the limits of a single integral process, and not through state’s generalizations of already functioning customary legal norms that arose earlier. As evidenced by historical and anthropological research, formation of customs themselves took place under a significant (and often decisive) influence of transcendental sources that went beyond the “world of phenomena” and cannot be verified by experience myths, religious ideas, etc. (such sources include myths, religious ideas, etc.).

Therefore, the roots of principles of law should be sought in mythology, under the determining influence of which numerous taboos on incest, marital (primarily female) infidelity, theft, etc., were formulated[7]. In religion, in particular, they were formulated in such divine commandments typical of all religions, such as “do not kill”, “do not steal”, “do not commit adultery”, etc., which became the foundation of virtually all legal systems, despite significant differences between them; in social morality they were formulated, in particular in such its principles as “give everyone according to his/her merits”, "caring for your own good, do not harm others”, “don't be a judge in your own case”, etc., which have not lost their

[6] *POHREBNIAK, Stanislav Petrovych. Conclusions and recommendations from the national legal debate. Law of Ukraine. 2017. No. 7. Kyiv. Ukraine. p. 90-93.*
[7] *NORBERT, Röttgen. Historical introduction to law. 2005. Moscow. Russian Federation.*

significance even today.

At the same time, the formation of principles of law was subordinated to the decision of practical tasks (making decisions in specific life situations, i.e., principles of law were established first of all due to the practice of ancient arbitrators (judges who solved legal disputes).

The same historical-anthropological studies show that customs as a source of law often arose later than the principles and the decisions of ancient judges based on such customs. Their adoption was influenced by the ideas of justice, correctness, truthfulness, integrity and other moral values prevailing in the society.

Thus, principles of law, as well as the law itself, have a non-governmental origin. The state (government) joined formation of such principles only at certain historical stages of legal development when the purely empirical procedure of law-making and the oral form of transmission of legal information turned out to be unable to provide reliable statutory and legal regulation in the conditions of complicated social relations and their growing dynamism. In this connection, there was a need for written expression of legal norms and principles in the form of state normative acts, which would not limit with fixing existing typified relations (legal relations) and judicial decisions, but which would try, on the one hand, to regulate them in advance, ahead of the dynamics of public life (which led to an increase in the level of abstraction, generalizations of normative formulas) and , on the other hand, to provide greater definition of rules and principles of law (which would eliminate elements of subjectivity in their application)[8].

1. Understanding the principles of law in modern conditions of globalization

As in many other issues related to principles of law, there is no unity of opinions in approaches to their classification. The most common is their division into general, inter-branch principles, sectoral principles and principles of law institutes. At the same time, in contrast to the Western theory of law, where general principles are understood as principles that operate in

[8] CHYZHMAR, Yurii; REZVOROVICH, Kristina; ORLOVSKYI, Ruslan; KYSYLOVA, Krystyna; BUHAICHUK, Kostiantyn. State employment service: European approaches to providing electronic services. Journal of Legal, Ethical and Regulatory Issues, 2019. 22(6), 1-7.

all legal systems[9], in domestic general theoretical jurisprudence, in the national general theoretical jurisprudence.

General principles of law are generally referred to as those that apply to the entire system of law of the country and apply to all branches and institutions, i.e., they are reduced, as have already been mentioned, exclusively to characteristics of the national legal system.

This limitation of the scope of general principles of law by the national legal system can obviously be explained by the inertia of the Soviet methodological approaches, according to these methodological approaches any universality of principles of law was denied due to incompatibility of the essence of the "socialist law" with the "bourgeois" law. However, for the sake of fairness, it should be noted that even in the Western world, the official recognition of the existence of principles of law common to legal systems (and that mainly within the framework of international legal systems) took place relatively recently (only after the Second World War)[10].

Other, more advanced classifications of principles of law are often proposed in the domestic and post-Soviet literature. For example, in addition to sectoral and inter-sectoral principles of law P. Rabinovych defines universal human principles, typological principles and specific-historical principles. He defines universal human principles of law as "conceptual legal principles which are conditioned by a certain level of development of human civilization and embody the best progressive achievements of the world legal history and are widely recognized in international normative documents"[11]. In particular, among them the author refers to:

- Enshrined and protected by law fundamental human rights, freedom of people and their associations;
- Legally (formally-defined and mandatory) equality of the same-named subjects before the state and the law;
- Recognition of the law [as an act of normative will of the highest

[9] *BERZHEL, Jean-Luy. General Theory of Law. 2000. Moscow. Russian Federation.*

[10] LEHEZA, Yevhen. FILIPENKO, Tatiana. SOKOLENKO, Olha. DARAHAN, Valerii, KUCHERENKO, Oleksii. Ensuring human rights in ukraine: problematic issues and ways of their solution in the social and legal sphere. Cuestiones políticas. 2020. Vol. 37 № 64 (enero-junio 2020). P. 123-136. DOI: https://doi.org/10.46398/cuestpol.3764.10.

[11] *RABINOVYCH, Petro. Fundamentals of the general theory of law and the state: a textbook. View. 9th with changes. 2007. Lviv: Krai, Ukraine.*

representative body of the state power or direct expression of the people's will (referendum)] to be the original, primary official source of subjective rights and duties of individuals;

- Unity of legal rights and obligations;
- Regulating behavior of people and their associations according to the generally permitted type "Everything which is not forbidden is allowed by the law";
- Regulating activities of state bodies and officials according to the specially permitted type: "Only what is expressly allowed by law can be done." and so on.

According to P. Rabinovych typological principles of law include "its guiding principles (ideas), which are characteristic of all legal systems of a certain historical type and reflect its social and contextual essence"[12].

Specific historical principles of law are defined as principles that reflect specificity of the law of a particular state in real social conditions.

Tribute should be paid to P. Rabinovych's effort, firstly, to go beyond the traditional for Soviet jurisprudence tying principles of law to a specific legal system, and secondly, to focus attention precisely on legal (and not on political, ideological, etc.) foundations, which determine content and direction of legal regulation; at the same time, one cannot fail to notice vulnerable places in the classification of legal principles proposed by the author[13].

According to him universal human principles include many principles that are a characteristic rather of the law of a separate civilization (in this case, European civilization) or even a certain legal family (in particular, a continental one) and can hardly be extended to all civilizations and legal families, that is, to claim the name of universal civilizational ones or universal human ones[14].

Separation of typological principles of law would obviously be justified on the condition of preserving the formational approach to the typology of law, which

[12] *RABINOVYCH, Petro. Fundamentals of the general theory of law and the state: a textbook. View. 9th with changes. 2007. Lviv: Krai, Ukraine.*
[13] *RABINOVYCH, Petro. Fundamentals of the general theory of law and the state: a textbook. View. 9th with changes. 2007. Lviv: Krai, Ukraine.*
[14] YUNINA, Maryna. KURYLO, Tetyana , NOVYTSKA, Marina., NESTERTSOVA-SOBAKAR, Oleksandra , KRYZHANOVSKA, Olena. Labor resource management at the macro level as social security in the context of European integration. Journal of Security & Sustainability Issues, 2020. 9. 420-432 DOI: https://doi.org/10.9770/jssi.2020.9.M(32).

today is far from indisputable, and specific historical principles of law (at least those named by the author) rather characterize peculiarities of law relationships with the state system and not law as a phenomenon[15].

In a broader context, depending on the level of public relations governed by law, principles of law are also viewed by O. Skakun. In the system of principles, she defines the following types: Universal human (international, civil) principles, regional-continental principles and national (domestic) principles. The latter, in their turn, are divided into general legal (general, basic) principles, inter-branch principles, sectoral principles, subsectoral principles and institutional principles[16]. According to O.Skakun universal human (universal civilizational) principles of law include principles that are valid within the international legal order and determined by the achieved level of mankind development. In her opinion, these are principles of humanism, legal equality, freedom, democracy, justice, legality[17].

Regional-continental principles of law operate within national legal systems that have created interstate associations on the continents of the world (for example, the principles laid down in the Treaty establishing the European Economic Community). O. Skakun believes that these principles usually coincide with universal human principles[18].

Other domestic jurists are also inclined to recognize the universal nature of certain principles of law, their civilizational and right-family features. In particular in the system of general principles of law S.Pohrebniak determines a group of fundamental principles which are “laid in the basis of law and form its foundation”[19]. They are not just a concentrated expression of the most important essential features and values characteristic of a certain society, but they are “often a consolidation of those higher principles and values that form universal

[15] LEHEZA, Yevhen. Illegal influence on the results of sports competitions: comparison with foreign legislation. Ratio Juris UNAULA, 2022. 17(34), 53-70. Retrieved from https://publicaciones.unaula.edu.co/index.php/ratiojuris/article/view/1338.
[16] *SKAKUN, Olha. Theory of the state and law. Encyclopedic course. Kharkov. Ukraine.*
[17] VASYLIEVA, Oleksandra., Slukhai, Sergii. Khadzhyradieva, Svitlana. Klochko, Andriy. & Pashkova, Anna . 2020. Ukrainian civil service: implementation of the public administration reform strategy in Ukraine. Journal of Advanced Research in Law and Economics. *2005.* v. 11, n. 4, 1439-1445. DOI: https://doi.org/10.14505/jarle.v11.4(50).41
[18] *SKAKUN, Olha. 2005. Theory of the state and law. Encyclopedic course. Kharkov. Ukraine.*
[19] *POHREBNIAK, Stanislav Petrovych. Fundamental principles of law (content description). 2008. Kharkiv: Right. Ukraine.*

dimension of the society"[20]. "Most of such principles are based on "natural justice" common to all legal systems" According to S. Pohrrebniak fundamental principles of law Pogrebniak, apart from justice, also include equality, freedom and humanism. Fundamental general legal principles of law common to all legal systems were described by S. Shevchuk[21].

Summarizing these disparate and sometimes contradictory positions, it is possible to propose the following classification (the following main types) of principles of law according to their scope:

a) Universal (universal human) principles of law, i.e. fundamental, basic legal principles, formulated in the process of centuries-long history of progressive development of law, inherent in all legal systems;

b) Civilizational principles of law that characterize certain legal cultures and traditions embodied in their respective civilizations;

c) Right-family principles of law, i.e. the principles inherent in separate legal families (even within the limits of one civilization);

d) National principles of law, i.e. principles formulated and operated within a certain national legal system, reflecting its peculiarities[22].

A relatively autonomous system of principles of law is formed by principles of international law, among which are also defined as general principles of international law (according to the formula presented in the Article 38 the Statute of the International Court of Justice of the United Nations (hereinafter the UN) — "General principles of law recognized by civilized Nations"), the sectoral principles and principles of the institutions of international law[23]. Although there are many of these principles that extend their effect to national legal systems, it is not correct to fully identify general principles of law with generally accepted principles of international law, as is sometimes the case in the literature[24].

[20] *POHREBNIAK, Stanislav Petrovych. Fundamental principles of law (content description). 2008. Kharkiv: Right. Ukraine.*
[21] *SHEVCHUK, Svitlana. Judicial law-making: world experience and prospects in Ukraine 2007. Kyiv: Abstract. Ukraine.*
[22] LEHEZA, Yevhen. SHAMARA, Oleksandr. CHALAVAN, Viktor. Principios del poder judicial administrativo en Ucrania. 2022. DIXI, 24(1), 1-11.
[23] Kelman, Mykhailo Stepanovych. General theory of the state and law: Textbook. 2003. Lviv: "New World". Ukraine.
[24] LEHEZA, Yevhen.YERKO, Iryna. KOLOMIICHUK, Viacheslav. LISNIAK, Mariia. International Legal And Administrative-Criminal Regulation Of Service Relations. Jurnal cita hukum indonesian law journal. 2022. Vol. 10 No. 1, pp. 49-60, DOI: https://doi.org/10.15408/jch.v10i1.25808.

2. Principles of administrative procedural law of Ukraine in the modern conditions of the present time

It should be noted at once that systematization of scientific approaches, understandings and legal ideas about theoretical interpretations of administrative procedural law depending on the understanding of the "administrative process" definition in today's conditions gives an opportunity to define administrative procedural law as one of the independent procedural branches of law being a properly ordered set of administrative-procedural norms (rules) enshrined in administrative procedural legislation governing public relations between the court and participants in court proceedings in the sphere of administrative proceedings for the purpose to effectively protect rights, freedoms and interests of individuals, rights and interests of legal entities from being violated by subjects of power. It is based on this approach to understanding the content of administrative procedural law as an independent branch of law the fundamental and guiding principles of the latter will be considered in this article.

From the scientific point of view, expediency of studying principles of any branch of procedural law consists in the fact that these branches belong to one of the fundamental categories of the Ukrainian legal science and occupy a priority place in its conceptual apparatus, act as a kind of a "coordinate system" for scientific analysis of procedural legal relations in the process of their functioning. The law's procedural branches are characterized by a higher degree of generality of normative attributes than in case with the branches of material law. As mentioned on pages of legal literature, research of any branch principles of law should be carried out based on their origin, evolution, legal nature, importance and practical implementation. It is also important to deduce the legal essence from the philosophical understanding of the principles[25]. It is no coincidence that the pioneers in the studying of problems of principles in legal science, have historically been representatives of procedural branches (they belong to the science of criminal procedure, where the doctrine of principles arose much earlier than in other branches of jurisprudence)[26].

[25] POLYANICHKO, Angela Alexandrovna. Principles of law: a modern general theoretical view. University scientific notes. 2013. № 3 (47).
[26] LEHEZA, Yevhen. SAVIELIEVA, Maryna. DZHAFAROVA, Olena. Structural and legal analysis

The term "principle" as a general scientific category is of Latin origin (Latin “principium”) and can be interpreted as: basic, starting point of any theory, doctrine, scientific system[27]; beliefs, norms, rules guiding someone in life and behavior; canon[28]; the feature underlying the creation or implementation of something, the method of creating or implementing something; beliefs, norms, rules that guide someone in life, behavior, or the basic, starting point of any scientific system, theory, ideological direction, etc.[29]. The terms “basic”, "guiding" or “starting”, which are used in almost all definitions provided in reference publications, indicate that this system-forming element, given its essence, is endowed with the highest imperative, it encompasses a fundamental rule that does not require any proof.

Theorists of law, who have studied the principles of law, come to the same conclusion that these are “basic ideas or initial provisions that characterize the content of law, patterns of its development, essence and purpose as a special social regulator”[30]. In any case, definition of “principles of law” is used under specific conditions when it comes to a basic rule or requirement that belongs to the sphere of jurisprudence and is considered in connection with either the law in general or a particular activity. In specific cases, the definition of “principles” can either be interpreted or clarified, depending on the range of its use and functional orientation[31].

Norms of the Code of Administrative Proceedings of Ukraine (CAPU) CAPU determining the principles of administrative proceedings are worth to be mentioned as an example. The latest version of this coded act clearly demonstrates legislators not only moved the list of basic principles to the beginning of this legislative act, but also placed them together with the provisions on the tasks of administrative proceedings (Part 3 Art. 2 of the CAPU) and

of scientific activity regulation in developed countries. Baltic Journal of Economic Studies. 2018. Vol. 4 (3), pp. 147-157. *DOI:* https://doi.org/10.30525/2256-0742/2018-4-3-147-157.

[27] LOPATINA, Vladimir Vladimirovich, LOPATINA, Lyudmila Evgenievna. Small explanatory dictionary of the Russian language / under. ed. 1990.. Moscow: Russian language. p. 253.

[28] YAREMENKO, Vasil. SLIPUSHKO, Oxana. New explanatory dictionary of the Ukrainian language: in 4 volumes:. 1998. Kyiv: *Ukraine.* p. 124.

[29] YAREMENKO, Vasil. SLIPUSHKO, Oxana. 2007. New explanatory dictionary of the Ukrainian language: in 3 volumes. Kyiv: *Ukraine.* p. 78.

[30] DOBKIN, Mikhail Markovich. Local state administrations: formation, development and functioning: monograph. 2012. Kharkiv: Golden Mile. *Ukraine.* p. 84.

[31] *SKAKUN, Olha. Theory of the state and law. Encyclopedic course. 2005. Kharkov. Ukraine*. p. 204.

supplemented with the following new principles: understanding of the time of court proceedings; inadmissibility of abuse of procedural rights; reimbursement of court costs of individuals and legal entities in whose favor the court decision is made[32].

Judicial proceedings in administrative cases are characterized by certain stages, their own goals and objectives, a special range of participants and certain specifics of their procedural status, a set of procedural actions, the amount of legal facts, legal results and their procedural design. As a result, the principles functioning within a certain institute of administrative procedural law or separate administrative proceeding[33] were thoroughly studied by scientists at the proper level. It is worth mentioning O.V.Kuzmenko's monograph "Theoretical Principles of the Administrative Process", its author points out that the principles form a structural conglomerate which constitutes the ideological basis of the public administration and its officials in the procedure of meeting public interests. The researcher systematically analyzed the principles of various administrative proceedings and viewed them as administrative and procedural principles[34].

Since 2005 (with the introduction of the CAPU) and till now, most scientific publications and theses have been devoted to the analysis of separate principles of the administrative judicial process (dissertation researches by S.V. Potapenko "Dispositiveness as a Principle of the Administrative Process of Ukraine" (2010), S.A. Bondarchuk "Principles of Administrative Justice of Ukraine" (2010), O.O.Gavrilyuk "The Principle of Transparency and Openness in the Administrative Proceedings of Ukraine" (2012), M.D. Kukhar "Competition as a Principle of Administrative Proceedings of Ukraine" (2014), Ye.O. Zhukova "Implementation of the Principle of Procedural Economy in the Administrative Proceedings of Ukraine" (2015). This state of scientific developments on this issue does not cause any complaints, because until the mid-December 2017 the CAPU clearly defined the concept of "administrative process" (paragraph 5, Part

[32] LEHEZA, Yevhen. FILIPENKO, Tatiana. SOKOLENKO, Olha. DARAHAN, Valerii, KUCHERENKO, Oleksii. Ensuring human rights in ukraine: problematic issues and ways of their solution in the social and legal sphere. *Cuestiones políticas.* 2020. Vol. 37 № 64 (enero-junio 2020). P. 123-136. DOI: https://doi.org/10.46398/cuestpol.3764.10.

[33] ZADYKHAYLA, Elena Anatoliyivna. Administrative law of Ukraine (General part): textbook. manual / for general ed .. 2016. Kharkiv: Law. *Ukraine. p. 87.*

[34] KUZMENKO, Oksana Vladimirovna. Theoretical principles of the administrative process: monograph. 2005. Kyiv: Attica. *Ukraine. p. 163.*

1 Art. of the Code) as “legal relations formed during implementation of administrative proceedings.” That is why the above-mentioned researches were conducted on the basis of the legislative requirement. The Researchers equated the principles of administrative process to the principles of administrative proceedings and considered them as the basis, beginning, fundamental, and most abstract rules (basic requirements, principles), which serve as indisputable requirements underlying activities performed by the administrative court to resolve its cases fairly[35]. According to scientists, these principles are the basic normative-governing provision objectively existing as a category of legal awareness and due to the need to regulate public relations enshrined in procedural law which forms the borders for execution and development of administrative proceedings[36]. Such definitions indicate that the procedure for conducting administrative proceedings is provided by a set and system of procedural actions, which are based on the principles reproduced in the principles of administrative procedural legislation, and in particular in the principles the CAPU Principles determine the main points in the organization and activity of the administrative court with provisions of a more detailed nature appearing from these main points. That is, legal requirements, rules contained in the principles of administrative proceedings, run as the “starting line” through the entire course of consideration and resolution of administrative cases, they determine contents of the relevant specific procedural rules as well as procedural activities carried out on their basis[37].

Let us point out the characteristic features of this legal phenomenon based on the above observations and conclusions. Such features include:

— legal orientation - each principle is based on a certain idea, theory, concept or view, which is a prerequisite for its emergence and it is always determined by social, legal, ideological factors and values of social life;

— normative and textual fixation - the principles are reflected in the

[35] MATVIYCHUK, Valery Konstantinovich. Scientific and practical commentary to the Code of Administrative Procedure of Ukraine: in 2 volumes, ed. 2nd, changes. and ext. 2008. Kyiv: Alerta. *Ukraine.*

[36] BONDARCHUK, Sergiy Antonovych. Principles of administrative justice of Ukraine: dis. Cand. jurid. Sciences: 12.00.07 «Administrative law and process; finance law; information law "; Kharkiv National University University of Internal Affairs affairs. 2010. Kharkiv, *Ukraine.*

[37] LEHEZA, Yevhen. ODYNTSOVA, Iryna. DMYTRENKO, Natalia. Teoría y regulación legal del apoyo informativo de los procedimientos administrativos en Ucrania. *Ratio Juris UNAULA*, 2021. 16 (32). P. 291-306 https://doi.org/10.24142/raju.v16n32a12.

norms of legislation by their textual fixation;

— universality and effectiveness - principles of administrative procedural law viewed as universally binding and normative provisions determine formation and prospects of development of this branch of law, they are directly related to its norms and institutions, in particular principles have practical and general significance for each of them and determine their basic properties and typical features;

— stability and stability - the principles must not undergo significant changes for a long time and ensure the implementation of the main goal of this industry - to ensure the proper level of realization and protection of individuals and legal entities of their rights, freedoms and legitimate interests from violations by government powers;

— firmness and certainty - principles must have a separate clearly defined content, in particular, certain content elements of one principle must not repeat content elements of other principles of administrative procedural law or be derived from them;

— in case of violation or non-compliance with the principles, during making decision of an administrative case, the court decision shall be subject to cancellation[38].

An interesting approach is followed by E.F. Demsky. He distinguishes two independent groups (types) of principles, in particular: 1) principles of administrative procedural law (rule of law; presumption of legality of actions and requirements of the subject of appeal and the person concerned; supremacy of law in the system of administrative procedural regulations; ensuring and protecting interests of individuals and the state; differentiation and specialization of the administrative process; compliance of norms of the procedural law of Ukraine with provisions of international legal acts); 2) principles of administrative process, or administrative-procedural principles: a) functional principles, which determine direction of the administrative process as well as form and content of its institutes; b) organizational principles which determine procedural activity of bodies authorized to consider administrative cases. This position is justified by

[38] LEHEZA, Yevhen. DOROKHINA, Yuliia. SHAMARA Oleksandr. MIROSHNYCHENKO, Serhii. MOROZ, Vita. Citizens 'participation in the fight against criminal offences: political and legal aspects. Cuestiones Políticas, 2021. 39(69), 212-224. https://doi.org/10.46398/cuestpol.3969.12.

the fact that it is a mistake to equate principles of law (which determine functioning of the system) with contents of law and the principles of the subjects of legal relations, its components which alongside with the method of procedural actions, guarantees of administrative proceedings and the legal status of the subjects of the administrative process form the structure of the administrative-procedural regime (procedural form)[39]. The listed individual principles (which are part of each group of proposed fundamentals) have repeatedly been the subject of research; their content and essence at the appropriate scientific level are set out in scientific publications and monographs.

3. The general principles of European Union law

The *general principles of European Union law* are general principles of law which are applied by the European Court of Justice and the national courts of the member states when determining the lawfulness of legislative and administrative measures within the European Union. General principles of European Union law may be derived from common legal principles in the various EU member states, or general principles found in international law or European Union law. General principles of law should be distinguished from rules of law as principles are more general and open-ended in the sense that they need to be honed to be applied to specific cases with correct results.[1]

The general principles of European Union law are rules of law which a European Union judge, sitting for example in the European Court of Justice, has to find and apply but not create. Particularly for fundamental rights, Article 6(3) of the Treaty on European Union provided.

Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Further, Article 340 of the Treaty on the Functioning of the European Union (formerly Article 215 of the Treaty establishing the European Economic Community) expressly provides for the application of the "general principles

[39] DEMSKY, Eduard. 2008. Administrative procedural law of Ukraine: textbook. manual. Kyiv: Attica. *Ukraine.*

common to the laws of the Member States" in the case of non-contractual liability[40].

In practice the European Court of Justice has applied general principles to all aspects of European Union law. In formulating general principles, European Union judges draw on a variety of sources, including: public international law and its general principles inherent to all legal systems; national laws of the member states, that is general principles common to the laws of all member states, general principles inferred from European Union law, and fundamental human rights. General principles are found and applied to avoid the denial of justice, fill gaps in European Union law and to strengthen the coherence of European Union law[41].

Accepted general principles of European Union Law include fundamental rights, proportionality, legal certainty, equality before the law and subsidiarity. In Case T-74/00 *Artegodan*, the General Court (then Court of First Instance) appeared willing to extrapolate from the limited provision for the precautionary principle in environmental policy in Article 191(2) TFEU to a general principle of EU law[42].

Comparative approach at the european level.

a) Council of Europe

1) Document: Article 3 of the Statute of London provides: “Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms” (“Tout Membre du Conseil de l’Europe reconnaît le principe de la prééminence du Droit et le principe en vertu duquel toute personne placée sous sa juridiction doit jouir des droits de l’homme et des libertés fondamentales”). The last paragraph of the preamble to the European Convention on Human Rights (ECHR) mentions the same principle: “Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law” (“Résolus, en tant que

[40] Treaty on the Functioning of the European Union. Article 340. Retrieved 11 November 2017.
[41] KACZOROWSKY, Alina. *European Union law*. Taylor & Francis. 2008. p. 231.
[42] Craig, Paul; de Búrca, Gráinne *EU law: text, cases, and materials* (sixth ed.). Oxford University Press. 2015. pp. 112–113.

gouvernements d'Etats européens animés d'un même esprit et possédant un patrimoine commun d'idéal et de traditions politiques, de respect de la liberté et de prééminence du droit […]").

2) "Etat de droit" in the case-law of the ECourtHR ("State based on the rule of law" / "law-governed State" / "State subject to the rule of law")

The case-law search stopped on 24 August 2005. Thirteen judgments containing the expression "Etat de droit" were found. Only those judgments in which the expression appears in the (legal) grounds were included[43].

The concept of Etat de droit is found to play a minor role in the reasoning behind decisions and is thus rather more rhetorical than prescriptive in nature. The term appears to be used systematically in support of doctrine concerning the courts and the administration of justice. In the Prager and Oberschlick v. Austria judgment (§34) of 22 March 1995, for example, the Court held: "regard must, however, be had to the special role of the judiciary in society. As the guarantor of justice, a fundamental value in a law-governed State, it must enjoy public confidence if it is to be successful in carrying out its duties" ("il convient de tenir compte de la mission particulière du pouvoir judiciaire dans la société. Comme garant de la justice, valeur fondamentale dans un Etat de droit, son action a besoin de la nécessaire confiance des citoyens pour prospérer"). Similarly, in the De Haes and Gijsels v. Belgium judgment (§37) of 27 January 1997, the Court stated: "the courts – the guarantors of justice, whose role is fundamental in a State based on the rule of law – must enjoy public confidence" ("l'action des tribunaux, qui sont garants de la justice et dont la mission est fondamentale dans un Etat de droit, a besoin de la confiance du public"). In July 2000, in the Antonetto v. Italy judgment (§28), the Court held that "the administrative authorities form one element of a State subject to the rule of law [Etat de droit] and their interests accordingly coincide with the need for the proper administration of justice"[44].

It seems, therefore, that the idea of an Etat de droit implicitly underlies the Court's case-law, but it is striking that it is virtually absent from the principles applied by judges in their judicial work. If we look at the Court's usage, we find

[43] HEUSCHLING, Etat de droit, Rechtsstaat, Rule of law, Thesis, Dalloz, 2001, p. 309.
[44] CARPANO, E., *Etat de droit et droits européens*, Thesis, L'Harmattan, Logiques juridiques, 2001. p. 266.

that Etat de droit is never referred to as a fundamental value in itself. The Court simply states, for example, that “the justice system plays a fundamental role in a State governed by the rule of law [Etat de droit]”. Moreover, when the concept is used, it never appears to be a deciding factor. For instance, in the Hornsby v. Greece judgment (§41) of 25 February 1997, the applicants alleged that the Greek government had not complied with decisions of the Supreme Administrative Court in their favour, and consequently held that their right to effective judicial protection as upheld by Article 6§1 of the ECHR had been infringed. In this case, the Court held that “the effective protection of a party to such proceedings and the restoration of legality presuppose an obligation on the administrative authorities’ part to comply with a judgment of that court”. It added that “the Court observes in this connection that the administrative authorities form one element of a State subject to the rule of law and their interests accordingly coincide with the need for the proper administration of justice” (“l’administration constitue un élément de l’Etat de droit et que son intérêt s’identifie donc avec celui d’une bonne administration de la justice”). Consequently, “where administrative authorities refuse or fail to comply, or even delay doing so, the guarantees under Article 6 enjoyed by a litigant during the judicial phase of the proceedings are rendered devoid of purpose”. This is a good example of the European Court’s attitude to Etat de droit in that, in this instance, it does not comment directly on compliance or otherwise with Etat de droit, but rather on compliance with the guarantees under Article 6.

The principle of the Etat de droit is not, therefore, established as a fundamental principle of the ECHR system and cannot be the source of new rights. This does not appear to be the case with “prééminence du droit”.

Conclusions

Based on the above it can be concluded that universal human universal values common to all civilizations and legal systems first of all include human rights.

The path to their universalization was rather complicated and controversial. For a long period of time, it was believed that conceptual ideas about human rights differ significantly in different civilizations, therefore rejected was any possibility of their universalization, at least at the level of an international

document establishing minimum standards for provision and protection of human rights. They were viewed as an internal matter of each state or civilization, which can have their own view of their nature and the level of provision and protection. Attempts to conceptually “westernize” human rights, i.e. attempts to spread Western European ideas about them and their scope to other countries and civilizations, especially with the help of pressure, met with sharp resistance and often ended in fiasco.

In spite of this human rights influenced by various factors gradually acquired a universal civilizational character while becoming an object of international legal regulation. As noted in the literature sources, today they are considered a normative standard that claims universal and unconditional reception throughout the world. Their universality grows all the more in the context of modern human-centered globalization transformations, which were discussed earlier.

For example, in Ukraine universal, civilizational and right-family principles of law are “passed” through the prism of both positive and negative factors inherent in it. Thus, functioning of principles of law in Ukraine is positively influenced by certain features genetically inherent to the Ukrainian people; such features include primordial desire for freedom, creation of their own independent state, tolerance, respect for human dignity, etc.

Agreeing with the fact that independent Ukraine and its legal system can exist only in the European civilizational and mental dimension, at the same time it should be realized that our state is currently only at the beginning of its return to Europe and European values.

When viewing the principles of administrative procedural law we consider it expedient to divide them into those that directly reflect the specifics and content of this branch of law, determine its features, purpose, objectives and intention, as well as separately - administrative procedural principles, i.e. basic principles enshrined in administrative procedural law which do not undergo significant changes, determine the nature and content of the activities of all subjects of administrative procedural legal relations. The functional purpose of principles is to ensure a relatively stable vector orientation for settlement of administrative procedural relations arising from the protection of rights, freedoms and interests of individuals, rights and interests of legal entities from being violated by subjects

of power during court proceedings in the sphere of public and relations.

To improve the administrative and legal regulation and the mechanism of control by the subjects of public administration through the delimitation of their competence; the procedure for exercising the powers of public authorities and local governments to control the provision of public services.

It is necessary to introduce into the legislation on appeals of decisions, actions or inactions of public administration bodies on the provision of public services the mandatory administrative procedure for appealing decisions, actions or inactions of public administration bodies on the provision of public services, which makes it possible to consider such category of administrative lawsuits in a short time.

Therefore, universal human principles of law are its universal normative framework which is recorded in positive law and developed by humanity as a global macro-civilizational system, objectively determined by the needs and level of development of human civilization and which embodies its best achievements in the legal sphere, determines the essence and direction of legal regulation and is applicable in any legal system. The progressive legal opinion has formed such general framework that cannot be realized irrespective of the principles of organization and functioning of the entire social system, including the legal one. They include principles of humanity, democracy, justice, freedom, equality, etc., that is, principles that are extremely important for functioning of law (law cannot function without such principles). Each of them finds its own expression both in the system of law in general and in its separate branches and institutions.

The term Etat de droit as such is therefore not found in the Statute of the Council of Europe or the ECHR, but reference is made to a similar concept, prééminence du droit. Both terms are used in the case-law of the European Court of Human Rights (ECtHR), although prééminence du droit is much more common.

Case-law: It seems appropriate to draw a distinction between the terms Etat de droit and pré-éminence du droit, the better to grasp their significance in case-law.

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