

UDC: 351.87:35.084.64 (477)

Kulava Mariia Konstantinovna,

a student of the Department of Public Administration of the Interregional Academy of Personnel Management, lecturer of the Department of Law of the Danube Branch of the Private Joint-Stock Company "Higher Educational Institution" Interregional Academy of Personnel Management", 68600, Izmail, Str. Klushyna, 3-a, tel.: 048-41-7-79-02, e-mail: mkulava80@ukr.net

ORCID: 0000-0001-8081-0211

Кулава Марія Костянтинівна,

здобувач кафедри публічного адміністрування Міжрегіональної Академії управління персоналом, викладач кафедри права Придніпурської філії Приватного акціонерного товариства "Вищий навчальний заклад "Міжрегіональна Академія управління персоналом", 68600, м. Ізмаїл, вул. Клушина, 3-а, тел.: 048-41-7-79-02, e-mail: mkulava80@ukr.net

ORCID: 0000-0001-8081-0211

Кулава Мария Константиновна,

соискатель кафедры публичного администрирования Межрегиональной Академии управления персоналом, преподаватель кафедры права Межрегиональной Академии управления персоналом, 68600, г. Измаил, ул. Клушина, 3-а, тел.: 048-41-7-79-02, e-mail: mkulava80@ukr.net

ORCID: 0000-0001-8081-0211

DOI <https://doi.org/10.31618/vadnd.v1i13.134>



PRINCIPLES OF STATE REGULATION OF THE ACTIVITIES OF BODIES OF THE STATE EXECUTIVE SERVICE AND PRIVATE EXECUTORS

Abstract. Within the presented article, taking into account already existing achievements of scientists, the concept, the main features of the principles of state administration of the executive system of Ukraine are defined. The principles of activity of executive bodies according to the current legislation of Ukraine are determined. A brief description of the principles is presented, namely: the rule of law, legality, compulsory, independence, justice, impartiality and objectivity, discretion, transparency and openness of executive proceedings and its fixation by

technical means, the reasonableness of the time limits for enforcement proceedings, the proportionality of enforcement measures and the amount of claims for decisions, the right to appeal decisions, actions or omissions of state executives, private performers. It is established that in general the principles of executive proceedings in the investigated normative acts are duplicated, in addition to the principles of independence and the right to appeal decisions, actions or inaction of state executives, private performers.

The actual vision of the principles of public administration of the executive system of Ukraine is determined. The opinion on the need to supplement the list of principles with the following: the principle of equal competition between state and private performers through the balance between them; the principle of responsibility of the executive system bodies, their officials and private executors for damage caused as a result of violations of regulatory requirements; the principle of introducing effective incentives for voluntary implementation of decisions; the principle of professionalism and competence.

Also, within the submitted article, it is stated that the use of the terms “principles” and “principles” in the Laws of Ukraine “On Bodies and Officials Performing Enforcement of Court Decisions and Decisions of Other Bodies”, “On Enforcement Proceedings”, which are adopted simultaneously and regulated, are unjustified, identical social relations.

Keywords: the principles of public administration, state executives, private executives, enforcement of decisions.

ПРИНЦИПИ ДЕРЖАВНОГО РЕГУЛЮВАННЯ ДІЯЛЬНОСТІ ОРГАНІВ ДВС ТА ПРИВАТНИХ ВИКОНАВЦІВ

Анотація. Визначено поняття, основні ознаки принципів державного управління виконавчою системою України, принципи діяльності органів виконавчої системи згідно з чинним законодавством України. Представлена коротка характеристика принципів: верховенства права, законності, обов’язковості, незалежності, справедливості, неупередженості та об’єктивності, диспозитивності, гласності та відкритості виконавчого провадження та його фіксування технічними засобами, розумності строків виконавчого провадження, співмірності заходів примусового виконання рішень та обсягу вимог за рішеннями, забезпечення права на оскарження рішень, дій чи бездіяльності державних виконавців, приватних виконавців. Встановлено, що в цілому принципи виконавчого провадження у досліджуваних нормативних актах дублюються, крім принципів незалежності та забезпечення права на оскарження рішень, дій чи бездіяльності державних виконавців, приватних виконавців.

Визначено власне бачення принципів державного управління виконавчою системою України, а також висловлено думку про необхідність їх доповнення: принципом рівноцінного конкурування між державними і приватними виконавцями через дотримання балансу між ними; принципом відповідальності органів виконавчої системи, їх посадових осіб та приватних виконавців за шкоду, заподіяну внаслідок порушення нормативних приписів; принципом

впровадження дієвих стимулів для добровільного виконання рішень; принципом професіоналізму і компетентності. Також у межах представленої статті вказано на невиправданість використання термінів “засади” і “принципи” в Законах України: “Про органи та осіб, які здійснюють примусове виконання судових рішень і рішень інших органів”, “Про виконавче провадження”, що прийняті одночасно та регулюють тотожні суспільні відносини.

Ключові слова: принципи державного управління, державні виконавці, приватні виконавці, примусове виконання рішень.

ПРИНЦИПЫ ГОСУДАРСТВЕННОГО РЕГУЛИРОВАНИЯ ДЕЯТЕЛЬНОСТИ ОРГАНОВ ГИС И ЧАСТНЫХ ИСПОЛНИТЕЛЕЙ

Аннотация. Определены понятие, основные признаки принципов государственного управления исполнительной системой Украины, принципы деятельности органов исполнительной системы согласно действующему законодательству Украины. Представлена краткая характеристика принципов, а именно: верховенства права, законности, обязательности, независимости, справедливости, беспристрастности и объективности, диспозитивности, гласности и открытости исполнительного производства и его фиксация техническими средствами, разумности сроков исполнительного производства, соразмерности мер принудительного исполнения решений и объема требований по решениям, обеспечение права на обжалование решений, действий или бездействия государственных исполнителей, частных исполнителей. Установлено, что в целом принципы исполнительного производства в исследуемых нормативных актах дублируются, кроме принципов независимости и обеспечения права на обжалование решений, действий или бездействия государственных исполнителей, частных исполнителей.

Представлено авторское видение принципов государственного управления исполнительной системой Украины, а также указывается на необходимость их дополнения: принципом равноценного конкурирования между государственными и частными исполнителями через соблюдение баланса между ними; принципом ответственности органов исполнительной системы, их должностных лиц и частных исполнителей за вред, причиненный вследствие нарушения нормативных предписаний; принципом введения действенных стимулов для добровольного исполнения решений; принципом профессионализма и компетентности. Также в рамках представленной статьи указано на нецелесообразность использования терминов “основы” и “принципы” в Законах Украины “Об органах и лицах, осуществляющих принудительное исполнение судебных решений и решений других органов”, “Об исполнительном производстве”, которые приняты одновременно и регулируют тождественные общественные отношения.

Ключевые слова: принципы государственного управления, государственные исполнители, частные исполнители, принудительное исполнение решений.

Thesis statement. The imperfection of the enforcement mechanism became the basis for reforming the enforcement system of Ukraine, the introduction of a mixed system of enforcement authorities, the normative consolidation of the principles of state administration of the activity of the enforcement system of Ukraine, which is a significant step towards the existence of an effective enforcement system, took place.

Analysis of recent publications. The research of scholars on the principles of public administration has a different depth and is devoted to the principles of organization and management of various spheres of public life. At the same time, few works would comprehensively study the principles of the activities of the enforcement bodies themselves, especially after the introduction of a mixed system.

In general, the following works study the principles of public administration: H. Atamanchuk, N. Maltiukhova, O. Chechel, and others; the principles of public administration of the enforcement system of Ukraine: V. Boliukh, O. Verby-Sydor, E. Gryshko, L. Krupnova, S. Savonai, S. Fedyk, K. Shevchuk and others.

The objective of the article is to define the concept of the principle of public administration, to define the basic principles of the functioning of the enforcement system, to describe them briefly, to define the author's own vision of the principles of state administration of the enforcement system of Ukraine.

Results. The principles of this activity are of great importance in the mechanism of public administration for the enforcement of judgments and deci-

sions of other bodies (officials) (hereinafter – decisions).

The term “principle” derives from the Latin principium – the basis, the beginning and has the following interpretations:

1) The basic, initial position of theory, doctrine, etc., the guiding idea, the basic rule of activity;

2) Internal belief, a view that means the norm of behaviour [1, p. 409].

Under the principles of public administration, one understands the patterns, relations, interrelationships, and the guiding principles on which its organization and implementation are based and which can be formulated in certain rules [2, p. 74].

The principles of public administration:

- must be enshrined in normative legal acts, that is, have a legal form. It is the legal consolidation of the principles of activity to be a guarantee of the observance of rights by all participants, in our case, enforcement legal relations;

- must be stable, system-forming stabilizing structures;

- should be real guiding postulates, which are actually used in the practice of enforcement of decisions, are the guarantee of an effective, efficient, consistent with modern realities mechanism of public administration for the enforcement of decisions. Suitable in this regard is the opinion of V. Gorchenev and I. Shakhov, namely: “if the principles are perceived, they must be deeply understood, mastered in detail and become professional beliefs” [3].

That is, under the principles of state administration for the enforcement system one needs to understand the stable, system-forming constructions, which

are enshrined in the normative and legal acts and are actually used in practical activity in the enforcement of decisions, are the guarantee of effective, efficient, corresponding to modern realities, mechanism of public administration for enforcement of decisions.

In this case, the number of principles is determined by the level of knowledge about certain patterns of the implementation of a phenomenon or a process [4].

In Ukraine, the principles of the organization and operation of enforcement bodies were regulated in 2016 in Art. 4 of the Law of Ukraine "On Bodies and Officials Performing Enforcement of Court Decisions and Decisions of Other Bodies" [5], namely: 1) the rule of law; 2) legality; 3) independence; 4) fairness, impartiality and objectivity; 5) mandatory implementation of decisions; 6) discretion; 7) transparency and openness of enforcement proceedings and its fixation by technical means; 8) the reasonableness of the terms of enforcement proceedings; 9) the proportionality of the measures for the enforcement of decisions and the amount of claims by decisions.

In its turn, Art. 2 of the Law of Ukraine "On Enforcement Proceedings" [6] regulates that enforcement proceedings are carried out with the following principles: 1) the rule of law; 2) mandatory implementation of decisions; 3) legality; 4) discretion; 5) fairness, impartiality and objectivity; 6) transparency and openness of executive proceedings; 7) the reasonableness of the terms of enforcement proceedings; 8) the proportionality of the measures for the enforcement of decisions and the amount of claims by decisions; 9) ensuring the right to appeal deci-

sions, actions or omissions of state and private performers.

It is unjustified, considering the presented norms, to use different terms in laws that are adopted at the same time and regulate enforcement proceedings. "Norms" and "principles" are not identical concepts. The term "norm" is broader in its content and also covers the phenomena that are outlined by the "principle" category [7]. Principles of enforcement proceedings are duplicated, the principle of independence remains the same as the first rule, and the second is the provision of the right to appeal decisions, actions or omissions of state and private performers.

Let us analyse the presented principles in view of the system of enforcement of decisions we are investigating.

The rule of law principle. The rule of law is reflected in the fact that the laws must comply with the law as the measure of equal to all freedom and justice, in laws, it is necessary to restrict the private arbitrariness of both individual and state for the benefit of society [8, p. 188].

The observance of the principle of the rule of law in state administration for enforcement decisions depends on: respect for a person in the process of proceedings; actual, and not declarative equality of all before the law; balance of interests of society; subordination of the activities of all state institutions to the needs for realization and protection of human rights; not only the regulation of human rights and freedoms as the main duty of the state, but also the real guarantee of the realization of these rights; ensuring the right to appeal decisions, actions or omissions of public and private performers.

The principle of legality in the enforcement of decisions involves a condition where the enforcement legal relationship does not contradict the rules of law proclaimed in the interests of society; when the laws are observed by the participants steadily, when the rights and freedoms of participants in the enforcement proceedings are not violated; when the activity of private and public performers is under control.

The Constitution of Ukraine, the procedural codes of Ukraine guarantee the principle of compulsory execution of decisions. It should be noted that any court decision and decisions of other bodies (officials) is an individual act, but its non-fulfilment causes significant harm not only to a person whose interests are not secured, but also the public order. In addition, the fact of non-execution of the decision violates such principles of enforcement as the rule of law, legality, etc. If we investigate the factors that create the extremely unsatisfactory state of voluntary and then enforcement execution of decisions, we can distinguish, in addition to subjective factors, also objective ones: organizational factors (ineffective organization of enforcement bodies of Ukraine), economic problems in the state.

As a result, as G. Ognevyyuk rightly states, a situation is created in which a citizen used all the possibilities provided by the state to protect his violated right, but did not receive the actual provision of his right [9, p. 174].

The principle of independence from public authorities, institutions and officials, as well as local authorities and self-government bodies, public associations should be expressed in a competent public and private performers

conscientious performance of their duties, the priority of public interests over departmental or own. The principle of independence should protect performers from outside influences, from unskilled recommendations, preconceived opinions of people who have no professional training, can not give a scientifically based assessment of a particular activities, decisions, events, that are relevantly accepted, take place in the enforcement of decisions. In its turn, independence does not imply that the enforcement bodies of Ukraine become exempt from assessments of their activity, from liability for its consequences.

Part 2 of Article 16 of the Law of Ukraine "On the Bodies and Persons Carrying Out Enforcement of Court Decisions and Decisions of Other Bodies" regulates that the private official is the subject of independent professional activity. However, the next article, 17, of this Law indicates that the state regulation of the activity of a private official is carried out by the Ministry of Justice of Ukraine. This ministry regulates the activities of state performers as well. As a pretty abstract we consider Art. 9 of the Law of Ukraine "On Bodies and Persons Enforcing Enforcement of Judgments and Decisions of Other Bodies", which states that the independence of state performers from the influence or interference in their enforcement activities is guaranteed by: 1) a special procedure for financing and material and technical provision of state executive service bodies; 2) an effective mechanism for motivating state performers; 3) transparency of enforcement activities; 4) in another way, determined by law. In view of this, we consider it

doubtful that the subjects of enforcement proceedings are independent.

Justice, impartiality and objectivity. The principle of equity in the field of study manifests in particular: in the equality of all before the law, the proportionality of enforcement measures and the volume of claims by decisions. Impartiality manifests in: making decisions, committing acts that do not depend on the preference and interests of both public and private performers; in protecting the rights, freedoms and legitimate interests of a person irrespective of sex, race, nationality, language, origin, property and official position, place of residence, attitude to religion, beliefs, membership in social associations, and other circumstances; in the existence of enforcement of such institutions as “recusal” and “self-recusal”.

Objectivity as a principle of the functioning of the Enforcement Service of Ukraine manifests itself in the strict conformity of the actions of the performers with the normatively declared competence; exclusion of any personal motive; impartiality; the exclusion of material (except for the statutory), physical and moral influence on public and private performers.

The principle of discretion of enforcement proceedings manifests itself in the ability of participants in enforcement relations to exercise their subjective rights at their discretion. The state guarantees them free access to their rights. Other participants in the legal relationship are obliged not to impede the person, who owns the subjective right, in its implementation.

Publicity and openness of enforcement proceedings and their fixation by technical means. Publicity is an ac-

cess to full and reliable information on debtors, on the results of enforcement proceedings. The principle of openness means both the openness of access to the service in the executive power bodies, as well as the constant ability of citizens to receive adequate information about the various institutions of executive power [10, p. 15]. This definition can undoubtedly apply to the authorities of the enforcement system of Ukraine. At the same time, information obtained during the enforcement proceedings, access to which is limited by law, can be used only in accordance with the requirements of the law. That is, openness and publicity correspond with professional secrecy during the enforcement proceedings. The principle of fixation enforcement proceedings by technical means exercises through the right granted to the official to use photo and film shooting, video recording (paragraph 17, part 3, Article 18 of the Law of Ukraine “On Enforcement Proceedings”) during the enforcement of decisions.

Reasonableness of the terms of enforcement proceedings. The terms in the enforcement proceedings are periods of time within which the participants in the enforcement proceedings are obliged or have the right to make a decision or to act. The time limits in the enforcement proceedings are established by law, namely Section II of the Law of Ukraine “On Enforcement Proceedings”, and if they are not specified by law, they are set by the official, that is, they are of an appraisal nature.

The principle of proportion of measures of enforcement of decisions and volume of claims by decisions provides that the foreclosure on the debtor's property is to the amount and scope

necessary for the implementation by an enforcement document, including charging enforcement fee, costs of enforcement proceedings, fines imposed on the debtor during enforcement proceedings, the main reward of a private official. The time will show if this principle will defend the debtor from the possible manifestations of arbitrariness on the part of the performers.

The principle of ensuring the right to appeal decisions, actions or omissions of state performers, private performers. Thus, Article 74 of the Law of Ukraine “On Enforcement Proceedings” regulates the right to appeal decisions, actions or omissions of the state performers and officials of the bodies of the State Enforcement Service in certain cases to the court, either to the administrative court or to the head of the department, which the state official is directly subordinated to. Article 37 of the Law of Ukraine “On Bodies and Persons Enforcing Enforcement of Court Decisions and Decisions of Other Bodies” stipulates that a private official shall bear the civil, administrative or criminal liability for his decisions, actions or omissions in the order and volumes established by law, as well as disciplinary liability in the manner prescribed by law.

Summary. Consequently, the principles of the activity of the enforcement bodies of Ukraine, private performers play an important role as theoretical foundations, the basis of the activities of state and private performers, which determines the effectiveness and efficiency of this system. At the same time, we observe an uneven list of principles in “related” regulations, and even the use of different terms, namely, “princi-

ples” and “norms”. The principles analyzed are mostly constitutional rather than special procedural ones, which are inherent to the enforcement bodies of Ukraine, to private performers. In addition, the Laws under study do not contain separate articles that would disclose the content of these principles, and this raises the ambiguity of the content of such principles. We believe that the list of these principles should be supplemented, for example, by the following principles: the principle of equal competition between public and private performers through the balance between them; the principle of the responsibility of the enforcement bodies, their officials and private performers for damage caused as a result of violations of regulatory requirements; the principle of introducing effective incentives for voluntary implementation of decisions; the principle of professionalism and competence.

REFERENCES

1. *Slovar' inostrannyh slov* (1989), [Dictionary of foreign words], 18nd ed, Russkij jazyk, Moscow, Russia.
2. *Korenev A. P.* (1967), Principles of modern administrative law, Pravovedenie, vol. 3, p. 72–78.
3. *Gorshenev V. M. and Shahov I. B.* (1987), Kontrol' kak pravovaja forma dejatel'nosti [Control as a legal form of activity], Juridicheskaja literature, Moscow, Russia.
4. *Meľtiukhova N. M.* (2009), Laws and Principles of Public Administration, Aktual'ni problemy derzhavnoho upravlinnia, vol. 1, p. 42–50.
5. *The Verkhovna Rada of Ukraine* (2016), The Law of Ukraine “On bodies and persons, who carry out enforce-

- ment of court decisions and decisions of other bodies”, available at: <http://zakon5.rada.gov.ua/laws/show/1403-19> (Accessed 27 April 2016).
6. *The Verkhovna Rada of Ukraine* (2016), The Law of Ukraine “On enforcement proceedings”, available at: <http://zakon3.rada.gov.ua/laws/show/1404-19> (Accessed 27 April 2016).
 7. *Bozhko V.* (2011) “The analysis of the relation between the meaning of the terms “ambush” and “principle” through the prism of the legal position of the Constitutional Court of Ukraine”, *Visnyk Lvivs'koho universytetu im. Ivana Franka*, vol. 54, p. 124–132.
 8. *Tarasys'hyna O. M.* (2007), “Representation of the principle of justice in the legislative acts of Ukraine”, *Aktual'ni problemy derzhavy i prava*, vol. 36, p. 187–195.
 9. *Ohnev'iuk H. Z.* (2015), “Obligation of a court decision as a component of the principle of legal certainty”, *Chasopys Kyivs'koho universytetu prava*, vol. 2, p. 171–155.
 10. *Vavzhenchuk S. Ya.* (2008) “Constitutional Foundations of Development of Executive Power in Ukraine”, Ph.D. Thesis, Constitutional law, National Law Academy of Ukraine named after Yaroslav the Wise, Kharkiv, Ukraine.
 3. *Горшенев В. М.* Контроль как правовая форма деятельности / В. М. Горшенев, И. Б. Шахов. — М.: Юрид. лит., 1987. — 176 с.
 4. *Мельтюхова Н. М.* Законы та принципы державного управління / Н. М. Мельтюхова // Актуальні проблеми держ. упр. — 2009. — № 1. — С. 42–50.
 5. *Про органи та осіб, які здійснюють примусове виконання судових рішень і рішень інших органів: Закон України від 02.06.2016 р.* // Відомості Верховної Ради України. — 2016. — № 29. — Ст. 535.
 6. *Про виконавче провадження: Закон України від 02.06.2016 р.* // Відомості Верховної Ради України. — 2016. — № 30. — Ст. 542.
 7. *Божко В.* Аналіз співвідношення змісту термінів “засада” і “принцип” крізь призму правових позицій Конституційного Суду України / В. Божко // Вісн. Львів. ун-ту ім. Івана Франка. — 2011. — Вип. 54. — С. 124–132.
 8. *Тарасишина О. М.* Відображення принципу справедливості в законодавчих актах. України // Актуальні проблеми держави і права. — 2007. — № 36. — С. 187–195.
 9. *Огнев'юк Г. З.* Обов'язковість рішення суду як складова принципу правової визначеності / Г. З. Огнев'юк // Часопис Київ. ун-ту права. — 2015. — № 2. — С. 171–175.
 10. *Вавженчук С. Я.* Конституційні основи розвитку виконавчої влади в Україні: автореф. дис... канд. юрид. наук: спец. 12.00.02 / С. Я. Вавженчук; Нац. юрид. акад. України ім. Я. Мудрого. — Х., 2008. — 18 с.

СПИСОК ВИКОРИСТАНИХ ДЖЕРЕЛ

1. *Словарь иностранных слов.* — 18-е изд., стер. — М.: Русский яз., 1989. — 624 с.
2. *Коренев А. П.* Принципы современного административного права / А. П. Коренев // Правоведение. — 1967. — № 3. — С. 72–78.