

## PRINCIPLES OF LAW: METHODOLOGICAL APPROACHES TO UNDERSTANDING IN THE CONTEXT OF MODERN GLOBALIZATION TRANSFORMATIONS

PRINCIPIOS DE DERECHO: ENFOQUES METODOLÓGICOS PARA LA COMPRESIÓN EN EL  
CONTEXTO DE LAS TRANSFORMACIONES DE LA GLOBALIZACIÓN 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

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perception are being traced. **Methodology:** 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. **Conclusions.** 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, science, classification, universal principles.

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**Resumen:** *El propósito de la investigación es resaltar enfoques metodológicos para comprender los principios del derecho en el contexto de las transformaciones de la globalización moderna. Contenido principal. Se revela su naturaleza ontológica, epistemológica y axiológica, en particular, se enlacen los vínculos de los principios del derecho con la existencia humana, la ciencia y otras formas de percepción del mundo. Metodología: La base metodológica de la investigación es el método dialéctico del conocimiento científico, a través de la aplicación de este método se consideraron los aspectos jurídicos, funcionales, organizativos y procesales de los enfoques metodológicos para la comprensión de los principios del derecho en el contexto de las transformaciones de la globalización moderna. Conclusiones. Se destacó la clasificación de los principios del derecho y se proporcionó una breve descripción de sus tipos: principios universales, principios de civilización y principios de derecho de familia y posibilidades de separar los principios del sistema legal nacional.*

**Palabras clave:** *principios de derecho, naturaleza ontológica, naturaleza epistemológica, naturaleza axiológica, ciencia, clasificación, principios universales.*

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**Summary.** *I. Introduction. II. Literature review. III. Materials and methods. IV. Results and discussion. IV.1. Understanding the principles of law in modern conditions of globalization. IV.2. Principles of administrative procedural law of Ukraine in the modern conditions of the present time. IV.3. Principles of guarantees for the provision of public services in Ukraine. V. Conclusions. References.*

## **I. 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.

## **II. LITERATURE REVIEW**

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 (Pohrebniak, 2007).

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 (Norbert, 2005). 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 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) (Chyzhmar et., 2019).

### **III. MATERIALS AND METHODS**

The research is based on the work of foreign and Ukrainian researchers on methodological approaches of understanding principles of law in the contexts of modern globalization transformations.

The essence of methodological approaches of understanding principles of law in the context of modern globalization transformations was determined by the use of the gnoseological method; with the help of the logic-semantics method the conceptual apparatus was deepened, and the essence of the concepts of principles of law in the context of modern globalization transformations was determined. By means of using the system-structural method investigated are components of methodological approaches to understanding of principles of law in the context of modern globalization transformations.

### **IV. RESULTS AND DISCUSSION**

#### ***IV.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 all legal systems (Berzhel, 2000), in domestic general theoretical jurisprudence (*Berzhel, 2000*), 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) (Leheza et., 2020).

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” (*Rabinovych, 2007*). In particular, among them the author refers to:

- (i) Enshrined and protected by law fundamental human rights, freedom of people and their associations;
- (ii) Legally (formally-defined and mandatory) equality of the same-named subjects before the state and the law;
- (iii) Recognition of the law (as an act of normative will of the highest 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;
- (iv) Unity of legal rights and obligations;
- (v) Regulating behavior of people and their associations according to the generally permitted type “Everything which is not forbidden is allowed by the law”;
- (vi) 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” (*Rabinovych, 2007*).

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 (*2007*).

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 (Yunina, ect, 2020).

Separation of typological principles of law would obviously be justified on the condition of preserving the formational approach to the typology of law, which 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 (Leheza ect, 2022).

In a broader context, depending on the level of public relations governed by law, principles of law are also researched 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 (*Skakun, 2005*). 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 (Vasylieva ect., 2020).

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 (Skakun, 2005).

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” (Pohrebniak, 2008). 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 dimension of the society” (Pohrebniak, 2008) (Pohrebniak, 2008). «Most of such principles are based on «natural justice» common to all legal systems» According to S. Pohrebniak fundamental principles of law Pohrebniak, apart from justice, also include equality, freedom and humanism (Pohrebniak, 2008). Fundamental general legal principles of law common to all legal systems were described by S. Shevchuk (Shevchuk, 2007).

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:

(i) 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;

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

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

(iv) National principles of law, i.e. principles formulated and operated within a certain national legal system, reflecting its peculiarities (Leheza et., 2022).

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. 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 (Leheza et., 2022).



#### ***IV.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. Administrative procedural 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 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 (Polyanichko, 2013). 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) (Leheza et al., 2018).

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 (Lopatina, 1990); beliefs, norms, rules guiding someone In life and behavior; canon (Yaremenko & Slipushko, 1998); 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. (Yaremenko & Slipushko, 2007). 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” (Dobkin, 2012). 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 (Skakun, 2005).

Norms of the 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 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 (Leheza et al., 2020).

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 (Zadykhayla, 2016) 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 (Kuzmenko, 2005).

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 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. (Matviychuk, 2008). 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 (Bondarchuk, 2010).

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 Code of Administrative Proceedings of Ukraine (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 (Leheza et al., 2021).

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

- (i) 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;

- (ii) normative and textual fixation - the principles are reflected in the norms of legislation by their textual fixation;
- (iii) 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;
- (iv) 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;
- (v) 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;
- (vi) 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 (Leheza et al., 2021).

An interesting approach is followed by E.F. Demsky. He distinguishes two independent groups (types) of principles, in particular: (i) 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); (ii) 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 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) (Demsky, 2008). 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.

### ***IV.3. Principles of guarantees for the provision of public services in Ukraine***

Thus, in the general legal sense, M.V. Kravchuk notes that it is correct to speak of legal guarantees as a set of "means and methods" (Kravchuk, 2013). V.F. Pogorilko understands legal guarantees as special means of practical provision of human and civil rights and freedoms provided by law (Pogorilko, Siryi, 1997). This definition does not pay attention to the purpose of legal guarantees, i.e. the what particularly they provide. Instead, the definition of this concept should include an indication of the purpose of these "means and methods" as one of the most essential features of legal guarantees. Therefore, the definitions in which it is emphasized that legal guarantees are designed to ensure the actual implementation, comprehensive protection and protection of citizens rights are noteworthy.

The definition proposed by V.O. Patyulin is quite complete in its content, such that reveals all the essential features of the concept of "legal guarantees" in the general legal aspect, namely: legal guarantees should be understood as legal norms that define specific legal means, conditions and the procedure for exercising rights, legal means of their protection and defense in case of violation (Patyulin, 1974).

Let us consider the definition of "legal guarantees of loyalty". For example, I.S. Samoshchenko understands legal guarantees of legality as special normative-legal means that guarantee strict observance of legal norms, prevention of arbitrariness on the part of state bodies and officials in relation to citizens, ensuring restoration of violated rights and punishment of violators of legality (Samoshchenko, 1960). According to others, it is also the activity of state bodies (and in some cases, public organizations), which is carried out in accordance with these norms (Lunev, Studenikin, 1948).

The guarantees of legality include the activities of state bodies and public organizations (in accordance with legal norms) (Mitskewich, 1962). It is also believed that legal guarantees should be understood as a system of normative and individual legal requirements and relevant legal activities specifically designed to ensure legality (Nagarny, 2003).

Scientist S.M. Shylo considers legal guarantees of legality not only as a set of means and methods (as is the case in the above definitions), but as a unity of elements, as a holistic legal entity (Shilo, 2013).

Special guarantees include legal guarantees of loyalty, the specific legal means and internal legal mechanisms that are the real embodiment of

legality in the legal sphere. Legal guarantees of loyalty include: completeness and effectiveness of legal norms; high level of control and supervision over the implementation of the law; quality activities of the competent authorities to ensure the rule of law; improvement of legal practice; effectiveness of legal liability measures.

Special legal guarantees can be classified into the following groups:

(i) general legal guarantees (development of the legal system as a whole; completeness and consistency of legislation; availability of developed legal techniques and legal procedure; a certain level of legal culture of society);

(ii) organizational and legal guarantees (activity of legislative, executive, judicial power and the President as a guarantor of the Constitution of Ukraine, as well as special purpose bodies as a guarantor of the effectiveness of laws and creation of conditions for their implementation and protection);

(iii) procedural guarantees (availability of effective means of state coercion; presumption of innocence; equality of legal status; inalienability of rights and obligations of subjects; normatively defined principle of inevitability of punishment for violation of the Law) (Okolita, 2000).

Let us consider appeals of decisions, actions or inactions of public administration entities on the provision of public services as one of the types of guarantees to ensure the legality of the provision of public services in Ukraine.

Thus, O.S. Dukhnevych interprets proceedings on appeals in court against decisions, actions or inactions of executive authorities and local governments as a normatively regulated procedure for the proceedings that ensure legal and objective consideration and resolution by administrative courts of the cases on appeals of decisions, actions or inaction of executive authorities and local governments and their officials (Dukhnevych, 2019).

We strongly agree with V.P. Tymoschuk, who notes that according to the general rule, appeals of procedural decisions, actions and inactions should be made together with the appeal of an administrative act. Exceptions may be only procedural actions and decisions that significantly affect the consideration and resolution of the case. Their exhaustive list must be contained in the law. Inaction of an administrative body may be an independent subject of appeal in case of non-adoption of an administrative act within the term established by law or obvious delay in consideration of an administrative case (adoption of procedural decisions, taking procedural actions). Therefore, this procedure should also be attributed to the procedure for appealing decisions, actions or inactions of public administration bodies on the provision of administrative services.

The analysis of scientific publications and the regulatory framework allows us to highlight the following signs of appeal of decisions, actions or inaction of public administration bodies on provision of public services:

(i) Direct initiative (application) of individuals and legal entities. Appeals of decisions, actions or inaction of public administration bodies regarding public services are made only on the direct initiative (application) of individuals and legal entities, regardless of the form of the person's application (oral or written) and the procedure for obtaining it by the authority.

(ii) Imperativeness of legal regulation of appeals of decisions, actions or inaction of public administration bodies on the provision of public service. Appeals of decisions, actions or inactions of public administration bodies on the provision of public services are possible only if there is a special legal regulation of the procedure for appealing against such services. A person's request to the authority to take any action in his / her favor may be considered as an administrative service only when the procedure for consideration of this application is clearly regulated. Decisions, actions or inaction of public administration bodies on the provision of public service may not be appealed if its delivery is not provided by law.

(iii) Appeals of decisions, actions or inactions of public administration bodies on the provision of public services are determined by the body of executive power or local self-government. As a general rule, to appeal decisions, actions or inactions of public administration bodies on the provision of public service can be addressed only to a certain (only one) authority defined by law, in contrast to other types of appeals that can be considered and resolved by a wider range of subjects.

(iv) Appeals of decisions, actions or inactions of public administration bodies on the provision of public services shall be carried out in accordance with the relevant procedure. For example, if the service is appealed administratively (extrajudicially), the plaintiff can appeal the service only within the authority that issued the service, or to a higher unit.

(v) The result of appealing of decisions, actions or inaction of public administration bodies on the provision of public service is an individual act of standard form or administrative act - a decision of the body, for example, on registration or issuance of a certificate or restoration of the right to receive a certain public service.

Thus, appeals of decisions, actions or inactions of public administration bodies on the provision of public services are understood as a normatively regulated procedure for performing procedural actions that ensure legal and objective consideration of cases in administrative and / or judicial proceedings related to the appeals of decisions, actions or inactions of

executive authorities and local governments and their officials regarding the consideration of the application of a natural or legal person for the issuance of an administrative act (decision, resolution or ruling to obtain a permit, license, registration, certificate, etc.).

Let us consider the general features of litigation of appeals of decisions, actions or inactions of public administration bodies on the provision of public services.

According to Yu. S. Pedko, administrative proceedings structurally consist of proceedings. Within these proceedings, cases of certain categories under the jurisdiction of the administrative court are considered (for example, proceedings in cases of abuse of office, proceedings in cases of providing inaccurate information by executive authorities or local governments, etc.) (Pedko, 2003).

In French administrative law, certain administrative proceedings that are adjudicated by administrative courts are called “varieties of administrative justice” by scholars. (Wedel, 1973).

In German administrative law, certain proceedings in the administrative courts of first instance, the Supreme Administrative Land Courts and the Federal Administrative Court of Germany are defined as "administrative proceedings" (Kuybida and Shishkina, 2006).

The concept of certain types of administrative proceedings within the administrative procedure of Ukraine covers: (i) proceedings in cases on appeal of decisions, actions or inactions of a subject of power; (ii) proceedings in cases related to the election process or the referendum process; (iii) proceedings in cases on the appeals of the subject of power in cases established by law.

Furthermore, within the administrative process, there are types of proceedings that characterize the general procedure for consideration by administrative courts of all categories of administrative cases. The species diversity of such proceedings is reflected in the structure of the Code of Administrative Procedure of Ukraine (CAPU), according to which the following are distinguished: proceedings in the court of first instance; appeal and cassation proceedings; proceedings on exceptional and newly discovered circumstances.

It should be noted that if we examine the proceedings on the consideration of administrative courts of a particular category of administrative cases, the above proceedings will have the content of stages, i.e. structural elements of the proceedings.

According to theorists of procedural legal activity, procedural proceedings are a logically and functionally consistent sequence of actions that reflect the specific nature of the relationship of subjects, due to the



specifics of this category of legal cases, i.e. the logical-temporal characteristics of the process - its stages (Gorsheneva, 1985). Procedural stage is a set of procedural actions that are aimed at achieving a certain immediate procedural goal. Given the universal nature of the form of claim, proceedings on citizens' claims for illegal decisions, actions or inactions of executive authorities and local governments should be built on the general rules of litigation, taking into account the features arising from the subject (administrative and legal disputes) and composition of the participants in the proceedings, and the list of stages in administrative proceedings is similar to the list of stages of other types of litigation.

It should be noted that the names of the stages of the administrative procedure, the types and essence of which will be discussed below, are determined by a number of factors, namely: 1) the content of the stage and the procedural actions that are carried out within it; 2) regulatory and legal consolidation of the relevant stage. The name, content and procedure for carrying out the stages of the administrative process, its participants and other procedural features of the stages of such a procedure are enshrined mainly in the CAPU; 3) the procedural purpose of the relevant stage of the administrative procedure.

Thus, O.S. Dukhnevych refers to the stages of the administrative process for consideration and resolution of a particular administrative case as follows: (i) initiation of an administrative case in an administrative court (appeal to the administrative court and the opening of proceedings in an administrative case); (ii) preparation of an administrative case for trial (preparatory proceedings); (iii) judicial review of an administrative case (Dukhnevych, 2019).

These three stages of the administrative procedure are mandatory (constitutive), because after an individual or legal entity applies to the administrative court, the administrative case inevitably goes through all these stages. Their occurrence after the filing of an administrative lawsuit, which, in fact, the administrative procedure begins with, no longer depends on the will of the applicant or other participants in such a process.

For example, in accordance with Art. 157 of CAPU the court closes the proceedings: if the case is not to be considered in administrative proceedings; if the plaintiff waived the administrative claim and the waiver was accepted by the court; if the parties have reached reconciliation; if there are those that have entered into force, the decision or ruling of the court on the same dispute and between the same parties; in case of death or pronouncing dead in the manner prescribed by law of the person who was a party to the case, if the disputed legal relationship does not allow succession,

or liquidation of the enterprise, institution, organization that was a party to the case (Nalyvaiko et al., 2022).

Having considered the appeal of decisions, actions or inaction of public administration entities on the provision of public services in court (administrative proceedings), the focus shall be made on the peculiarities of appealing the results of the provision of public services in administrative proceedings, i.e. individuals (citizens and stateless persons) appealing according to the Law of Ukraine "On Citizens' Appeals".

The current procedure for consideration of administrative complaints is established by Art. 16 of the Law of Ukraine "On Citizens' Appeals" (Legislation of Ukraine, 1996), the complaint means the right of a person to apply in the order of subordination to a higher body or official with a request to consider the legality of actions or decisions of public administration entities. In addition, a possible deadline for filing an administrative complaint, including in the field of public services is one month from the moment when a person learned about the managerial decision.

According to Part 4 of Article 16 of the Law of Ukraine "On Citizens' Appeals", a citizen may file a complaint in person or through another authorized person. Complaints in the interests of minors and incapacitated persons are filed by their legal representatives. The complaint shall be accompanied by the decisions or copies of the decisions available to the citizen, which were made at his request earlier, as well as other documents necessary for the consideration of the complaint, which shall be returned to the citizen after its consideration (Nalyvaiko et al., 2018).

The Resolution of the Verkhovna Rada of Ukraine dated April 9, 2015 adopted the draft law submitted by the President of Ukraine on amendments to the Law of Ukraine "On Citizens' Appeals" regarding the possibility of submitting electronic appeals and petitions in which actions or inaction of public administration bodies are subject to appeal. 2005). An electronic application in this draft law means a written application sent using the Internet, electronic means of communication (Legislation of Ukraine, 2015). However, a fair question arises: what is the fundamental difference between filing a complaint against the actions or inaction of public administration entities in electronic form and an electronic petition? Article 23-1 of the Law of Ukraine "On Citizens' Appeals" stipulates that the collection of signatures under an electronic petition is conducted through the official websites of public authorities or local governments and in case of obtaining the required number of signatures (for example, for electronic petitions addressed to the Cabinet of Ministers of Ukraine).

Verkhovna Rada of Ukraine or the President of Ukraine - 25,000 signatures) it is subject to consideration "immediately, but not later than ten

working days from the date of publication of information on the beginning of its consideration", and information on the beginning of its consideration must be published "on the official website accordingly of the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the relevant local government no later than three working days after obtaining the required number of signatures in support of the petition, and in case of receiving an electronic petition from a public association - no later than two working days after receiving such a petition" (Legislation of Ukraine, 2015).

It should be mentioned that there is an obvious effect from the introduction of the practice of appealing actions, decisions and inaction of public administration on provision public services in an administrative manner - reducing the number of administrative lawsuits and ensuring the implementation of the principle of prompt court decisions (Nalyvaiko et al., 2018).

For example, in the Federal Republic of Germany, appealing of the actions, decisions or inactions of public administration is an obligatory stage, without which it is impossible to appeal to the courts. However, even if such an administrative appeal procedure is followed, the plaintiffs in the administrative courts of Germany wait for the case to be heard for months or even years (Tymoschuk, 2003).

In the United Kingdom, the scheme of the bodies to which a citizen can apply at the local level to satisfy his complaint about the results of the provision of public services includes: a consulting agency; adviser; Department of local self-government; Department of Legal Services; Subcommittee on Complaints; Ombudsman (Ivashchenko, 2018).

According to English scholars, the following types of behavior should be considered poor administration: rudeness; unwillingness to work with the complainant as a person with rights; refusal to answer reasonable questions; neglect to inform the complainant on demand about his rights or the right to compensation payments; deliberate disorientation or inadequate advice; ignoring effective advice; offering to waive the satisfaction of the complaint or offering a disproportionate satisfaction of the complaint; manifestations of racial, sexual or other discrimination; failure to notify the person who loses the right to appeal; refusal to properly inform about the right to appeal; erroneous procedures; violation of the procedure for adequate monitoring of compliance with procedures; ignoring recommendations that should have facilitated the proper treatment of service users; incompleteness; not mitigating the effect of strict adherence to the letter of the law when it leads to manifestly unfair treatment (Ivashchenko, 2018).

The establishment of the rights and obligations of the complainant must correspond to the relevant establishment of the rights and obligations of the subject of power, which has the right to consider the administrative complaint (Kolb et al., 2021).

We believe that we should agree with the well-founded proposal of O. Ivashchenko on the feasibility based on the positive experience of the United Kingdom to introduce the following options for filing a complaint: "through a local council member, through the Advisory Bureau (which is recommended to create for provision free advice and consultations to citizens on legal, financial and other issues) or directly to the department that should consider complaints" (Ivashchenko, 2018). The scientist emphasizes the importance of creation a Department for Legal and Public Services and a Subcommittee on Complaints in each local government structure in increasing the effectiveness of appealing actions, decisions or inaction of public administration entities on provision public services and strengthening the role of the Ombudsman in the process of appealing public services in Ukraine (Ivashchenko, 2018).

It is also worth completely agreeing with the position of D.O. Vlasenko, who proposes to amend Part 2 of Article 19 of the Law of Ukraine "On Administrative Services", providing for the obligation to file an administrative complaint against decisions, actions or inactions of public administration to a higher authority (Vlasenko, 2019). The procedure for administrative appeal of a decision, action or inaction of public administration entities on the provision of public services must be provided by a standard administrative regulation approved by the Resolution of the Cabinet of Ministers of Ukraine. The result of consideration of the administrative complaint is the basis for further appeal in administrative proceedings.

## **V. 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 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 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, it is proposed to supplement part 1 of Article 183-2 of the CAPU with paragraph 7, which should be worded as follows: "1. Abbreviated proceedings are used in administrative cases concerning:... 7) appeals by individuals of decisions, actions or inactions of subjects of power on the provision of public services. The proposed changes are related to the need to establish a maximum period of summary proceedings in 10 working days, which is sufficient for the judge to decide on the merits of the claim, provided that the plaintiff requires the procedure to appeal the law enforcement act or inaction. The rules of legislative technique require the supplement of part 5 of Article 183-2 of the Criminal Procedure Code, paragraph five, as follows: "not later than 10 working days - in case of appeal of decisions, actions or inactions of public authorities on provision public services."

To develop and adopt a law of Ukraine "On Public Services", which defines an exhaustive list of public administration entities that would exercise control in this area, their powers, forms and procedures for such activities, methods, ways of implementation and liability in case of abuse control, etc.

Strengthening public control and creating effective feedback with civil society organizations through the development and implementation of the project "Dissemination of non-governmental monitoring of quality public services provision", which will improve the quality of public services by relevant public administration entities, etc.

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