

УДК 342.5

**Yevhen KOLISNICHENKO**

Postgraduate Student of the Department of Constitutional and Administrative Law, Zaporizhzhia National University, 66, Zhukovsky St, Zaporizhzhia, Ukraine, 69600

ORCID: 0009-0004-9801-3869

DOI: 10.32782/LST/2023-4-9

**To cite this article:** Kolisnichenko, Ye. (2023). Pryntsyp bezstoronnosti (neuperedzhenosti) u systemi pryntsypiv administratyvnoi protsedury [The principle of failure (non-warning) in the system of principles of administrative procedure]. *Law. State. Technology*, 4, 55–59, doi: 10.32782/LST/2023-4-9

## THE PRINCIPLE OF FAILURE (NON-WARNING) IN THE SYSTEM OF PRINCIPLES OF ADMINISTRATIVE PROCEDURE

*The purpose of the article is to implement the characteristics of the principle of impartiality (impartiality) in the system of principles of administrative procedure. The author emphasizes that the implementation of administrative procedures must meet the requirements of serviceability and “people-centric” approaches to building relations between the state and society. The author presents a number of views on determining the structure of the system of principles of administrative procedure. The author has defined a generally accepted approach to understanding the structure of the principles of administrative procedure, which are systematically divided into general (or general legal) and special (or specifically legal). The general (common law) principles of administrative procedure include the principles of the rule of law, legality, equality and publicity. Special (special legal) principles include the principle of efficiency, which provides for compliance with the requirements of efficiency and informality of approaches to regulating public-administrative relations, the principle of proportionality, the principle of impartiality (impartiality), the principle of accountability and control, the principle of comprehensiveness and universality of approaches to regulating relations for the implementation of administrative procedures. It has been determined that in the system of principles of administrative procedures, the application of the principle of impartiality (impartiality) contributes to the emergence of a conflict of interest, which is associated with the prevention of participation in the resolution of an administrative case by officials who have a personal interest in its settlement. It is concluded that the principle of impartiality (impartiality) is the basis for good governance. It is noted that the implementation of standards of impartiality (impartiality) has a positive impact on compliance with the quality of provision of administrative services by representatives of the public service.*

**Key words:** administrative procedure, administrative process, administrative services, principle of impartiality (impartiality), law enforcement, legal regulation, system.

**Євген КОЛІСНІЧЕНКО**

аспірант кафедри адміністративного та конституційного права, Запорізький національний університет, вул. Жуковського, 66, м. Запоріжжя, Україна, 69600

ORCID: 0009-0004-9801-3869

DOI: 10.32782/LST/2023-4-9

**Бібліографічний опис статті:** Колісніченко, Є. (2023). Принцип безсторонності (неупередженості) у системі принципів адміністративної процедури. *Law. State. Technology*, 4, 55–59, doi: 10.32782/LST/2023-4-9

## ПРИНЦИП БЕЗСТОРОННОСТІ (НЕУПЕРЕДЖЕНОСТІ) У СИСТЕМІ ПРИНЦИПІВ АДМІНІСТРАТИВНОЇ ПРОЦЕДУРИ

*Метою статті визначено здійснення характеристики принципу безсторонності (неупередженості) у системі принципів адміністративної процедури. Автором наголошено, що реалізація адміністративних процедур має відповідати вимогам сервісності та «людиноцентричним» підходам до побудови взаємовідносин держави та суспільства. Автором наведено ряд поглядів на визначення структури системи принципів адміністративної процедури. Автором визначено загальновизнаний підхід до розуміння структури принципів адміністративної процедури, що системно поділяються на загальні (або загальноправові) та спеціальні (або спеціальноправові). До загальних (загальноправових) принципів адміністративної процедури віднесено принципи верховенства права, законність, рівність та публічність. До спеціальних (спеціальноправових) принципів віднесено принцип ефективності, що передбачає*

дотримання вимог оперативності та неформальності підходів до регулювання публічно-управлінських відносин, принцип пропорційності, принцип безсторонності (неупередженості), принцип підзвітності та підконтрольності, принцип комплексності та універсальності підходів до регулювання відносин із здійснення адміністративних процедур. Визначено, що у системі принципів адміністративних процедур застосування принципу безсторонності (неупередженості) сприяє виникненню конфлікту інтересів, що пов'язується недопущенням участі у вирішенні адміністративної справи службових осіб, що мають особистий інтерес у її врегулюванні. Зроблено висновок, що принцип безсторонності (неупередженості) є базисом для забезпечення доброго урядування. Наголошено, що реалізація стандартів безсторонності (неупередженості) має позитивний вплив на дотримання якості надання адміністративних послуг представниками публічної служби.

**Ключові слова:** адміністративна процедура, адміністративний процес, адміністративні послуги, принцип безсторонності (неупередженості), правозастосування, правове регулювання, система.

**Urgency of the problem.** Effective implementation of tasks of public administration should be based on fundamental principles. Such principles are formulated by representatives of the professional scientific community and enshrined in normative legal acts. They constitute the "framework", "basis", "basis" of relations, form a model of appropriate behavior. This statement correlates with the current concept of "people-centeredness" of all administrative law, as well as its individual components. The modern update of the provisions of the doctrine of administrative law creates a number of conceptual tasks for modern administrative scientists, which are related to clarifying the specifics of the legal relationship between public administration bodies and private individuals, in particular, in the context of making individual administrative decisions. In the conditions of reorientation to the "serviceability" of the state and "partnership" relations between public administration bodies and private individuals, the study of the principles of administrative and procedural law becomes very relevant.

**Analysis of recent research and publications.** Within the publications of representatives of the administrative science of law and process, the question of the principles of implementation of administrative procedures was addressed only in separate scientific works, in particular, one of the main ones that require consideration within the scope of this article are the dissertations of P.O. Baranchuk "Principles of administrative law" (2012) (Baranchuk, 2012), A.O. Rybchenko "The rule of law as a principle of administrative proceedings" (2013), A.A. Sharaya "Principles of administrative-procedural law: issues of theory and practice" (2020) (Sharaya, 2020) and others. But at the same time, the studies carried out were developed and tested in the absence of the Law of Ukraine "On Administrative Procedure" and fragmentarily highlight the issue of definition content of the principle of impartiality (impartiality) as a basis for regulating public-management relations.

#### **Purpose and main objectives of the study.**

Taking into account the stated purpose of the article, establishing the content and essence of the principle of impartiality (impartiality) as a principle of administrative procedure is determined.

#### **Presentation of the main research material.**

Most often, the principles of administrative procedure are divided into two groups – basic general and special. The author refers to the main general (admittedly, their name is considered somewhat generalized, tautological) principles of administrative procedure: "the rule of law, legality, equality and publicity, and to special principles relating to procedural activity itself and corresponding to modern European and world standards in the field of administrative rights, such as efficiency (which includes such additional principles as efficiency and informality), proportionality, impartiality (impartiality) and controllability, and emphasizes the need to consolidate and implement such a fundamental principle as the principle of unity of requirements of administrative procedures for all state authorities and local self-government" (Frolov, 2013: 428). This approach is generally recognized and widespread in the field of administrative process theory.

There is an understanding of the principles of administrative procedures as "principles of implementation of administrative-type procedures by category of sphere of action can be divided into general legal or constitutional, which are characteristic of most branches and legal institutions, and branch, which become more characteristic in action for the regulation of administrative relations procedural" (Sushchenko, 2018: 123-124).

A.M. Lutsyk justifies the following classification of the principles of the implementation of the administrative procedure, such as: general principles: rule of law, legality, equality of the participants of the administrative procedure before the law, publicity; special principles: use of powers for the proper purpose, reasonableness,

impartiality of the tax authority, good faith, prudence, proportionality, openness, timeliness and reasonableness of the term, efficiency, presumption of legality of a person's actions and demands, guaranteeing the right of a person to participate in administrative proceedings, guaranteeing legal protection, tacit agreement, "single window" (Lutsyk, 2015: 31).

The analysis of European standards of relations between public administration bodies and citizens allows us to conclude on the application of the classification of principles according to two main groups of relations between public administration bodies and citizens: first, material (basic), namely: the principle of legality, the principle of equality before the law, the principle of compliance with the statutory goals, the principle of proportionality, the principle of objectivity and impartiality, the principle of protecting trust in the law and legally established rights, the principle of responsibility; secondly, procedural: the principle of access to administrative (public) services; the right to be heard; the right to representation and assistance; the principle of a reasonable term (term), the principle of notice, explanation of reasons and determination of means of protection of rights and appeals, the principle of implementation of administrative decisions. In the European science of administrative law, this division of principles into material (basic) and procedural is traditional (Pukhtetska, 2014: 114-145).

In addition, the European science of administrative law singles out the principles of administrative law in the aspect of public administration (principles of good administration and good governance) (Citizens' rights in the sphere of executive power, 2007: 94), most of which can be are classified among the principles affecting the administrative procedure. In this context, V. O. Galai notes that "the principles of "good governance" (although the use of the phrase "proper administration" is still common) are a kind of "basis" for the development of international standards of activity of public servants and is an important step when considering the question of the relationship between the categories of "principles" and "standards" of good governance. The practical aspect of compliance with these standards is an indicator of progress in the quality of public service provision by representatives of the public service" (Galai, 2020: 14), and such a position is quite worth supporting.

The principle of impartiality (impartiality) of an administrative body in administrative-procedural law presupposes the absence of any undue interest of the subject of public administration in

the results of consideration of an administrative case. That is, the subject of authority during the consideration of the case and in the process of exercising his powers should not show any bias or personal beliefs. It should be agreed that "a guarantee of the implementation of this principle can be the duty of an official or official to declare self-recusal, if he has or may have a personal, direct or indirect (indirect) interest in the results of consideration and/or resolution of an administrative case or in the presence of other circumstances, which cause or may cause doubt in the impartiality of the administrative body" (Solovyova, Syomina, 2017: 92-101). All actions of a subject of public administration must eliminate the possibility of doubts about the impartiality and independence of such a body. Elements of the implementation of such a basic idea of regulating administrative-procedural relations should be considered borrowing from foreign rule-making experience and enshrining in national legislation provisions on "integrity", "conflict of interests", "recusal", "self-recusal", "methods of preventing and settling conflicts of interests".

The principle of impartiality (impartiality) requires the authority representative to take all measures to prevent a conflict of interests, not allowing the participation of officials and civil servants in the consideration and decision of an administrative case, if it is related or may be related to their personal, direct or indirect interest in its results (Pysarenko, 2017: 90-91). Thus, the interconnectedness of the principle of impartiality (impartiality) of an administrative body and the prevention of conflicts of interest "refers" us to the norms of anti-corruption legislation, namely to the provisions of the Law of Ukraine dated 10.14.2014 "On Prevention of Corruption", which defines that "potential conflict interests - the presence of a person's private interest in the field in which he performs his official or representative powers, which can affect the objectivity or impartiality of his decision-making, or the performance or non-performance of actions during the performance of these powers", and "real conflict interests - a contradiction between a person's private interest and his official or representative powers, which affects the objectivity or impartiality of decision-making, or the performance or non-performance of actions during the performance of said powers" (On the Prevention of Corruption, 2014). The new regulation in the field of corruption prevention provides a set of tools to ensure the impartiality of administrative proceedings, starting from the mechanisms of impeachment and self-impeachment of officials and officials

of the administrative body, and ending with new institutional approaches to the consideration of complaints in the administrative procedure (Scientific and practical commentary to the draft Law of Ukraine "About administrative procedure", 2019: 60).

**Conclusions and prospects for further exploration of this issue.** Thus, the principle of impartiality (impartiality) of an administrative body in administrative-procedural law determines the duty of an administrative body to ensure equal treatment of all participants in administrative proceedings. We are talking about the principle of ensuring the "purity" of

administrative-procedural relations, namely the "disinterested" attitude to such relations on the part of any subject of administrative-procedural relations and the establishment of tools to prevent any interest. These principles actually found their manifestation in the implementation of on-line administrative procedures (electronic governance, electronic services), "minimization" of communication between the subjects of administrative procedures with mediated "front" and "back" offices, with strengthening of the principles of public control over administrative – procedural relations (observers, public councils, etc.).

#### BIBLIOGRAPHY:

1. Баранчик П.О. Принципи адміністративного права: дис. ... к.ю.н. за спеціальністю 12.00.07. адміністративне право і процес; фінансове право; інформаційне право. Запоріжжя: Запорізький національний університет, 2012. 173 с.
2. Шарая А.А. Принципи адміністративно-процедурного права: питання теорії та практики: дис. ... д.ю.н. за спеціальністю 12.00.07 – адміністративне право і процес; фінансове право; інформаційне право. Запоріжжя: Запорізький національний університет, 2020. 460 с.
3. Фролов Ю. М. Класифікація принципів адміністративних процедур. *Форум права*. 2013. № 4. С. 423–429. URL: [http://nbuv.gov.ua/UJRN/FP\\_index](http://nbuv.gov.ua/UJRN/FP_index)
4. Сущенко Д. В. Адміністративні процедури в Україні та країнах Європи: порівняльно-правовий аспект: дис. ... канд. юрид. наук. 12.00.07. Запоріжжя, 2018. 211 с.
5. Луцик А.М. Адміністративні процедури у сфері оподаткування в Україні: дис. ... канд. юрид. наук: 12.00.07. Харків, 2015. 192 с.
6. Пухтецька А.А. Європейські принципи адміністративного права : монографія ; за заг. ред. д-ра юрид. наук, проф. В. Б. Авер'янова. К. : Логос, 2014. 237 с.
7. Права громадян у сфері виконавчої влади: адміністративно-правове забезпечення реалізації та захисту. Київ: Наук. Думка, 2007. 586 с.
8. Галай В. О. Сучасна концепція принципів публічної служби в адміністративному праві України: автореф. дис... д-ра. юрид. наук. Ірпінь, 2020. 40 с.
9. Соловійова О., Сьоміна В. Щодо принципів адміністративної процедури. *Адміністративна процедура: особливості формування української концепції*: матеріали Круглого столу, м. Харків, 15 вересня 2017 р. – Харків : Національна академія правових наук України, Національний юридичний університет імені Ярослава Мудрого, 2017. С. 92–101
10. Писаренко Н. Позасудове оскарження як вид адміністративної процедури (стан та перспективи удосконалення правового врегулювання). *Адміністративна процедура: особливості формування української концепції*: матеріали Круглого столу, м. Харків, 15 вересня 2017 р. Харків : Національна академія правових наук України, Національний юридичний університет імені Ярослава Мудрого, 2017. С. 86–91.
11. Про запобігання корупції: Закон України від 14.10.2014 р. URL: <https://zakon.rada.gov.ua/laws/show/1700-18>
12. Науково-практичний коментар до проекту Закону України «Про адміністративну процедуру» / Авт. колектив (Андрійко О. Ф., Бевзенко В. М. та ін.), за заг. ред. Тимощука В. П. Київ: ФОРМ МІШАЛОВ Д. В., 2019. 460 с.

#### REFERENCES:

1. Baranchyk, P.O. (2012). *Pryntsypy administratyvnoho prava* [Principles of administrative law]: dys. ... k.i.u.n. za spetsialnistiu 12.00.07. administratyvne pravo i protses; finansove pravo; informatsiine pravo. Zaporizhzhia: Zaporizkyi natsionalnyi universytet. 173 s. [in Ukrainian].
2. Sharaia, A.A. (2020). *Pryntsypy administratyvno-protsedurnoho prava: pytannia teorii ta praktyky* [Principles of administrative and procedural law]: dys. ... d.i.u.n. za spetsialnistiu 12.00.07 – administratyvne pravo i protses; finansove pravo; informatsiine pravo. Zaporizhzhia: Zaporizkyi natsionalnyi universytet, 2020. 460 s. [in Ukrainian].

3. Frolov, Yu. M. (2013). Klasyfikatsiia pryntsyviv administratyvnykh protsedur [Classification of principles of administrative procedures]. Forum prava. № 4. S. 423–429. Retrieved from [http://nbuv.gov.ua/UJRN/FP\\_index](http://nbuv.gov.ua/UJRN/FP_index) [in Ukrainian].
4. Sushchenko, D. V. (2018). Administratyvni protsedury v Ukraini ta krainakh Yevropy: porivnialno-pravovyi aspekt [Administrative procedures in Ukraine and European countries: comparative legal aspect]: dys. ... kand. yuryd. nauk. 12.00.07. Zaporizhzhia. 211 s. [in Ukrainian].
5. Lutsyk, A.M. (2015). Administratyvni protsedury u sferi opodatkuvannia v Ukraini [Administrative procedures in the field of taxation in Ukraine]: dys. ... kand. yuryd. nauk: 12.00.07. Kharkiv, 2015. 192 s. [in Ukrainian].
6. Pukhtetska, A.A. (2014). Yevropeiski pryntsyvy administratyvnoho prava [European principles of administrative law]: monohrafiia ; za zah. red. d-ra. yuryd. nauk, prof. V. B. Averianova. K. : Lohos, 2014. 237 s. [in Ukrainian].
7. Prava hromadian u sferi vykonavchoi vlady (2007): administratyvno-pravove zabezpechennia realizatsii ta zakhystu [Rights of citizens in the sphere of executive power: administrative and legal provision of implementation and protection]. Kyiv: Nauk. Dumka. 586 s. [in Ukrainian].
8. Halai, V. O. (2020). Suchasna kontseptsii pryntsyviv publichnoi sluzhby v administratyvnomu pravi Ukrainy [Modern concept of the principles of public service in the administrative law of Ukraine]: avtoref. dys... d-ra. yuryd. nauk. Irpin, 2020. 40 s. [in Ukrainian].
9. Soloviiova, O., Somina, V. (2017). Shchodo pryntsyviv administratyvnoi protsedury [Regarding the principles of administrative procedure]. Administratyvna protsedura: osoblyvosti formuvannia ukrainskoi kontseptsii : materily Kruhloho stolu, m. Kharkiv, 15 veresnia 2017 r. – Kharkiv : Natsionalna akademiia pravovykh nauk Ukrainy, Natsionalnyi yurydychnyi universytet imeni Yaroslava Mudroho. S. 92–101 [in Ukrainian].
10. Pysarenko, N. (2017). Pozasudove oskarzhennia yak vyd administratyvnoi protsedury (stan ta perspektyvy udoskonalennia pravovoho vrehuliuвання) [Out-of-court appeal as a type of administrative procedure (state and prospects for improving legal settlement)]. Administratyvna protsedura: osoblyvosti formuvannia ukrainskoi kontseptsii : materily Kruhloho stolu, m. Kharkiv, 15 veresnia 2017 r. Kharkiv : Natsionalna akademiia pravovykh nauk Ukrainy, Natsionalnyi yurydychnyi universytet imeni Yaroslava Mudroho. S. 86–91 [in Ukrainian].
11. Pro zapobihannia koruptsii (2014). [On prevention of corruption]: Zakon Ukrainy vid 14.10.2014 r. Retrieved from <https://zakon.rada.gov.ua/laws/show/1700-18> [in Ukrainian].
12. Naukovo-praktychnyi komentar do proektu Zakonu Ukrainy «Pro administratyvnu protseduru» (2019). [Scientific and practical commentary to the draft Law of Ukraine "About the administrative procedure"]/ Avt. kolektyv (Andriiko O. F., Bevzenko V. M. ta in.), za zah. red. Tymoshchuka V. P. Kyiv: FOP Myshalov D. V. 460 s. [in Ukrainian].