

ROLE AND IMPLEMENTATION OF LEGAL PRINCIPLES IN THE CONTEXT OF DIGITAL LEGAL REGULATION: COMPARATIVE ANALYSIS OF EUROPEAN UNION (EU)

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Abstrak: Tujuan dari artikel ini adalah untuk melakukan penelitian orisinal mengenai peran dan implementasi prinsip-prinsip hukum dalam konteks regulasi hukum digital: analisis komparatif Uni Eropa (UE). Selama penulisan artikel ini, metode penelitian fungsional, induksi, deduksi dan klasifikasi (misalnya klasifikasi prinsip-prinsip hukum menurut ruang lingkupnya) digunakan; hal ini memungkinkan untuk mengungkapkan secara menyeluruh aspek dinamis dari prinsip-prinsip hukum, tujuan praktisnya, tempat dan perannya di antara elemen-elemen hukum lainnya dan sistem hukum masyarakat pada umumnya, serta mempengaruhi hubungan sosial dalam bentuk peraturan hukum dan bentuk-bentuk pengaruh hukum lainnya (yang bersifat informasi, yang berorientasi pada nilai, yang bersifat psikologis, pembentuk sistem, dan lain-lain). Disimpulkan bahwa keadaan implementasi prinsip-prinsip dasar serikat di negara-negara pendiri, dengan menggunakan contoh Republik Federal Jerman dan Republik Prancis, serta masalah dengan implementasi prinsip-prinsip hukum Republik Polandia, dipelajari. Dengan demikian, Jerman dan Prancis saat ini memiliki tingkat implementasi dan kepatuhan yang cukup tinggi terhadap prinsip-prinsip utama hukum Uni Eropa, sementara Polandia baru-baru ini memiliki masalah tertentu dengan hal ini. Jadi, selama 7 tahun terakhir, negara bagian ini telah melanggar nilai-nilai Uni Eropa dalam dua kategori sekaligus - dalam kategori hak-hak pribadi dan politik. Pada tahun 2023, kasus aborsi yang sah dibatasi di Republik Polandia, yang melanggar hak atas integritas individu dan tidak dapat diganggu gugat, yang merupakan salah satu nilai utama Uni Eropa. Pada tahun 2022, Komisi Eropa mengajukan gugatan terhadap Polandia ke Pengadilan Eropa terkait pelanggaran persyaratan terbaru dari Perjanjian Uni Eropa mengenai prinsip independensi peradilan. Peran prinsip-prinsip hukum bahkan lebih signifikan dalam hal menutup kesenjangan dalam undang-undang. Apabila undang-undang tidak mengatur atau tidak cukup jelas mengenai suatu masalah tertentu, pengadilan harus mencari solusi berdasarkan prinsip-prinsip hukum.

Kata kunci : Masyarakat Digital, Tempat Asas Hukum, Peraturan Hukum, Asas Hukum, Humas.

Abstract: Purpose of the article is to carry out original research on the role and implementation of legal principles in the context of digital legal regulation: comparative analysis of European Union (EU). During writing this article, a functional research, induction, deduction and classification methods (for example classification of principles of law according to their scope) was used; it allows to thoroughly reveal dynamic aspects of principles of law, their practical purpose, place and role among other elements of law and the legal system of society in general, as well as influence social relations in the form of legal regulation and other forms of legal influence (informational one, value-

oriented one, psychological one, system-forming one, etc.). It was concluded that the state of implementation of the fundamental principles of the Union in the founding states, using the example of the Federal Republic of Germany and the French Republic, as well as problems with the implementation of the principles of the law of the Republic of Poland, were studied. Thus, Germany and France today have a fairly high level of implementation and compliance with the main principles of European Union law, while Poland has recently had certain problems with this. So, over the past 7 years, this state has violated EU values in two categories at once - in the category of personal and political rights. In 2023, cases of legitimate abortions were limited in the Republic of Poland, which violated the right to the integrity of the individual and its inviolability, which is one of the main values of the European Union. In 2022, the European Commission filed a lawsuit against Poland to the European Court of Justice regarding violations of the latest requirements of the EU Treaty regarding the principle of judicial independence. The role of legal principles is even more significant when it comes to closing gaps in legislation. In the event that the law does not prescribe or is not sufficiently clear about a certain issue, the court must find a solution in the light of principles of law.

Key words: Digital Society, Place of principles of law, Legal regulation, Principle of law, Public relations.

INTRODUCTION

The process of intensive renewal of the entire legal system of Ukrainian society observed in recent years, is accompanied by attempts to form a fundamentally new legal ideology and so, it could not ignore the deep foundations on which the law is based. It is advisable to consider principles of law as legal norms, which differ in the most general nature, with a high level of abstraction. Principles of law form a kind of foundation on which the law rests, and in this capacity they act as sources of law. They permeate the legal matter, all the processes taking place in the legal sphere and they are in one way or another related to the law. Principles express the essence of law; they determine its content and the general nature of the legal regulation of social relations. The concept of “principles of law” is one of the basic legal categories. They are mentioned in almost every monographic legal study, in numerous educational manuals and textbooks in any field of legal knowledge.

The problems of the legal nature of principles of law and their classification should be included among the current problems of jurisprudence. The leading role of principles is ensured by their direct or indirect anchoring within the norms of the law, since principles of the law comprehensively reflect its essence. Transition of Ukraine to a market economy, its integration into the world society of economically developed countries require bringing the national legislation of the country to the level of world standards.¹

Principles of law are imperative, unconditional and they reflect the laws of social relations in a concentrated manner, permeate the entire mechanism of social legal relations, including the organizational and socio-economic structure of social relations. Relevance of the research is determined by the fact that principles of law direct and synchronize the entire mechanism of legal regulation of social relations, more fully reveal the place of law in social life and its development.²

Legal science distinguishes principles of law, principles of legal responsibility, the principles of the rule of law, and others. As a rule, we are talking about initial, fundamental, indicative, legal requirements that are the basis of a certain legal phenomenon. Principles are universally binding and constitute the most important elements of any legal phenomenon. They

¹ Starchuk O.V. Regarding the concept of principles of law. *Journal of the Kyiv University of Law*. 2012. No. 2. 40-43.

² Leheza, Yevhen, Volodymyr Shablysty, Irina V. Aristova, Ivan O. Kravchenko, and Tatiana Korniakova. 'Foreign Experience in Legal Regulation of Combating Crime in the Sphere of Trafficking of Narcotic Drugs, Psychotropic Substances, Their Analogues and Precursors: Administrative and Criminal Aspect'. *Journal of Drug and Alcohol Research* 12, no. 4 (2023). <https://doi.org/10.4303/JDAR/236240>.

have the global experience of the history and development of law, experience of a certain civilization concentrated in them. Principles are initial provisions that establish objective regularities of social life. Their leading role is provided by means of their direct or indirect enshrinement in legal norms.³

Yu.O. Voloshyn rightly states that the term “principle” is used in different meanings: 1) basic principles, original ideas characterized by universality, general significance, higher imperativeness and reflecting the essential provisions of theory, doctrine, science, the system of domestic and international law, political, state or public organization (humanism, legality, justice, equality of citizens before the law, etc.); 2) the inner conviction of a person, which determines his/her attitude to reality, social ideas and activities.⁴

V.O. Kotyuk notes that in the theory of law there are two terms “principles of law” and “legal principles”. They are distinguished from each other by the fact that legal principles arise, as a rule, long before the emergence of the system of law and legislation. Legal principles enshrined in the system of law and legislation, become principles of law.⁵

The purpose is to carry out original research on the place of principles of law in legal regulation of public relations in conditions of digitalization. In order to achieve the set purpose, the following tasks were formed and solved: analyze theoretical and legal foundations of the essence of the principles of law in social legal relations; reveal the peculiarities of ensuring the principles of law in modern society.

METHOD

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. The structural-logical method was used to define the basic directions for optimization of methodological approaches to understanding of principles of law in the context of modern globalization transformations.

In a broader context, depending on the level of public relations governed by law, principles of law are also viewed by O. Skakun. In the system of principles, she defines the following types: Universal human (international, civil) principles, regional-continental principles and national (domestic) principles.

The latter, in their turn, are divided into general legal (general, basic) principles, inter-branch principles, sectoral principles, subsectoral principles and institutional principles.⁶ 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

³ Makeeva O. . Principles of legal communication tions: theoretical and legal aspects. Legal Bulletin. Air and space law. 2018. No. 1. 48-53.

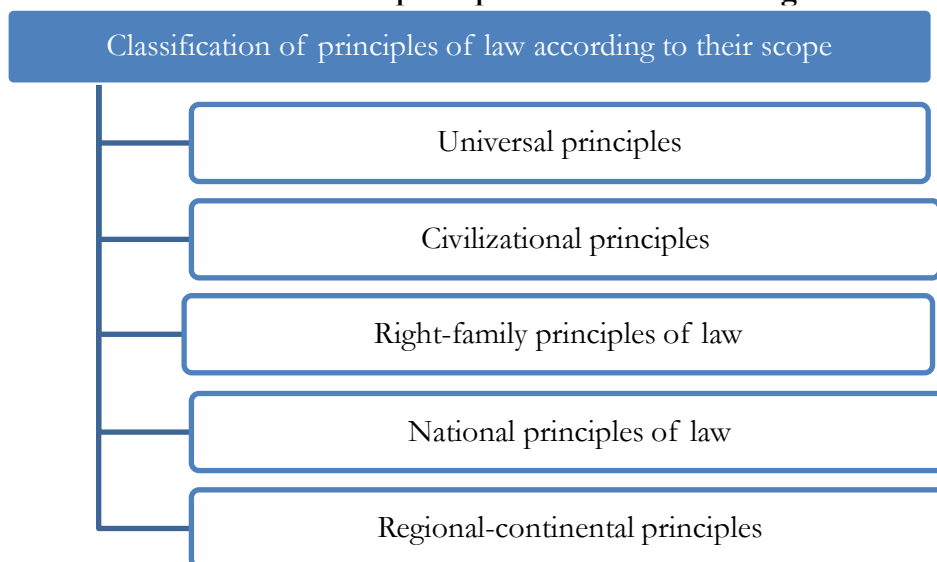
⁴ Voloshyn Yu.O. Principle: in 6 volumes. Kyiv: "Ukrainian Encyclopedia" Publishing House named after M. P. Bazhan, 2004. Volume 5. 736 p.

⁵ Kotyuk V.O. Theory of law: a course of lectures. Kyiv : Venturi, 1996. 208 p.

⁶ Skakun, Olha. 2005. Theory of the state and law. Encyclopedic course. Kharkov. Ukraine.

principles of humanism, legal equality, freedom, democracy, justice, legality.⁷

Scheme 1. **Classification of principles of law according to their scope**



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.

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

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

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

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). A. Skakun believes that these principles usually coincide with universal human principles.⁸

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”.⁹

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”.¹⁰ “Most of such principles are based on “natural justice” common to all legal systems” According to S. Pohrebniak fundamental principles of law Pogrebniak, apart from justice, also include equality, freedom and humanism. Fundamental general legal

⁷ Voloshaniyska, Tetiana, Inna Pozihun, Serhii Losych, Olha Merdova and Yevhen Leheza. ‘Administrative and Criminal Law Aspects of Preventing Offenses Committed by Minors in the Sphere of Illegal Circulation of Narcotic Drugs, Psychotropic Substances and Precursors’. *Journal of Drug and Alcohol Research*, 12(10) (2023). <https://doi.org/10.4303/JDAR/236269>

⁸ Skakun, Olha. 2005. *Theory of the state and law*. Encyclopedic course. Kharkov. Ukraine.

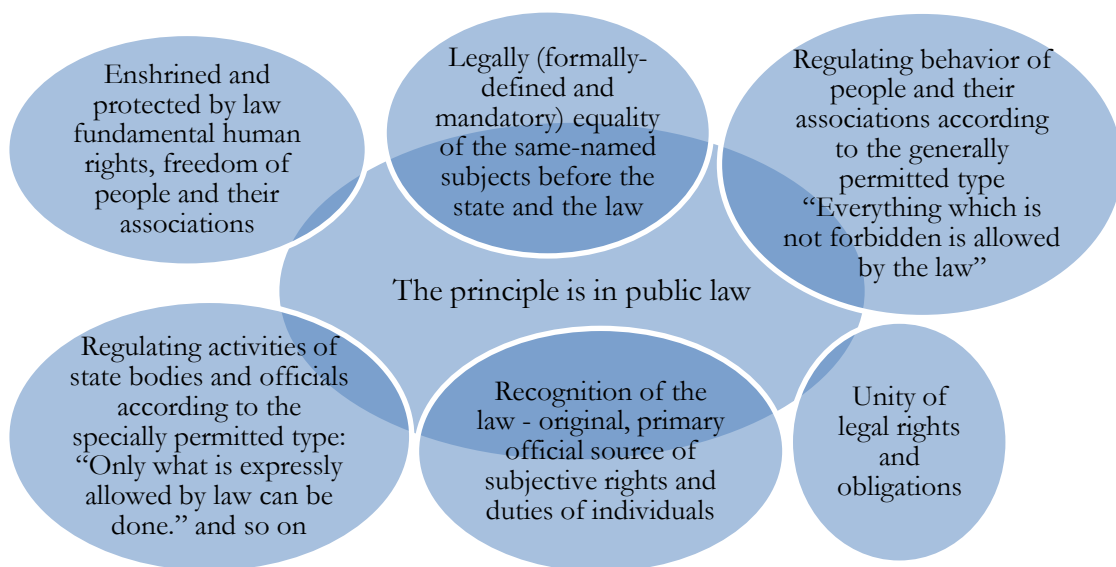
⁹ Pohrebniak, Stanislav Petrovych. 2008. *Fundamental principles of law* (content description). Kharkiv: Right. Ukraine.

¹⁰ Pohrebniak, Stanislav Petrovych. 2017. *Conclusions and recommendations from the national legal debate*. *Law of Ukraine*. No. 7. Kyiv. Ukraine. 90-93.

principles of law common to all legal systems were described by S. Shevchuk.¹¹

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. Elements of principles of law in public legal relations are proposed (Scheme 2).

Scheme 2 Elements of principles of law in public legal relations.



Essential legal features of legal principles may include:

1) Objectivity in legal norms. The given sign emphasizes that a principle of law necessarily has a legal nature, that is, the corresponding provision, requirement, principle must be either directly enshrined in the acts of the current legislation textually, or the corresponding requirement or principle must undoubtedly (and not allowing for another interpretation) follow from content of the current legal regulation, with the help of systematic interpretation of its norms;

2) Official certainty. This feature draws attention to cases of lack of textual confirmation of the principle of law. In such cases, it is obvious that in order to acquire the qualities of a principle of law, the relevant provision or requirement must be of an official nature, determined by a single practice of legal interpretation and law enforcement;

3) It is a requirement, a principle, in certain cases it is a concept. Determining the external expression of a principle of law, we come to understand that most often a principle is understood as a legal requirement (for example, legality, equality) or a foundation (for example, political, economic and ideological diversity). However, quite often a principle may outwardly take the form of a certain concept that cannot be clearly included in a requirement or foundation, such as, for example, the principle of good governance. Such a principle is a certain set of requirements that, at a certain stage of social development (as a result of their actual unique

¹¹ Shevchuk, Svitlana. 2007. Judicial law-making: world experience and prospects in Ukraine Kyiv: Abstract. Ukraine.

combination, as well as a result of the necessary theoretical justification) formed an indivisible structure - a single principle. Principles-concepts, in our opinion, are more complex and derived from principles-requirements, principles-foundations; they are constructed by learned theoreticians and usually operate within more special branch legal relations;

4) They reflect the regularities of social development, embody the main requirements of such development, accordingly adjusting the content of legal norms;

5) They are real regulators of social relations. Such a feature can be further expanded in several directions. These directions include: a) when penetrating the legal consciousness of participants of legal relations, principles of law constitute the main motivational levers, guidelines for a certain legal behavior of the relevant subjects. Subjects of legal relations do not remember direct, clear norms from various legislative acts - they are aware of the basic principles of legal regulation, which they are guided by; b) principles of law serve as an effective tool in the practice of law enforcement in cases where there are certain legal conflicts (controversies) or gaps. It is thanks to the general and sectoral principles of law that it becomes possible to overcome such gaps and conflicts, ensure a proper and qualitative understanding of the essence and spirit of law, resolution of legal disputes, as well as adoption of individual legal acts;

6) They direct the procedure of law-making. Principles of law are programmatic in their nature. The most generalized legal requirements reflecting the essence and content of the law, also serve as a certain reference point for improvement and development of the current legal system, for filling its gaps, and overcoming conflicts.

RESULTS AND DISCUSSIONS

The process of intensive renewal of the entire legal system of Ukrainian society observed in recent years is accompanied by attempts to form a fundamentally new legal ideology and so, it could not ignore the deep foundations on which the law is based.

In legal science, principles of law are considered either as ideas or as norms. When presenting principles of law as ideas, we give them a purely doctrinal nature, which reduces their role from the point of view of practical application. Determined by the essence of law, principles are initially ideas, but later they acquire the characteristic of normativeness. Normativeness gives them practical value as a foundation for formation of legal legislation, which, in particular, is confirmed by the practice of the Constitutional Court of Ukraine.

It should be noted that the Constitutional Court of Ukraine is obliged in its activities to adhere to the principle of the rule of law and to take into account international (in particular, European) standards regarding application of the principle of proportionality. The latter is one of the requirements of the rule of law and is of significant importance for judicial proceedings, including constitutional proceedings.¹²

In accordance with the part 1 of Article 8 of the Constitution of Ukraine, the principle of the rule of law is recognized and operates in Ukraine. One of manifestations of the rule of law consists in the fact that the law is not limited to legislation as one of its forms, but also includes other social regulators, including moral norms, traditions, customs, etc., which are legitimized by society and stipulated by the historically achieved cultural level of society. All these elements of law are united by a quality that corresponds to the ideology of justice, the idea of law, which is largely reflected in the Constitution of Ukraine.¹³

Thus, principles of law are advisable to be considered as legal norms, which differ in the most general nature, with a high level of abstraction.

We believe that a principle of law should be defined through the term "requirement". According to this approach, a principle of law is perceived as a tool that has an active functional load, and not as a declarative statement. Principles of law should not be considered as one of the forms of external manifestation of law, that is, they should not be viewed as sources of law in the formal sense. Being a specific (fundamental, abstract, etc.) rule of law, a principle of law must be

¹² Yevtoshuk Yu. The principle of proportionality in the practice of the Constitutional Court of Ukraine. Bulletin of the Constitutional Court of Ukraine. 2011. No. 1. 90-101.

¹³ Bakhnovska I.P. Features of the principles of law: theoretical aspects. Scientific Bulletin of the Uzhhorod National University. "Law" series. 2013. Issue 23. Part 1. T 1. 18-22.

expressed in a certain external form (constitution, law, court decision, doctrine).

I.P. Bachnovska singles out the following functions of principles of law:

1) The regulatory function, which is manifested in the fact that principles of law are important constituent elements of the system of legal regulation; the most clearly regulatory function of principles of law is manifested when overcoming gaps in the law, but it is not limited to this - the regulatory role of principles of law should not be considered exclusively optional compared to the norms of law, principles of law can have a direct regulatory effect.

2) The system-forming function of principles of law. This function of principles is aimed at ensuring coherence and unity of the system of law.

3) The evaluation function of principles of law. Principles determine the worldview, ideological, target, axiological, normative and other direction of formation, development and functioning of legal phenomena of society. This is natural for all legal systems of the world.

4) Guaranteeing legality and law and order, effectiveness of legal regulation.

The epistemological function of principles of law. It cannot be equated with the cognitive function performed by concepts of science, elements of theory, etc. The cognitive aspect of legal activity is one way or another connected with the use of legal principles. In law-making, activity of subjects is subordinated to the system of "principles of law", in the principles of law they are subordinated to their main function - regulatory one.¹⁴

So, the functional approach provides an opportunity to thoroughly reveal the dynamic aspects of principles of law, their practical purpose, place and role among other elements of law and the legal system of society as a whole. In the functions, individual properties and aspects of principles, their essence and content are concretely specified.

Functions of principles of law ensure equal formulation of legal norms, and also influence social relations in the form of legal regulation and other forms of legal influence (informational one, value-oriented one, psychological one, system-forming one, etc.).

Therefore, the main functions of principles of law should be understood as relatively separate directions of their homogeneous influence on subjective and objective reality, as a result of which certain changes occur in the sphere of regulatory and legal regulation of social relations.

When examining the forms of expression of principles of law, we come to the conclusion that principles of law are not just theoretical categories used by legal science, but they are legal norms performing regulatory functions.

Like any legal norm, a principle of law finds its expression in the positive law, due to such consolidation it is given the quality of universal obligation. Legal foundations find their external expression in traditional forms - in the Constitution, in laws, in judicial practice, as well as in legal doctrine.

Analysis of Ukrainian legislation demonstrates the lack of unity of approaches in the reflection of legal principles in normative legal acts. Legal principles are often confused with other categories, which leads to a misunderstanding of the meaning of legal principles during application and interpretation of the law.

As noted by V.M. Kosovych, the following question arises: how should a drafter of the law formulate principles of law in a clause of the normative legal act: in the form of basic abstract provisions or as a legal norm (rules of conduct)? The author notes that there is no contradiction here, since at the doctrinal level it is now recognized that the principles of law can be both formally (normatively) established and have the form of stable beliefs at the level of legal awareness, primarily of the legal community.¹⁵

For example, Article 3 of the Civil Code of Ukraine lists the principles of civil legislation: inadmissibility of any intervention in the sphere of private life of the person; inadmissibility of deprivation of the property right, except the cases established by the Constitution of Ukraine and the law; freedom of the agreement; freedom of the business activity which is not forbidden by the law; judicial protection of the civil law and interest; justice, conscientiousness and

¹⁴ Leheza, Yevhen. Pisotska, Karina. Dubenko, Oleksandr. Dakhno, Oleksandr. Sotskyi, Artur. 2022. the essence of the principles of ukrainian law in modern jurisprudence. Revista jurídica portucalense, december, 342-363. doi: [https://doi.org/10.34625/issn.2183-2705\(32\)2022.ic-15](https://doi.org/10.34625/issn.2183-2705(32)2022.ic-15)

¹⁵ Kosovych V.M. Normative consolidation of the principles of law as a factor in the perfection of normative legal acts of Ukraine. Scientific and informative bulletin. "Law" series. 2013. No. 7. 40-50.

rationality.¹⁶ Consolidating the defining principles of civil law as the main branch of private law through formally undefined terminology, the law-making subject lays down basic, legally constructive approaches to the regulation of personal non-property and property relations regardless of their institutional features.¹⁷

Therefore, it would be correct to enumerate and disclose the content of principles of law in codified acts, in particular, in the Criminal Code, Criminal Procedural Code, Civil Procedural Code, etc. The list of principles of law should not be exhaustive, because when applying the law, a situation may arise when it turns out to be necessary to refer to a principle not specified in it.

The following question arises: how do principles of law affect the process of law-making, in what cases do they cause emergence of new legal norms? We proceed from the fact that the general, sectoral, inter-sectoral principles of law “serve” their respective subject field; any kind of science, legality, democracy, etc.

And from the substantive side of law-making, it includes all forms and means of emergence, development and change of law, in particular existence in the form of non-institutional forms (legal awareness, legal principles, legal theories and concepts, etc.).¹⁸

The process of law-making is not reduced only to the legislative activity of various state structures, but is a long-term creative process divided into three conventionally selected stages:

1) Formation of specific legal relations directly in public life and their self-regulation based on the material conditions of society’s existence and the empirical legal awareness of participants in these relations;

2) Generalization by the state of specific legal relations that arose through evolution, formulation of relevant rules of general behavior and their reflection in normative legal acts or other legal documents;

3) Implementation of formalized legal norms, again, into specific social relations, but already into more ordered, stable and protected ones.¹⁹

The specific weight of these stages in the law-making process is different depending on whether the law of a particular country (legal system) belongs to a certain legal family.

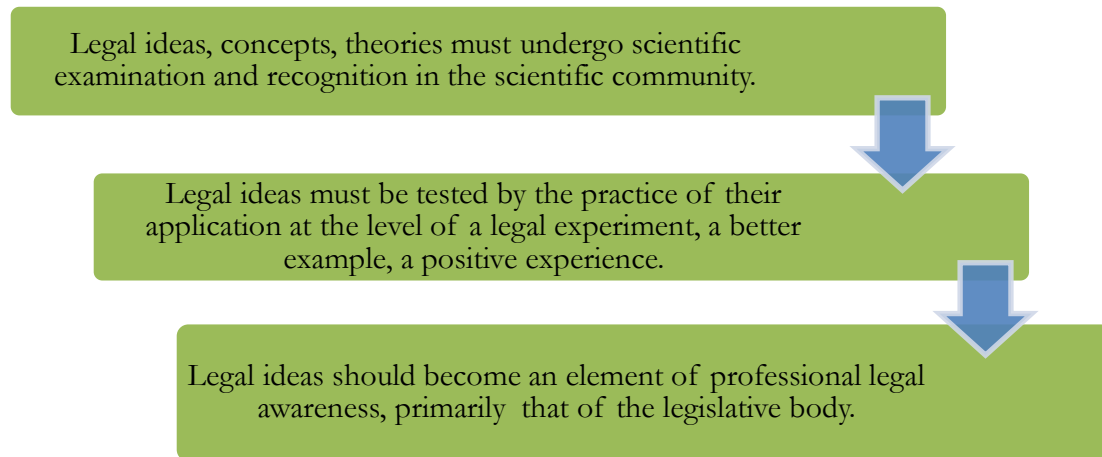
We believe that the algorithm of the process of recognition of legal ideas as principles of law-making should include the following actions: Legal ideas, concepts, theories must undergo scientific examination and recognition in the scientific community; Legal ideas must be tested by the practice of their application at the level of a legal experiment, a better example, a positive experience; Legal ideas should become an element of professional legal awareness, primarily that of the legislative body.

¹⁶ Civil Code of Ukraine: Law of Ukraine dated January 16, 2003 No. 435-M. Verkhovna Rada of Ukraine. URL.: <https://zakon.rada.gov.ua/laws/show/435-15#Text>

¹⁷ Leheza, Yevhen, Tatiana Filipenko, Olha Sokolenko, Valerii Darahan, and Oleksii Kucherenko. ‘Ensuring Human Rights in Ukraine: Problematic Issues and Ways of Their Solution in the Social and Legal Sphere’. *Cuestiones Políticas* 37, no. 64 (2020): 124–36. <https://doi.org/10.46398/cuestpol.3764.10>.

¹⁸ Dymko, Iegor, Arsen Muradian, Yevgeny Leheza, Andrii Manzhula, and Oleksandr Rudkovskiy. ‘Integrated Approach to the Development of the Effectiveness Function of Quality Control of Metal Products’. *Eastern-European Journal of Enterprise Technologies* 6, no. 3 (90) (2017): 26–34. <https://doi.org/10.15587/1729-4061.2017.119500>.

¹⁹ Lysenkova S.L. *Theory of the state and law: a textbook*. 2005. Yurinkom Inter, Kyiv. Ukraine.

Table 1. Algorithm of the process of recognition of legal ideas as principles of law-making

Principles of law should be considered in their systemic unity. At the same time, they appear in Ukrainian law as a structure with norms, institutions, sub-sectors, branches and the entire system formed around it, where they find a kind of reflection in each of the components.²⁰

We also cannot ignore problems concerning interaction between the international law and the national law, as well as concerning implementation of the international law in the legal system of Ukraine.

In the Constitution of Ukraine of 1996, the basis in this respect is formed by Art. 9.²¹ The current Constitution also contains references to the international law, in particular, clause 4 of Art. 55, part 5 of Art. 124.²²

. Article 38 of the Statute of the International Court of Justice of the United Nations contains a list of sources of international law, among which are “general principles of law recognized by civilized nations”.²³

General principles of law are common legal concepts, logical rules, “technical” principles used during interpretation and application of law (for example, an equal one has no rights over an equal one; no one can transfer more rights than he/she has; no one can be a judge in one’s own business, etc.). These general principles are mostly rules of application of legal norms in any legal system. For international law, they are quite useful in view of the underdevelopment of procedural international legal norms. However, commonality of certain principles for national legal systems does not mean their automatic introduction into the system of international law. To be included in the latter, such principles must be at least tacitly recognized as norms of international law, that is, they must be constituted as an international order. But in this case, they lose the nature of a special source of international law.²⁴

²⁰ Leheza, Yevhen, Larysa Yerofieienko, and Volodymyr Komashko. ‘Peculiarities of Legal Regulation of Intellectual Property Protection in Ukraine under Martial Law: Administrative and Civil Aspects’. *Revista Justiça Do Direito* 37, no. 3 (2023): 157–72. <https://doi.org/10.5335/rjd.v37i3.15233>.

²¹ Constitution of Ukraine: Law of Ukraine dated June 28, 1996 No. 254k/96. Verkhovna Rada of Ukraine. Information of the Verkhovna Rada of Ukraine. 1996. No. 30. Art. 141

²² The Charter of the United Nations and the Charter of the International Court of Justice of the United Nations: International document of June 26, 1945. Supreme Council of Ukraine. URL: https://zakon.rada.gov.ua/laws/show/995_010#Text

²³ Leheza, Yevhen. Shablysty, Volodymyr. Aristova, Irina V. Kravchenko, Ivan O. Korniakova, Tatiana. 2023. Foreign Experience in Legal Regulation of Combating Crime in the Sphere of Trafficking of Narcotic Drugs, Psychotropic Substances, their Analogues and Precursors: Administrative and Criminal Aspect. *Journal of Drug and Alcohol Research*. 12, 4, 1-8. DOI: <https://doi.org/10.4303/JDAR/236240>

²⁴ Kornienko, Maksym, Anatolii Desyatnik, Galina Didkivska, Yevhen Leheza, and Oleksiy Titarenko. ‘Peculiarities of Investigating Criminal Offenses Related to Illegal Turnover of Narcotic Drugs, Psychotropic Substances, Their Analogues or Precursors: Criminal Law Aspect’. *Khazanah Hukum* 5, no. 3 (2023): 205–15. <https://doi.org/10.15575/kh.v5i3.31742>.

Reference to the norms of international law has become a common phenomenon in the activities of law-making and law-enforcement bodies as well as all subjects of domestic law. Previously, the use of norms of international law, references to them could be found mostly in court decisions regarding a rather narrow category of cases. Today, norms of international law are increasingly referred to by state and local self-government bodies, enterprises and companies, legal practitioners, lawyers, statesmen, and citizens in the course of their activities.

Nevertheless, today there is no unified position regarding the fact which principles and norms should be considered universally recognized. In our opinion, such principles and norms should include a significant number of norms of international law officially recognized by most countries as mandatory, regardless of their political or ideological orientations. Principles of international law are the most general of them.

According to the Constitution of Ukraine, exercise of the state power can be guided by an algorithm only if the letter of the law is always followed when applying the law. But for this purpose a human or a self-learning system must turn the law into an algorithm. In some cases, this is in principle possible, although it is a difficult task requiring the developer to have very deep knowledge in the field of information technology, mathematics and law. However, many legal norms cannot be described in single-valued variables characteristic of an algorithm. This is due to both the inevitable vagueness of the instrument of law - human language, and the deliberate vagueness that ensures flexibility of legislation. Instead of step-by-step instructions (conditional programs), the law often uses result-oriented programs: general objectives such as improving living conditions, public involvement and public awareness, balancing and integration of interests, sufficiency of information, appropriate and economical, and reasonable land use; discretionary powers, such as the right of a law enforcement agency to issue a warrant to a person responsible for public order, in order to counter a threat or eliminate a violation; vague legal terms such as overriding public interest or danger general principles such as human dignity, proportionality and equal treatment.²⁵

The possibility of developing artificial intelligence is proposed to be enshrined in the principles of law, taking into account international standards:: 1) promotion of inclusive growth, sustainable development and well-being; 2) observance of the rule of law, fundamental rights and freedoms of human and citizen, democratic values at all stages of development, implementation of artificial intelligence systems, as well as provision of appropriate guarantees during the use of such technologies; 3) compliance with the requirements of current legislation on the protection of personal data, as well as compliance with the constitutional right of everyone to non-interference in personal and family life in connection with the processing of personal data; 4) information about artificial intelligence systems can be disclosed exclusively responsibly and in order to ensure transparency; 5) the need to ensure reliability and safety of functioning of artificial intelligence systems and conduct their evaluation and management of potential risks on a permanent basis; 6) presence of responsibility of organizations that carry out the development of artificial intelligence regarding reliability of such systems.

Fundamental rights are reflected in the basic laws of the member states. For example, in the Preamble of the Constitution, Germany established its aspiration to be a full-fledged member of a united Europe, and to fulfill this aspiration, the state-guaranteed catalog of human rights was established in the very first chapter. Thus, Article 1 of the Basic Law of the Federal Republic of Germany states: "Human dignity is absolute and inviolable." To respect and protect it is the duty of any state authority. The German people therefore recognize inviolable and inalienable human rights as the basis of any human community, peace and justice in the world. Fundamental rights are mandatory for the legislative, executive and justice as a right of direct action, which is not subject to restrictive interpretation".²⁶

However, not all states ensure real observance of a group of fundamental human rights. For

²⁵ Volobueva, Olena, Yevhen Leheza, Vita Pervii, Yevhenii Plokhuta, and Roman Pichko. 'Criminal and Administrative Legal Characteristics of Offenses in the Field of Countering Drug Trafficking: Insights from Ukraine'. *Yustisia Jurnal Hukum* 12, no. 3 (2023): 262–77. <https://doi.org/10.20961/yustisia.v12i3.79443>

²⁶ Basic Law of the Federal Republic of Germany. Legal Library legalns.com. 2019. URL: <https://legalns.com/download/books/cons/germany.pdf>

example, in Poland, on October 22, 2020, the Constitutional Court of Poland made a decision that further limited the list of situations in which women can legally have an abortion. The court ruled that abortions due to disease or unviability of the embryo are unconstitutional. This approach to this issue caused indignation in Polish society and in important institutions of united Europe. In particular, Council of Europe Commissioner for Human Rights Dunya Mijatovych noted that the decision of the Constitutional Court means underground or foreign abortions for those who can afford it, and even more serious trials for the rest.²⁷

In the research aspect of the mentioned topic, it is also worth noting that the right to dispose of one's own body is a component of the right to the integrity of the individual and its inviolability, which is one of the main values of the Union. In addition, the Charter prohibits practices aimed at using the human body and its parts for profit, and also contains a ban on human reproductive cloning.²⁸ Therefore, in our opinion, such an attack on human rights may well be the reason for the initiation of a temporary suspension of Poland's membership in the EU.

The next important component of the values of the European Community are political and economic rights, which include the right to a fair trial, the prohibition of punishment without trial, the right to effective legal protection, the right to respect for private and family life (protection of private housing and correspondence), the right for marriage, the right to freedom of association, freedom of thought and expression, the right to elect and be elected, the right to assembly and rallies, etc. This group of rights can be attributed to the functional rights of a person, since they provide the domestic and Union institutional mechanisms for the implementation and protection of fundamental human rights.

The practical implementation of the principles of this category is characterized by volume and dynamism. States usually enshrine functional principles in the Constitutions, defining the fundamental principles of the activity of the court, the bar, the prosecutor's office, and state authorities. However, the functional values are detailed in the relevant laws - requirements are set for persons applying for the position of judge, lawyer, prosecutor or public administration employee. For example, the Constitutional Law of the French Republic establishes that the court must remain independent in order to guarantee the observance of the rights and freedoms enshrined in the Universal Declaration of Human Rights.

In order to comply with the principle of judicial independence, a completely autonomous selection system operates in France - a candidate for a judicial position must successfully graduate from the National School of Magistrates (28 months). The candidate is subject to serious requirements: 1) having a higher legal education; 2) stay in French citizenship for at least 5 years; 3) possession of the full range of civil rights; 4) impeccable reputation; 5) availability of military duty; 6) absence of diseases that prevent the performance of judicial duties; 7) for persons entering by competition (or by referral from the court, the Ministry of Justice, etc.) - the maximum age is 27 years.²⁹

In addition, in France, as in Germany and Spain, the principle of judicial immunity is enshrined in the Criminal Procedure Laws, which is an organic component of the principle of judicial independence.

In Germany, the judiciary is defined by the Basic Law, the Judiciary Act of January 27, 1877 as amended on May 9, 1975, the Administrative Courts Act, the Financial Courts Act, the Social Courts Act, and the Labor Courts Act. On December 22, 1999, the law on strengthening the independence of judges and courts was adopted.

The Constitution of the Federal Republic of Germany recognizes judges as independent and subject only to the law (Article 97 of the Constitution). They are appointed to their positions for life and cannot be transferred to another court or dismissed without their consent, except by court decision.

²⁷ Case of «Salaman v United Kingdom», decision of European Court of Human Rights of 15 June 2000. URL: <http://en.datocapital.com/uk/executives/Clement-Salaman.html>

²⁸ Miyatovich D. A sad day for Womens Rights. 2020. URL: <https://twitter.com/CommissionerHR/status/1319273573240893452>

²⁹ Mytko Y. S. Ethical requirements for candidates for the position of judge in foreign countries. National University State Tax Service of Ukraine. 2009. URL: <http://surl.li/rneb>

Judicial officials who do not have a legal education undergo specialized training, which includes a course in theory and law, and are civil servants, although they do not have the constitutional privileges granted to judges.

At the same time, not all states can ensure compliance with the principle of judicial independence. Thus, in 2017, the European Commission filed a lawsuit against Poland to the European Court of Justice regarding violations of the latest requirements of the EU Treaty regarding the principle of judicial independence. The Law on the Supreme Court, adopted by the Sejm of Poland, reduced the retirement age of Supreme Court judges from 70 to 65. This situation led to the inhibition of the judicial system, as a significant number of judges of the Supreme Court were forced to resign. This situation was recognized by the European Commission as undermining the principle of independence of the national judicial system and is absolutely unacceptable for a member of the European Community.

It is important to dwell separately on the fact that the lack of independence indicates a lack of respect for the rights of citizens and the judicial system in general, which is an integral prerequisite for public confidence in the courts and, in a broader sense, the rule of law. According to clause 1.1 of the European Charter on the Status of Judges, "the status of judges means ensuring the competence, independence and impartiality that any person legitimately expects from judicial authorities and from each judge who is entrusted with the protection of his rights. He rejects any provision and any procedure that could shake confidence in this competence, independence and impartiality".³⁰

When analyzing the constant of the right to a fair trial, guaranteed by the Convention on the Protection of Human Rights and Fundamental Freedoms, it can be summarized that independence, as a principle, concerns the entire judicial system or the status of judges in the state, their interaction with other bodies. The principle of impartiality implies an emphasis on a specific case, which "is usually revealed in the light of the circumstances of a specific case, that is, Gassie's rule".³¹ However, today it is quite difficult to draw a clear line between the principles, since the violation of one entails, accordingly, the violation of the other.

As a general rule, legal mechanisms for ensuring this principle are the possibility of impeachment or self-impeachment of a judge. But it can be observed in the context of the positions of the European Court of Human Rights that the operation of such a mechanism may cause a contradictory situation with access to the court as an institution. This is manifested in the case when all judges are subject to self-recusal, for example, due to a conflict of interest in deciding a case, and the case cannot be transferred to another court. Thus, in the presence of such circumstances, the case continues to be considered according to the principle "if all judges of the court are interested, then it is considered that none of them is interested", so as not to deny access to the court, leveling the essence of the latter. In this regard, the ECtHR expressed categorically, noting that rights can be limited, but only in such a way and to the extent that they do not violate the content of these rights (*Philis v. Greece* (*Philis*), § 59; *De Geouffre de la Pradelle v. France* (*Where Joufre de la Pradel v. France*), § 28, and *Stanev v. Bulgaria* (*Stanev v. Bulgaria*) [GC], § 229). And right access to court is not absolute and may be limited by court decisions (*Golder v. the United Kingdom*, §38; *Stanev v. Bulgaria* (*Stanev v. Bulgaria*) [GC], 230).

That is, a judge cannot be removed from participating in the consideration of a case in the event that no other court can be appointed to consider the case or due to the urgent nature of the case, when a delay in its decision may lead to a serious judicial error.

However, extraordinary circumstances may require a departure from the principle outlined above. The concept of necessity allows a judge, who would otherwise be disqualified, to hear and rule on a case, because otherwise it could lead to a miscarriage of justice. Such a need may arise in the absence of another judge who is not similarly suspended from participating in the court proceedings, if the postponement of the court process or an improper trial will lead to serious difficulties, or if it is impossible to appoint a court to consider the case and make a decision in it due to the absence of the appropriate judges. Of course, such a necessity appears rarely and in

³⁰ European Charter "On the Status of Judges" of June 10, 1998. Official website of the Verkhovna Rada of Ukraine. URL: http://zakon1.rada.gov.ua/laws/show/994_236

³¹ Case of «*Salaman v United Kingdom*», decision of European Court of Human Rights of 15 June 2000. URL: <http://en.datocapital.com/uk/executives/Clement-Salaman.html>

individual cases. However, a similar situation may arise from time to time in courts of last instance, where there is a limited number of judges who are entrusted with important constitutional and appellate functions that cannot be delegated to other judges.

Institutional access is absolute, impartiality “concedes” to it and therefore, at first glance, is a non-absolute standard, but this can be stated with some caution and with reservations, because in some cases impartiality is declared by the ECtHR as a priority value of justice in that case, in particular, when any - which judge, biased or not, would decide the case only in a unique way and the fact of interest would not play a determining role, nevertheless, the guarantee of impartiality cannot be leveled as a component of the standard “court established by law” (the case “Skrlija v. Croatia” (No. 32953/13)). Also interesting is the position on the priority of the judge's oath over certain general ideas acceptable in society, regarding the vision of self-interest or conflict of interests, and over certain other social duties and obligations.³²

In the aspect of the mentioned topic, it is impossible not to say about the polysystem principle, which belongs to the fundamental principles of the EU - the right to self-determination, which is actively defended by Catalonia today.

CONCLUSION

Principles of law should not be considered as one of the forms of external manifestation of law, that is, they should not be viewed as sources of law in the formal sense. Summarizing the above provisions, it is worth emphasizing that principles of law are among the most effective catalysts for the evolution of any legal system, although the evolution of law has its own internal patterns, and these patterns set a certain direction for innovations in this area. Therefore, being an integral part of the legal system, principles of law differ from ordinary legal norms due to their fundamentality, degree of generalization (abstraction), stability and firmness, significance for the entire process of legal regulation.

Role of principles of law in different legal systems of today is not the same. However, despite this, practically everywhere, either nominally or in fact, they are one of the sources of law, including in the Ukrainian legal system. Inclusion of universally recognized principles and norms of international law in the domestic legal system significantly changes its content, in a new way raises the question of interaction, hierarchy of legal acts in accordance with their legal force and the meaning of norms contained in them. It has a great influence on the internal structure of the legal system, often qualitatively changing it.

Importance of principles of law is reflected in the fact that they act as a framework, a fundamental structure of the legal system; principles of law are a guide in the process of law development and formation; they significantly influence the formation of people's legal awareness, can be a direct basis for making individual legal decisions in specific cases; in the case of gaps in the legislation, principles of law can be used as a legal ground when considering the issue of law, while they act as a source of law, principles of law contribute to the correct interpretation of legal norms. The role of legal principles is even more significant when it comes to closing gaps in legislation. In the event that the law does not prescribe or is not sufficiently clear about a certain issue, the court must find a solution in the light of principles of law.

Analyzing all of the above, we can conclude that the values of the Union are the main pillar that ensures its existence, as well as the organic, systemic development of its members. Adherence to the principles of the Union is the main requirement for membership in the EU, and this is quite fair given the fact that the implementation of the principles of the European Union ensures unity in the formation of the main approaches of states to ensure the implementation and protection of human rights. At the same time, practice shows that in the process of state formation, sometimes states still violate the values of the Union and legitimize their own exit from the EU by their actions.

³² Case of «Salaman v United Kingdom», decision of European Court of Human Rights of 15 June 2000. URL: <http://en.datocapital.com/uk/executives/Clement-Salaman.html>

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