Principles of the discretionary powers of public administration

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Abstract*. The article analyzes the principles of the discretionary powers of state politicians. Public officials with political qualities of their posts are given the opportunity of discretion in making political decisions. Accordingly, the establishment of principles for implementing such authority and control over their observance is of strategic importance today.*

Administrative legislation of Ukraine, which regulates the activity of the administrative officials of public power, resembles a chaotic conglomeration of rules, regulations, guidelines and methods that are poorly correlated. And in many cases, illegal activities of officials of public authorities is a reflection of the legal system, existing in the country, and the general state of relations, which involves all citizens of the country.

Key words: *state politician, public service, discretion, responsibility.*

Problem statement

Article 6 of the Constitution of Ukraine clearly stated that "the legislative, executive and judicial power exercise their authority as prescribed by the Constitution and according to the laws of Ukraine." But we must accept that "rule of law in advance is not possible to predict all cases and circumstances of life. So it leaves a space that has filled body, which uses normal. Moreover, this authority should take into account the general view of the importance of certain concepts aim, which he has achieved, and finally to the principles of common sense "[1, p. 480].

Actually, to take account of this "common sense" and provided global and national practice consolidation of public administration bodies and their officials discretion.

In the current legislation there is a legal definition of discretion. Thus, n. 2 Methodology for anti-corruption expertise of draft legal acts (which was approved by the Cabinet of Ministers of Ukraine of 08.12.2009 p. Number 1346) determined that discretion - a set of rights and responsibilities of state bodies, their officials and those that enable discretion to determine all or part or content of the decision to choose one of several options for making decisions act by the project.

Signs of discretion:

1) discretionary powers of government politicians and civil servants are given only by law, because the law authorizes them to rule-making and enforcement activities and establishes some form of political activity;

2) implementation of some of the powers of state politicians and civil servants is characterized by a certain margin (discretion - that is free, political, administrative, discretion) in the assessment and actions to choose one of the options making and legal implications;

3) the procedure for implementing discretion consists of a series of proceedings, collecting evidence on the merits, political and legal description of the data collected, the implementation of selecting one of several options to address the issue, the final decision;

4) discretion always implemented in a combination of law, justice, political expediency and efficiency of administrative regulation.

Implementation of discretion is very important and responsible part of the status of state politicians and civil servants. However, it is for state politicians discretionary povnovadzhennya most characteristic

compared with governmental officials. Implementation of state politics political figures closely connected with the adoption of management decisions based on their own discretion considering the many economic, political and social factors to the extent permitted by law. This is a feature of the legal status of state political leaders.

Like any public activity implementation discretion must meet basic requirements put forward to them. These requirements are basic principles.

Close enough to outline the principles of public service is offered in the recommendations of the Committee of Ministers on March 11, 1980 r. № R (80) 2 Principles on the exercise of discretionary powers by administrative authorities. Of course, the position of the document directed to civil servants as representatives of "administrative bodies", but with certain reservations and additions can be used for outlining the principles of political discretion. Thus, the principles of discretionary powers in accordance with that document include compliance objective of giving discretionary powers; objectivity and impartiality; equality before the law; proportionality; reasonable time; application instructions; openness instructions; deviation from the instructions; character control; the administrative authority of the action; the powers of supervisory bodies for information.

Discarding of purely administrative principles, we have the basis for those that are unique to government politicians with their specific legal status.

*The purpose of discretionary powers.*Any prescription legal act, including the empowered bodies of public administration, pursuing a legally meaningful purpose. Usually, it is caused directly or disposition article, which is granted powers or functions directly follows from an organ.

To establish the correctness of this principle requires a combination of two factors:

1. A clear implementation of the provisions of the Constitution of Ukraine, according to which public authorities, their officers and officials should act only to the extent and in the manner prescribed by law.

2. The combination of the correspondence principle purpose of granting discretionary powers to the principle of appropriateness and proportionality (which will be discussed below).

The principle of objectivity and impartiality in business administration publichnoh most problematic during its execution. Butthis principle is discretionary nayvyznachalnishym the legality of their activities. There is actually a measure of the legality of their activities and preserves the meaning of discretion for consumers politico-administrative services.

We must accept that objectivity as such - rather complex and multifaceted phenomenon associated not only with legal factors, many with psychological, social and cultural qualities sluzhbvtsya. Of course, we do not deny mandatory following the norms of legislation, but quite often, and especially in the implementation of discretionary powers is necessary to fully take account of objective, procedurally important factors that are not legal. And at this stage official public administration is reasonably and properly come before a final decision on the basis of so-called objective truth.

Objective truth (sometimes referred to as the principle of objectivity) - is expressed in the legal requirements under which decisions enforcement agency must fully and accurately reflect objective reality. [2, p. 321] Truth in application of the law - a reliable knowledge of the circumstances that meet the objective reality and approved by the competent authority using specially defined in the law procedures and knowledge [3, p. 12].

Ukrainian administratyvisty under the principle of impartiality understand the complete exclusion from the process of manifestation sub`yektyvizmu, one-sided action in analyzing subjects; it is intended to ensure the establishment and evaluation of the facts relevant for making reasoned decisions in a particular administrative case [4, p. 30].

For employees of public administration, this principle is important when deciding during performance of their state functions. All existing weighting factors (political, administrative or social) should be a guarantee of the impartiality of the decision.

Generally impartiality in procedural law understood as the absence of official self-interest, that is, its impartiality in the decision under administrative discretion.

*The principle of equality before the law.*This principle is the most common subjects for all administrative and legal relations. The source of this principle is the Constitution of Ukraine, which has provided a number of articles alignment of rights, freedoms and legal interests. In particular, Art. 13 has determined that the state protects the rights of all subjects of property rights and economic, social orientation of the economy. All subjects of property rights equal before the law; Art. 21 states that all people are free and equal in dignity and rights; according to Art. 24 citizens have equal constitutional rights and freedoms and are equal before the law. Article 36 determined that all trade unions have equal rights and all associations of citizens are equal before the law. A centuries. 129 established the equality of all participants in a trial before the law and the courts. Due to this fact, there can be no privileges or restrictions based on race, color, political, religious and other beliefs, sex, ethnic or social origin, property, residence, language and other characteristics.

However, there are several caveats to implement this principle:

1) if you examine the following list, we understand that the provisions of the Constitution of Ukraine concerning mainly individuals (used or restrictive category of "citizens" or generalization "all men"). When it comes to legal entities, the legislator is limited to the so-called situational equality: all trial participants (including legal entities) level - but it is only during the trial; all subjects of property rights (including legal entities) are equal before the law - but in property relations and so on. And the principle of equality should apply to anyone in the state, regardless of the subject. Therefore proposed an understanding of this principle is followed by fixing it to the Law of Ukraine "On civil service". The principle of equality before the law - a uniform application of natural and legal persons of the law in regulating relationships qualitatively identical homogeneous groups of subjects;

2) talk about the absolute equality of all before the law impossible. Realize the principle of equality is purely one category of subjects that are related by common traits.

Confirmation of this position is the position of Recommendation № (80) 2 of the Committee of Ministers concerning the exercise of discretionary powers by administrative authorities if the difference of treatment based on the fair grounds which may be objectively proven, given the goal, the principle of equality is not violated. Unfair discrimination exists only when the difference in treatment is not objectively justified considering the purpose and effects of the measures foreseen.

*It is one of the variations of the principle of equality before the law is the principle of non-discrimination (*Eng. non-discrimination), which means that such things do not consider differently if there is no objective reason for differentiation [5, p. 68].

The aim of this principle is to eliminate all manifestations of injustice and discriminatory treatment of the individual and the need to ensure equality both formally and practically. Actually equality rests directly on state politicians in the discharge of discretionary power.

*The principle of proportionality*employee activity in public administration acts as a sort of balance or acceptable for all subjects of legal compromise during its public activities. By definition in the scientific literature, the principle of proportionality is to reach the proportions between all elements of managed and control processes [6]. That balance human interests with the interests of society, the state and relevant bodies of public administration, which represents the employee.

The principle of proportionality is the concept of "appropriate physical process of law", which comes from US constitutional law and the basic idea of the purpose is legitimate if it is in the Constitution, and all means to achieve this are allowed, regarding it not prohibited, but the spirit and letter of the Constitution, then they are constitutional "[7, p. 86].

A more modern basis of this principle is the practice of the European Court of Human Rights. Thus, in the case "against the United Kingdom Sorin'» ("Soering v. United Kingdom») in its judgment of 7 July 1989 p. The Court noted that the Convention on Human Rights and Fundamental Freedoms of 1950 "aimed at finding the relation between the needs associated with the interests of society as a whole, and the requirements of the protection of fundamental human rights." In the case of "Rees v United Kingdom» ("Rees v. United Kingdom») in its judgment of 17 October 1986 this Court noted that, finding out whether there is a positive obligation of the

State concerning human "refers consider fair balance that must be established between the interests of society and the interests of the individual. "

The national law also maintains the world practice use of the principle of proportionality. In particular, according to ch. 2, Art. 64 of the Constitution of Ukraine some temporary restrictions of rights and freedoms can be established under martial law or state of emergency, except for the rights and freedoms under Art. 24, 25, 27-29, 40, 47, 51, 52, 55-63 of the Constitution of Ukraine. It should also be noted that such restrictions as it directly arising from ch. 2, Art. 64 of the Constitution of Ukraine, first of all, can only act within a specific period and, secondly, to be "separate", ie not affect the whole system of constitutional rights and freedoms of man and citizen and not the full scope and content of certain rights and freedoms .

The principle of expediency indicates the need to subordinate organizational, procedural and other components of public service employees and activities of the public administration of general policy and management goals.

Dictionaries define "appropriateness" as that responsible deliberately goals. In this sense it appears common characteristic of specific human activity, where the objective causation includes a conscious goal, which determines the direction and content of the process. As always appropriate in the sense of the people may be inappropriate in terms of the needs of the progressive development of society and the ultimate socially important purposes. In a broad and somehow the conventional sense - the objective characteristics of reaching pre-specified (no matter how) outcome [8].

The principle of reasonable time is decisive in terms of a clear, focused and operational work of public administration officials in the performance of their duties.

By "reasonable time" in this case should be understood sufficient time that depends on several factors: the complexity of the issue; number of subjects involved in the case; urgency solutions verify the facts on which the resolution of the issue; the need for political consultations and more. Sometimes it is impossible to establish clearly defined time frame the issue or sale of any authority as difficult to consider all possible factors (political, economic, and sometimes physical) that affect the period of implementation of discretionary powers. World practice is by determining the "reasonable time" in the work of officials and public authorities as follows: under paragraph. "C" chapter. 1 Recommendation number Rec (2003) 16 of the Committee of Ministers to the States Parties "On execution of administrative decisions and judgments in administrative law" "this power should be exercised by individuals within a reasonable time, not to create without having obstacles to the activities of administrative bodies and ensure legal authenticity "or in accordance with Clause." and "Ch. Recommendation 2 of the same "if the decision concerning an individual subject to enforcement, then that person should be allowed to comply with the judgment within a reasonable time, unless duly justified urgent cases" [9].

But these provisions, as can be noted regarding individuals and entities that are not public authorities. But the Administrative Code of Ukraine sets a reasonable time period as short address and resolve the administrative case, sufficient to provide timely (without undue delay) judicial protection of violated rights, freedoms and interests in public relations.

The principle of publicity. This principle involves two areas of its implementation:

1. In the case of government agenciesthe content of this principle is that any legally authorized supervisory authority has the right to access information that was the basis for the decision, and the state politician - is obliged to provide such information. This information should be submitted in accordance with applicable laws (including regulations on the use of restricted information (special) access). The essence of this case lies in a clear, consistent, and complete presentation of all the circumstances and conditions of the case, revealing the internal communication solutions for specific situations.

2. With respect to persons who are not public authorities. APublichnist about this category of individuals anchored in ch. 2, Art. 3, ch. 2, Art. 6, ch. 2, Art. 19, para. 2 h. 1 tbsp. 121, p. 124, 129 of the Constitution of Ukraine. According to ch. 2, Art. 3 of the Constitution of Ukraine human rights and freedoms and their guarantees determine the

content and direction of the state. The state is responsible to the people for their activities. To affirm and ensure human rights and freedoms is the main duty of the state.

Ensure this principle is the access of non-public authorities to public information. Moreover, such information should be as complete and accessible to the perception and understanding of the recipient of that information. On this occasion interesting is the fact that in bioethics crucial role also played by the so-called "principle of publicity" - for which no expert judgment can not be an argument bioethical discussion of the problem if it is not granted to "man in the street" [10, p. 75]. In our view, a very apt definition of the essence of the principle of publicity.

The way of the principle of publicity can be both published and the statutory announcement follows the decision and bring a personal note to the subject, who directed the action act (decision), such as in the case of mandatory assignments members of the Cabinet of Ministers of Ukraine under applicable law. For decisions to adopt within the discretionary powers of implementation, in our view, appropriate to the requirement of defining factors, motives and reasons that influenced the final decision state politician. The most convenient form such an explanation can be used for a long time in the office practice of "explanatory notes".

The value of respect for this principle is the real possibility of effective, full and proper compliance officers in the application of discretionary powers, the provisions of regulations and all of the above principles such activities as much as possible will help protect the rights and freedoms of citizens of Ukraine.

The principle of maintaining the image and credibility of the government. Public Administration Public purpose is to ensure the effective implementation of the tasks and functions of the state through conscientious performance of duties assigned to employees.

Employees must take care of a positive image and authority represented by them and the public service in general, to take care of their own dignity, value representative status of the state.

The behavior of public administration employee must meet the expectations of the public and ensure the public trust and public power and government, to promote the rights and freedoms of man and citizen determined by the Constitution and laws of Ukraine.

The employee must, with due respect for the rights and legitimate interests of citizens, associations and legal persons not manifest arbitrariness or indifference to their lawful action or requirements prevent manifestations of bureaucracy, vidomchosti, restraint in statements or otherwise behave in a manner that discredits the authorities.

The principle of accountability. This principle is the latest in our list, but it takes almost the first place in importance in all political and administrative activity of public administration employee. Lack of control in any field, let alone in public administration is detrimental to the entire state and its citizens. Talking about the implementation of all other principles without real control simply does not make sense. The principle of equality, fairness and all others will only declarations worthless for ordinary citizens. Therefore it is extremely important not only to consolidate but the real implementation of continuous, consistent control of all activities of public authorities in the country, let alone on such subjective discretionary activities.

Using administrative achievements of science in the field of research monitoring activities, can distinguish the general and targeted control [11] the activities of employees of public administration.

General- is the control exercised by authorized bodies on all activities controlled entity. Depending on the type of employee of the public administration, it may be the Verkhovna Rada of Ukraine, President of Ukraine, the Accounting Chamber of Ukraine, the Security Service of Ukraine, the system of organs like.

Trust- is the control exercised directly on individual work. In this case the implementation of public administration officer discretion. Among the entities targeted monitoring could be called the Constitutional Court of Ukraine and administrative courts that examine the decisions of public administration employees for their constitutionality and legality.

The scientific literature is proposed to allocate procedural control (with due respect for the principle of legality in the decision) and quality control solution that is matched by its

situational circumstances and arguments that characterize the feasibility of its adoption.

Summarizing analysis discretion of public administration employees must confirm their priority in the implementation of their status. Harakteryzuyuchys number of features due to the status of employees of public administration, discretion can play both positive and negative role in government. Use discretion when making an array of political and administrative decisions is always a danger factor for law enforcement. However, balanced, pravosvidomyy approach to securing these powers and their use will minimize the possibility of any abuse. Use this as a special law basic principles is the best way of regulatory discretion of public administration employees.

Conclusion

Eliminating corruption risks in public administration employees, eliminate the possibility of their violation of the law of Ukraine, positive impact on improving the work of public authorities and will enhance their credibility.

The discretionary powers despite their inalienability of the status of employees of public administration, if the violation bounds of discretion provoke the emergence of a special type of corruption - political. A definition of political corruption and given the range of subjects of misconduct. Political corruption - isillegal activity, which is to use person endowed with state-of authority in the field of public policy, such powers and related opportunities to meet their own material or non-material interests or interests of third parties.

Terms and conditions of implementation of discretionary powers of state politicians: first, objectivity and impartiality in the work that must be understood as the adoption of a balanced and objective decision of public administration employees through a combination of their impartiality and political interest; Second, equality before the law - a uniform application of natural and legal persons of the law in regulating relationships between qualitatively identical homogeneous groups of subjects; Thirdly, in the proportion of state-political figure that acts as a balance or acceptable for all subjects of legal compromise in the process of political activity; Fourth, this expediency in making decisions using discretionary powers. At the same time stressed that the opposition appropriateness and legality is unacceptable.

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