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Principles Governing the Exercise of Discretionary Powers by Public Authorities: Systematic Structure and Constitutional-Legal Foundation

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ABSTRACT

This study aims to substantiate the need to establish a modern system of principles for the implementation of the discretionary powers of public authorities as a fundamental element of their operational mechanism. This study provides an overview of the principles of the principles governing the exercise of discretionary powers, as outlined in international and national legal frameworks. Key principles such as the rule of law, legality, reasonable restraint, equality, legal certainty, objectivity, impartiality, and proportionality are identified, and their constitutional and legal interpretations are analyzed. Special attention should be given to the importance of constructing a coherent system of principles for exercising discretionary powers. The following classifications are proposed:

1) Fundamental principles: the rule of law and legality is of paramount importance in shaping the legal institution of discretionary powers;

2) General principles: proper use of discretionary powers, equality before the law, objectivity, impartiality, and reasonable timeframes;

3) Special principles: proportionality and constitutional restraint. In addition, the principle of prudentiality is highlighted as a distinct principle, despite its absence in national legislation, as it is applied in the practices of certain authorities. This study concludes that the formal legal establishment and practical application of the aforementioned principles not only share the nature and outcomes of interaction between public authorities but will also provide robust guarantees for the rights, freedoms, and legitimate interests of individuals and organizations, protecting them from abuse and arbitrariness

Keywords: principles of law; discretionary powers; discretion; public authorities; legal regulation.

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Принципы реализации дискреционных полномочий органов публичной власти: система и конституционно-правовое содержание

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АННОТАЦИЯ

Цель исследования состоит в обосновании необходимости выстраивания современной системы принципов дискреционных полномочий органов публичной власти как необходимой основы механизма их реализации. В рамках данной работы был проведен обзор принципов осуществления дискреционных полномочий, закрепленных в международных и национальных правовых актах; выделены основные принципы (верховенства права, законности, разумной сдержанности, равенства, правовой определенности, объективности и беспристрастности, соразмерности и др.), проанализировано их конституционно-правовое содержание. Особый акцент сделан на необходимости выстраивания системы принципов в механизме реализации дискреционных полномочий. Предложена следующая классификация:

1) фундаментальные принципы (принципы верховенства права и законности, которые имеют основополагающее значение в формировании правового института дискреционных полномочий);

2) общие принципы (принципы использования дискреционного полномочия с надлежащей целью, равенства перед законом, объективности и беспристрастности, разумного времени принятия решения);

3) специальные принципы (принципы пропорциональности, конституционной сдержанности). Кроме того, отдельно выделен принцип пруденциальности, который на сегодня не закреплен в национальном законодательстве, но применяется в практике деятельности ряда органов.

Вывод. Правовое установление и практическое применение вышеназванных принципов в деятельности органов публичной власти позволит, с одной стороны, повлиять на характер и последствия взаимодействия соответствующих органов между собой, с другой — создать эффективные гарантии прав, свобод и законных интересов граждан (прав и законных интересов организаций) от злоупотреблений и произвола.

Ключевые слова: принципы права; дискреционные полномочия; усмотрение; органы публичной власти; правовое регулирование.

Как цитировать

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In a state governed by the rule of law, the organization, functioning, and interaction of bodies that are part of a single system of public authority are based on certain principles. Possessing considerable constitutional value, they act as the foundation for rule-making and law enforcement and form the basis of subsequent trust and confidence in state power. In international and national law, principles are always enshrined in general, abstract formulations, while their concrete content is usually acquired in current legislation and the daily process of law enforcement and legal interpretation. S.S. Alekseev rightly pointed out that the principles are the most general norms that operate in the entire sphere of legal regulation and apply to all subjects, and that they are either formulated directly in the law or derived from their general meaning.[1] As fundamental "guiding ideas," without giving a clear formal legal ruling on what is possible and proper, the principles define acceptable choices and forms of behavior (including when exercising discretion).

At present, the application of legal principles in the exercise of discretionary powers [1, p. 56; 2, p. 83] is quite problematic, which is due, first, to their lack of institutionalization (consolidation), and second, to the excessively high level of normative generalization and, hence, to the significant uncertainty of the legal content. As we know, a principle should not look like a meaningless declaration, but rather, should have sufficiently clear legal content.[2]

Legal Discretion: an Overview of the Basic Principles

Turning to the problem of legal principles shifts our attention to the level of sources that consolidate the principles of exercising discretion by public authorities, which can be divided conditionally into certain groups.

The first is international legal acts (treaties, agreements, rules, and recommendations adopted by international organizations). In particular, the United Nations Standard Minimum Rules on the Administration of Juvenile Justice establish (in addition to the general legal principles of justice, humanity, and equality) the requirements of *accountability, professionalism, and prudence* in the exercise of discretionary powers by public authorities (paragraph 6.3); and the Guidelines on the Role of Prosecutors[3]—the *principle of necessity* (paragraph 19)—thus, when deciding whether or not to initiate proceedings against a minor, the nature and level of their development are considered in particular, and everything possible is done to ensure that the prosecution of minors is carried out only within strictly necessary limits.

A markedly relevant call to "exercise the greatest caution and prudence" is also to be found in some international agreements.[4]

It is impossible not to refer to the basic documents of international law relating to the issues of ensuring by law the fundamental human rights and freedoms and supporting the democratization of social relations, through the prism of which powers (including discretionary powers) are exercised: the Universal Declaration of Human Rights,[5] the International Covenant on Civil and Political Rights,[6] and the International Covenant on Economic, Social and Cultural Rights.[7]

At the supranational level of the Council of Europe countries, the legal regulation of the discretionary powers of administrative bodies is executed through a set of documents of the Committee of Ministers of the Council of Europe, which have a recommendatory nature, the starting points of which are the formulation of certain principles for the exercise of discretionary powers as the minimum standards of good governance. In particular, the principles specified in the Recommendation on the Exercise of Discretionary Powers by Administrative Authorities are divided into 1) basic principles; 2) principles of procedure; and 3) principles of control.[8]

The second is the national legislation of individual states (for example, constitutional acts, general and special laws,

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1 Alekseev S.S. Theory of State and law: textbook for universities. Moscow: Norma; Norma-Infra-M, 2000. p. 215.

2 Civil Procedure: textbook (5th ed., revised and supplemented). Moscow: Statute, 2014. URL: https://www.consultant.ru/edu/student/download_books/book/treushnikov_mk_grazhdanskij_process_uchebnik/ (date of access: 05.05.2024).

3 Guidelines on the Role of Prosecutors (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, August 27–September 7, 1990). URL: https://base.garant.ru/12123836/ (date of access: 07.05.2024).

4 Agreement between the Government of the USSR and the Government of the United States of America on the Prevention of Dangerous Military Activities. (Together with the "Procedures for establishing and maintaining communication," "Procedures for resolving incidents related to entering the state territory," and "Agreed statements...") (concluded in Moscow on 12.06.1989). URL: https://www.consultant.ru/document/cons_doc_LAW_128171 / (access date: 05/07/2024); Agreement between the Government of the USSR and the Government of the United States of America on the Prevention of Incidents on the High Seas and in the Airspace Above It (Moscow, May 25, 1972). URL: https://base.garant.ru/2541165 / (date of access: 07.05.2024).

5 The Universal Declaration of Human Rights (adopted by the UN General Assembly on 10.12.1948). URL: https://www.consultant.ru/document/cons_doc_LAW_120805 / (date of access: 07.05.2024).

6 The International Covenant on Civil and Political Rights (adopted on 16.12.1966 by Resolution 2200 (XXI) at the 1496th plenary meeting of the UN General Assembly). URL: https://www.consultant.ru/document/cons_doc_LAW_5531 / (date of access: 06.05.2024).

7 The International Covenant on Economic, Social and Cultural Rights (adopted on 16.12.1966 by Resolution 2200 (XXI) at the 1496th plenary meeting of the UN General Assembly). URL: https://www.consultant.ru/document/cons_doc_LAW_5429 / (date of access: 07.05.2024).

8 Recommendation No. R(80)2 of the Committee of Ministers Concerning the Exercise of Discretionary Powers by Administrative Authorities, Council of Europe, 11 March 1980, appendix, section I. URL: https://wcd.coe.int/ViewDoc.jsp?id=678043&Site=COE (date of access: 07.05.2024).

and departmental and local legal acts). At the national level of several European states, the standards of legal regulation of the discretionary powers of executive authorities are expressed in a fragmented form in laws, by-laws, and court decisions (e.g., Belgium, France, and Great Britain). A similar system exists in Russia. In others, codified acts regulating administrative procedures in detail are effective (e.g., Germany, Austria, and Denmark). In individual states, the principles of exercising discretionary powers are fixed constitutionally. Thus, according to the Constitution of Ghana, discretionary powers must be exercised based on *fairness and impartiality.*[9] In the members of Commonwealth of Independent States (CIS) (e.g., Uzbekistan, Kyrgyzstan, and Kazakhstan), procedural issues related to the exercise of discretionary powers are typically regulated by recourse to separate laws.[10]

The third group of sources consists of *judicial decisions* of the European Court of Human Rights, and decisions of the constitutional and supreme courts of specific states. Thus, the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 28 of July 28, 2022, established criteria for the legality of discretionary acts, which, along with the requirements of legality and reasonableness, indicates the importance of evaluating by the court's criteria such as maintaining citizens' trust in the law and the activities of the state, legitimate purpose, proportionality, reasonableness, and necessity.[11]

The fourth group consists of sources containing *doctrinal provisions* developed by legal science which have not found regulatory consolidation.

Different approaches to the definition of principles to be followed by public authorities in the exercise of discretionary powers can be found in the legal literature. Several authors note that discretion should be exercised following constitutional (general) principles and generally recognized principles of international law.[12] Others draw attention to the need to comply with specific principles, namely, legality; social justice, expediency, and reasonableness; and the principles of equality before the law, legal certainty, reasonable restraint, etc.

Most scholars do recognize (concerning the activities of executive authorities) that power entities must adhere to the principles of administrative law, the so-called principles of administrative procedures.

For this work, we consider it necessary to define a system of principles in the mechanism of exercising discretionary powers, thereby establishing their constitutional and legal content.

Analysis of the Constitutional and Legal Content of the System of Principles Extant in the Mechanism of Exercising Discretionary Powers

The basic principle of exercising the powers of public authorities, applied in modern legal systems of most countries, is the principle of the rule of law. A particularly significant contribution to its development was made by the works of the English lawyer and political scientist A.V. Dicey. Dicey revealed the content of the principle in three components.[13] First, the rule of law excludes any arbitrariness, prerogative, or even broad discretionary power *(the prohibition of abuse of authority)*: a) people are governed by law, which must be defined and future-oriented; and b) no one can be punished "at the whim" of an official or judge—punishment is possible only for violating the law *(legality and certainty).*

Second, the rule of law is the subordination of everyone equally to the law of the state: no one can stand above the law, and anyone (regardless of official position—"No matter how high you rise, the Law is above you") is subject to the laws of the state and subject to the jurisdiction of the courts *(equality).* Third, the rule of law is expressed in the fact that the principles of the constitution and the rights of citizens do not stem from a formally adopted constitutional text, but from previous judicial decisions. The latter makes it possible not only to simply proclaim human rights but also to properly ensure their protection *(guarantee of rights and freedoms).*

According to V.D. Zorkin's measured remark, this principle "is the basis of the Constitution of the Russian Federation, and its implementation belongs to the number of fundamental national interests" of the Russian state [3, p. 30]. In respect of the constitutional formalization of the relevant principle, we note the following: the principle of the rule of law is enshrined in the Constitution of the Russian Federation (part 1 of article 1, part 2 of article 4, article 18, and article 19) and in normative legal acts establishing the legal status of public authorities, it is guaranteed by both legislative and judicial bodies, including through recognition by the Constitutional

[9] The Constitution of the Republic of Ghana (adopted on May 8, 1992). URL: https://www.wipo.int/wipolex/ru/legislation/details/9414 (date of access: 07.05.2024).

[10] Davydov K.V. Administrative procedures: the concept of legal regulation: thesis for a Doctor's degree in Law Sciences. Nizhny Novgorod, 2021. 655 p. URL: https://vak.minobrnauki.gov.ru/advert/100054053 (date of access: 05.05.2024).

[11] Resolution of the Plenum of the Supreme Court of the Russian Federation dated 28.06.2022 No. 21 "On certain issues of Application by Courts of the Provisions of Chapter 22 of the Code of Administrative Procedure of the Russian Federation and Chapter 24 of the Arbitration Procedural Code of the Russian Federation." URL: https://www.consultant.ru/document/cons_doc_LAW_420838/ (date of access: 07.05.2024).

[12] Sharnina L.A. Discretion in constitutional law: thesis for a Candidate Degree in Law Sciences. Moscow, 2019. 353 p. URL: https://istina.msu.ru/dissertations/230929374 /. (date of access: 05.05.2024).

[13] Dicey A.V. Fundamentals of the state law of England. Introduction to the study of the English Constitution / edited by P.G. Vinogradov. St. Petersburg: L.F. Panteleev Publishing House, 1891. Pp. 137–154. URL: https://rusneb.ru/catalog/000199_000009_003659742/ (date of access: 07.05.2024).

Court of the Russian Federation of normative legal acts contrary to the Constitution of the Russian Federation.

Let us consider the operation of the principle of the rule of law in the activities of public authorities (legislative, executive, and judicial).

First, the implementation of the rule of law principle in the activities of the legislative body can be considered from two aspects, which are: 1) the inadmissibility of the Parliament's arbitrary use of its legislative powers; and 2) proper provision of the competence, independence, and legality of the activities of other bodies included in the unified system of public authority.

The first aspect boils down to a fairly deep theoretical discussion regarding the doctrine of parliamentary sovereignty, the essence of which is that the Parliament can adopt any acts and determine the rights of the country "unconditionally and indefinitely." In modern society, the concept of parliamentary sovereignty has lost its significance: in a state governed by the rule of law, a legislator cannot simply claim uncontrolled lawmaking, the competence of which is within the law. This is because Chapter 5 of the Constitution of the Russian Federation, proclaiming the independence of the legislature, defined its competence and the boundaries of legislative activity of the Parliament quite clearly (for example, Article 55 of the Constitution of the Russian Federation prohibits the adoption of laws abolishing or supplicating the rights and freedoms of man and citizen). In addition, the decisions of the Constitutional Court of the Russian Federation have repeatedly pointed to the restriction of the legislator's discretion by several requirements, namely, fairness, equality, and proportionality.

The rule of law thus provides the basis for the legal order within which legislative sovereignty must be contained and defined.

The second aspect, the Parliament, as a legislative body, must determine and establish the competence and powers of other public authorities, that is, the adoption of appropriate laws. Within the meaning of Part 2 of Article 15 of the Constitution of the Russian Federation, in terms of state authorities and local self-government bodies, their officials are obliged to act based on t and within the powers provided by the Constitution of the Russian Federation and laws.[14] To implement this provision, appropriate regulatory regulation is necessary, which allows public authorities to exercise their powers and competencies, and therefore, the principle of legal certainty is of particular importance.

One of the imperatives of the rule of law and the state of law is the aforementioned *principle of legal certainty*, which formulates the basic requirements for the law: a) an unambiguous understanding of legal norms; b) an absence of contradictions between them; and c) the inadmissibility of legislative gaps. According to the positions consistently expressed by the Constitutional Court of the Russian Federation, any ambiguity or inconsistency in legal regulation prevents an adequate understanding of its content and purpose, allows for the possibility of unlimited discretion of public authorities in the process of law enforcement, creates prerequisites for administrative arbitrariness and selective justice, and thereby weakens guarantees of protection of constitutional rights and freedoms.[15] Therefore, by itself, any violation of the requirement of certainty of a legal norm may well be enough to recognize such a norm as not conforming to the Constitution of the Russian Federation. However, as judicial practice shows, the unconstitutionality of regulation is often generated precisely by the uncertainty of the content of the legal norm.

The principle of legal certainty in its broadest sense manifests itself not only on the level of normative-legal regulation but also in law enforcement, assuming first of all the stability of administrative and judicial decisions and the stability of law enforcement practice in general.[16] Ensuring the unity of law enforcement practice is directly related to compliance with the *principle of maintaining citizens' trust in the law and the actions of the state* when the legislator changes previously established rules that then harm the legal status of the persons affected by it. The credibility of the court, which has been noted repeatedly in the decisions of the Constitutional Court of the Russian Federation, largely depends on a qualified approach to the consideration and resolution of disputes, allowing for a legitimate, reasonable, and fair decision and excluding any ambiguous law enforcement.[17] Judicial practice in the same categories of cases should, therefore, not be contradictory or characterized by a different understanding of certain norms of legislation and subordinate regulatory legal acts.

The principle of legal certainty acts as a source for the formation of the *principle of constitutional restraint*. The latter is not reflected in the legislative matter, rather, it is derived inductively by the body of constitutional norm control from the constitutional–legal text. Its application in the activities of any public authority (or official) can positively

[14] The Constitution of the Russian Federation (adopted by popular vote on 12.12.1993 with amendments approved during the all-Russian vote on 01.07.2020). URL: http://www.pravo.gov.ru (date of access: 07.05.2024).

[15] Resolution of the Constitutional Court of the Russian Federation dated 30.03.2018 No. 14-P URL: https://www.consultant.ru/document/cons_doc_LAW_294620 /. (date of access: 08.05.2024).

[16] Information of the Constitutional Court of the Russian Federation "Methodological aspects of constitutional control (to the 30th anniversary of the Constitutional Court of the Russian Federation)" (approved by the decision of the Constitutional Court of the Russian Federation dated 19.10.2021). URL: https://www.consultant.ru/document/cons_doc_LAW_399426/ (date of access: 08.05.2024).

[17] In the same place.

affect the nature and consequences of the interaction of the relevant authorities. As a consequence, reasonable restraint, being a principle of general constitutional and legal significance and possessing the highest degree of normative generality, by virtue of its universality, has a restraining effect on the discretionary rights of bodies and officials to ensure that the system of separation of powers provides a model of self-restraint on the part of different branches of their legal and legitimate opportunities [4, p. 61].

In our opinion, such an element of the rule of law principle as *proportionality* is necessary for the application of the discretionary powers of legislative authorities, aimed at ensuring a "fair balance" in legal regulation between the interests of society (or the state) and the interests of an individual. Revealing the normative content of the principle of proportionality, the Constitutional Court of the Russian Federation noted that restrictions on constitutional rights must correspond to the constitutionally recognized goals of such restrictions. In cases where constitutional norms allow the legislator to establish restrictions on the rights they enshrine, the legislator cannot carry out such regulation that would then encroach on the very essence of a right and lead to the loss of its real content. When it is permissible to restrict a right following constitutionally approved objectives, the state, while ensuring constitutionally protected values and interests, must not use excessive measures, but only those necessary and strictly conditioned by these objectives.

Thus, returning to the limits of the legislator's discretion, we note that, first, the powers of the Parliament to make laws are limited by the principle of the rule of law, and, accordingly, legislative powers cannot be considered exclusively discretionary and unlimited; and second, all legislative activity is partially offset by certain requirements of the principle—to the content, form, and procedure of adopting regulatory legal acts.

As the second point when considering the operation of the principle of the rule of law in the activities of public authorities, the issue of the discretion of executive authorities is the most difficult, because, in addition to the proper regulatory framework for their activities (which in itself is problematic), a high level of legal culture and several other tools (conditions) to ensure the legal conduct of the relevant authorities are also needed. At the same time, relations between executive bodies of state power and their officials on the one hand, and citizens and organizations conversely, impose stricter requirements for the exercise of discretionary powers, since within the framework of these relations, administrative discretion can create favorable grounds for various kinds of abuses and violations of citizens' rights and freedoms. The best approach to reducing the likelihood of abuse is to create a culture of the "rule of law" in the executive authorities.

The key here is the *principle of legality*, according to which the executive authorities must first act based on and under the law. Since the laws are not comprehensive in their content, a certain amount of discretion remains with the administrative authorities. Nevertheless, the law should define with sufficient clarity the boundaries of the discretion granted to the competent authorities and the procedure (method) for its implementation. The activities of the executive authorities should be subject to the law and carried out within a clearly defined framework, since if the discretion delegated to the executive authority were to be embodied in unlimited powers, this would contradict the principle of the rule of law. Consequently, discretionary powers must be established by law, or follow directly from its provisions for the executive authority (through its officials) to exercise its powers. Their application obliges the authority to comply with the procedure and form established by law for decision-making or acting. At the same time, the interpretation of the legal norm in the exercise of discretionary powers should take into account the requirements of the principle of legality, which, in the context of our study, suggests the following: discretionary law (as freedom of choice) should not go beyond the legal norms and principles of law; discretionary duties oblige one to act following the law and take the initiative to ensure the law is enforced.

In our opinion, the principle of proportionality is also significant for the exercise of the discretionary powers of executive authorities (i.e., their officials), which requires refraining from exercising discretionary powers in cases where this may cause harm to a person disproportionate to the intended purpose. This principle is an important means of establishing the boundaries of the discretionary powers of executive authorities in law enforcement and lawmaking activities, since it is aimed at determining the need for intervention and the degree of such intervention, and therefore, acts against uncontrolled arbitrariness [5, p. 18]. To this end, the principle provides flexibility in the use of legal means in the public sphere, establishes the boundaries of power interference, and does not allow for voluntarism in the actions of executive authorities and their officials.

Today, in the practice of several states, criteria have been defined for evaluating the decisions (actions or inaction) of executive bodies, which act simultaneously as principles of administrative procedures. Among them are the following: compliance with the legitimate purpose, proportionality, equality, impartiality and objectivity, reasonableness, the prohibition of excessive formalism, timeliness, coverage of the greater by the lesser, etc. [6, p. 5].

In our opinion, not all of these principles can be considered exclusively to be principles of exercising discretionary powers.

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Thus, the principle of the *purpose of discretion* is revealed in the concept of the purpose to be pursued only by the administrative body vested with the discretion. The purpose of discretionary power usually follows directly from the functions of a particular executive authority or is determined directly by the disposition of the article of the normative legal act to which this authority is granted, that is, it is a legally significant goal. Thus, the purpose of any authority of an executive authority (its official) must be appropriate, that is, it must be clearly defined and set out either in the norm of the law or arising from its content. The optimal application of this principle depends on the clarity of the stated purpose in the normative act and the nature of the criteria taken into account during the subsequent exercise of discretionary authority. In any case, for a correct understanding of the principle of the purpose of discretionary powers, it is important to distinguish the purpose of the law from the purpose of by-laws and thereby prevent extending the purpose of discretionary powers unjustifiably at the expense of the latter.

As for the principle of *objectivity and impartiality,* it does not concern only the exercise of discretionary powers. Domestic legislation and judicial practice use the terms "objectivity" and "impartiality" without defining their legal content. In a philosophical sense, the category of "objectivity" is considered one of the central principles on which the theory of knowledge is based. According to this principle, all things and phenomena are known as parts of objective reality, independent of human consciousness. The closest in substance is the requirement to act taking into account all the circumstances that are important for making a decision (taking an action), that is, reasonably. Reasonableness as one of the fundamental principles of administrative procedure is also defined in the articles of the Code of Administrative Proceedings of the Russian Federation and the aforementioned Plenum of the Supreme Court of the Russian Federation No. 21. *Reasonableness* underlies them, and is a reflection of one of the aspects of the general principle of objectivity and covers all the powers of administrative bodies.

Impartiality is also a general legal principle, which is revealed through the aspect of the lack of personal interest among officials of the executive authority, and in the process of applying administrative discretion. Thus, in the course of exercising its powers, the relevant authority has no right to allow a biased attitude toward a person to be a factor in its decisions and actions.

The principle of equality before the law is also general and means that every person has, and may exercise, equally with others, the full scope of constitutional rights and freedoms without discrimination by the state or other persons on any grounds. The administrative authority, in exercising discretionary powers, adheres to the principle of equality before the law by preventing unfair discrimination, which, in our view, also applies to all powers.

The principle of reasonable time from the point of view of exercising discretionary powers is characterized by an evaluative, subjective factor, which makes it impossible to determine specific deadlines. In our opinion, unreasonable slowness in the exercise of discretionary powers of executive authorities (i.e., their officials) and their results may adversely affect the rights of individuals; however, to date, the legislation does not provide for the right of individuals or legal entities to challenge the excessive duration of the terms of adoption of legal acts or the performance of other legally significant actions in the exercise of discretionary powers and does not guarantee the right to compensation for damage caused by unreasonable delay in the exercise of such powers.

Therefore, the principles of administrative procedures are a means of establishing the boundaries of discretionary powers of executive authorities in both lawmaking and law enforcement activities, as they aim to determine the need for intervention and the degree of such intervention, and hence, act against uncontrolled arbitrariness, but they are general, which makes them difficult to apply in all cases of exercising powers.

As the third point in considering the operation of the principle of the rule of law in the activities of public authorities, as for judicial discretion, this issue is also difficult. This is because the very concept of the rule of law defines the court as the most effective tool for the realization of this principle since only the court can go beyond formal law and determine the expedient and appropriate regulation in each specific situation. As we can see, this requires giving the justice body discretion at the time of decision-making, that is, discretionary power. Here, we are talking about a special kind of discretion, which is completely inappropriate to compare with legislative and administrative discretion.

The need for judicial discretion is conditioned by the activities of both the executive and legislative authorities. The point is that the executive authority, in exercising powers, must in any case be subject to judicial control. If the decision of the executive authority adopted within the framework of the law has created a legal problem, then this can be resolved by the court based on the same law. Solving the problem would require the court to look beyond (at a minimum) a particular statute or regulatory scheme, which is logical. Thus, depriving the court of the right of discretion will make it impossible to resolve the case on its merits. Full compliance with the language of the law will lead to the formalization of the law. Here, the more logical and justified position seems to be that, based

on discretionary powers, a judge may depart from a purely regulatory framework and decide a case purely on the principles of law.

As for the consequences of the Parliament's activities, it is also necessary to provide the court with certain limits of discretion, as the law is a dynamic phenomenon that needs constant updating in terms of legislation or judicial interpretation. That is why the court should be given certain discretion.

However, it should be borne in mind that unlimited judicial discretion may threaten to transform the supremacy of law into the supremacy of judges. Therefore, a legal framework is required that would make it impossible to abuse judicial discretion. The only effective limitation is and should be the principle of the supremacy of law, which, with a whole system of requirements, can thereby ensure the legality of judicial decisions.

Today, it is impossible to imagine public authorities with both absolute powers while being completely devoid of a certain discretion. That is why the main task of law is to develop clear boundaries to the use of discretionary powers. The most effective tool on this path is the principle of the rule of law and its imperatives, which require a sufficiently deep legal awareness and proper application.

The most relevant, in our opinion, and necessary for the application of discretionary powers of public authorities, is the principle of prudentiality (from Latin Prudentia—prudence), which, being a philosophical category, has, surprisingly, penetrated international law, but is not yet reflected either in domestic legislation or in judicial practice. The category of "prudence" or "the direct rule of all action," also referred to as "practical wisdom," is defined as the ability to govern and discipline oneself using reason. It neutralizes subjectivity in the activity of the lawmaker and law enforcer and acquires a direct regulatory significance when it becomes necessary to determine the legality or illegality of the use of discretion in the exercise of discretionary powers.

A subject endowed with discretion must be aware of the fact that they have the right and duty to exercise discretion and understand the meaning of such discretion in the context of various factors that need to be taken into account during the exercise of authority.

Summarizing the above, it should be noted that the principles of exercising the discretionary powers of public authorities (i.e., by their officials) can be classified into the following types (groups):

1) Fundamental principles: the rule of law and legality, which are of fundamental importance in the formation of the legal institution of discretionary powers.

2) General principles: the use of discretionary power for an appropriate purpose, equality before the law, objectivity and impartiality, and reasonable time.

3) Special principles: proportionality, constitutional restraint, and the principle of prudentiality, which is not currently enshrined in national legislation, but needs an analysis of its historical development and modern content, and to which separate legal studies should be devoted.

CONCLUSION

In conclusion, we would like to note the following. Today, when studying the issue of discretionary powers, the modern constitutional–legal idea is the constitutionalization of the mechanism of their implementation [7, p. 224]. The latter, as a process of subordination of the activities of the relevant bodies to the principles and values of the constitution, is a scientific problem relevant to both constitutional law and (taking into account the intersectoral influence of constitutional–legal norms) several other branches of current public law. However, in defining the principles of exercising discretionary powers and emphasizing their importance, it is important not to heed so much the legal specification of such principles as (and above all) the development of a mechanism for their implementation directly in the activities of public authorities, without which, according to a reasonable remark, "The property of constitutionality, which is endowed with individual principles... in many ways it remains declarative" [8, p. 85].

The opinions expressed here do not claim to be indisputable but simply offer an additional vector of research.

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