# Legal Principles of Administrative and Legal Mechanism of Realizing the Concept of a Social State: the Nature and Content

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The author of the article attempts to clarify the nature and content of legal principles of administrative and legal mechanism of realizing the concept of a social state. To achieve this objective the author puts forward the task to define the understanding of the categories of "legal act" and "juridical act", to find out the correlation of the categories of "administrative and legal principles" and "sources of administrative law", to build a system of regulatory (according to the types) that can be placed as the framework of administrative and legal mechanism of realizing the concept of a social state.

The author states the point of view about the impossibility to consider the category of legal act as a synonym to the category of juridical act. Such an approach is not justified because it ignores the difference between law and legislation; it does not consider the theory of natural legal thinking and the content of the rule of law principle. The author of the article has concluded that the law norms, regulations, etc. may be called legal only if they are verified to the compliance with the rule of law principle.

The point f view about the need to change current perceptions of the system of sources of administrative law and their subordination to each other is grounded. The author of the article attempts to prove that the Constitution of Ukraine is not a source of administrative law. According to the author the Constitution of Ukraine can act and actually acts: as the basis for the formation of the system of sources of administrative law; as the basis for filling the sources of administrative law with specific content; as the basis for conducting the control of norms located in the sources of administrative law concerning their constitutionality.

It is concluded that the sources of administrative law are only one of the elements of the system of legal regulatory, which lays the foundation for administrative and legal mechanism of realizing the concept of a social state. The rest of the elements, which are also equally obligatory for the objects of public administration, represented by the Constitution of Ukraine, international legal acts ratified by Ukraine, decisions of the European Court of Human Rights, make this system complete.

**Key words:** administrative and legal mechanism, social state, sources of administrative law, legal principles, hierarchy of regulatory acts.

Administrative and legal mechanism of realizing the concept of a social state, as it already follows from its name has a close relationship with the law, being based on it. However, such a conclusion is not enough for the cognition of its nature, because nowadays the terms used within the mentioned definition, have not receive their proper and complete understanding yet. Considering all this, the **objective** of this article we see the analysis of the content and essence of complex category – legal principles of administrative and legal mechanism of realizing the concept of a social state. To achieve the objective it is planned to determine the understanding of such categories as "legal act" and "juridical act", to find out the correlation of the categories "administrative and legal principles" and "sources of administrative law", to build a system of regulatory controls (by types) that can be laid in the basis of administrative and legal mechanism of realizing the concept of a social state.

In passing, we note that formulated objective and tasks of the article are characterized by relatively high level of scientific innovation, as under the specified angle of view this issue has not been considered yet.

Starting to address the first of the mentioned tasks, we should note that in most cases national authors, who consider the regulatory issues or the status of subjects of public administration or procedures of their activities, etc., make it through the use of the category of "legal", speaking, for example, about the legal regulation of public service[1], the legal regulation of withdrawal of administrative acts[2], the legal regulation of the Government's activity[3], etc. However, in our view, this approach is wrong, because it is based on an incorrect interpretation of the category of law and of derivative legal concepts of legal, legal act, etc. As a result, this leads to a lack of consensus in the legal terminology, as it is rightly emphasized in the literature, may have negative consequences for both law-making and for law enforcement

[1] M. I. Tsurkan, Legal Regulation of Public Service in Ukraine. Features of Judicial Disputes: monograph / M. I. Tsurkan. – Kh: Pravo, 2010. – 216 p.

[2] 2. A. M. Shkolyk, Legal Regulation of Administrative Acts Withdrawal / A. M. Shkolyk // Administrative Law and Process. – 2013. – No. 1. – P. 21-26.

[3] O. Sovhyria, Problems of Legal Regulation of the Activity of the Cabinet of Ministers of Ukraine / O. Sovhyria // Bulletin of Taras Shevchenko National University of Kyiv. Jurisprudence. – 2010 – Vol. 82. – P. 13-16.

activities[4].

Existing to the present time perception of the categories of law, legal, legal act, sadly to admit, is sometimes based on Soviet legal doctrine, for which, as we know, law was a synonym to the category of act and the notion of legal and legal acts were synonymous categories to juridical and juridical act accordingly. As a result, today we can often meet the idea of synonymy of these concepts, which, incidentally, does not cause any objections among the colleagues[5]. But we absolutely can not agree with this approach, because the concept of natural legal thinking and the associated rule of law principle necessitate the filigree relation to the use in legal circulation the category of law and all its derivatives definitions. In this respect, it is appropriate to draw attention to a number of judgements of the Constitutional Court of Ukraine, which have stated that the rule of law requires the state its embodiment in law-making and law enforcement activities, including the laws that under their content must be permeated above all with the ideas of social justice, freedom, equality, etc. One of the elements of the rule of law, the Court continues, is the principle of proportionality, which is in the area of social security means in particular that the measures provided in the regulations, should be aimed at achieving a legitimate purpose and be proportionate to it[6]. From the above it follows that the law, regulations, etc., may be called legal only if they comply with the requirements set forth by the Constitutional Court of Ukraine. This, in turn, means that a particular regulation or other enforcement act or separate rule can be defined as legal only if they ascertain compliance with the rule of law principle. And taking into account the fact that this test is not always carried out or implemented in some period of time after the adoption of a particular act, there is no sufficient ground to

[4] I. M. Tkachenko, Differentiation of Terms: "Legal Notion", "Legal Category" and "Legal Concept" (by the example of the provisions of the Civil Code of Ukraine) / I. M. Tkachenko // Scientific Notes of Taurida National V. I. Vernadsky University. Series "Jurisprudence". 2009 – Vol. 22 (61). – No. 1. – P. 384-388.

[5] M. V. Plotnikov, General Characteristics of Legal Acts of the National Bank of Ukraine as a Mean of State Regulation of banks Activities in Ukraine / M.V. Plotnikov // Legal Bulletin of Ukrainian Academy of Banking. – 2013. – No. 2 (9). – P. 58-62.

[6] The Judgement of the Constitutional Court of Ukraine in the Case under the Constitutional Petition of the Supreme Court of Ukraine Concerning the Conformity of th Constitution of Ukraine (constitutionality) to the provisions of the Art. 69 of the Criminal Code of Ukraine (the case of more lenient punishment) dated from November 2, 2004 No. 15–rp / 2004 // Official Bulletin of Ukraine. – 2004. – No. 45. – P. 2975.

The Judgement of the Constitutional Court of Ukraine in the Case under the Constitutional Petition of the Pension Fund of Ukraine Concerning the Official Interpretation of the Art. 1, parts one, two, three of the Art. 95, part two of the Art. 96, paragraphs 2, 3 and 6 of the Art. 116, part two of the Art. 124, part two of the Art. 129 of the Constitution of Ukraine to paragraph 5 of the Art. 4 of the Budget Code of Ukraine and paragraph 2 of the Art. 9 of the Code of Administrative Justice of Ukraine within the system relation with specific provisions of the Constitution of Ukraine dated from January 25, 2012 No. 3-rp / 2012 // Official Bulletin of Ukraine. – 2012. – No. 11. – P. 422.

call the latter as legal in an automatic procedure. To support this line of scientific thinking means nothing else than promulgate irresponsible attitude to understanding and essence both law and concepts derived from it.

With this respect we offer to talk about the juridical, not legal grounds of administrative and legal mechanism of realizing the concept of a social state.

Coming to the stage of specification of the system of juridical acts that lay the basis for administrative and legal mechanism of realizing the concept of a social state (hereinafter - the administrative and legal mechanism) we emphasize on the following aspect: announced system is different from the system of source of administrative law. This conclusion is fundamental, because it allows a broader approach to the position of determining the list of regulations which establish this mechanism. Let us study this aspect in detail.

The mention about legal and administrative elements in the context of talking about the mechanism of implementing the concept of a social state almost automatically leads to the idea that we should speak, only about the norms of administrative law, recorded in the sources. However, in our opinion, such a conclusion is superficial, because it does not account all regulatory features of public administration's activity. Most probably some scholars in the field of administrative law will non agree with us, particularly those who believe that the sources of administrative law are presented, among others, by the Constitution of Ukraine and international acts[7], and if so, the currently existing system of sources of this field of law as if "cover" absolutely all manifestations and scopes of public administration's activity. As we believe this approach is wrong, because it is not consistent with the definition of the term sthe ource of administrative law, under which we understand the external shape of the establishment (consolidation) and expression of administrative and legal norms (the norms of administrative law). Considering this, there is a logical question, does the Constitution of Ukraine contain the norms of administrative law?! If we follow this logic, then it completely consists of the norms of other branches of Ukrainian law, because while talking about the sources of civil law[8], labor

[7] Administrative Law of Ukraine. Academic course: textbook, in 2 volums / Ed. Board: V. B. Averianov (chief). – K.: Publishing House "Pravova Dumka", 2004. – Vol. 1. General Part. – 2004. – 584 p, p. 142.
Administrative Law of Ukraine in Modern Conditions (the challenges of the early XX century): monograph / [V. V. Halunko, V. I. Olefir, M. P. Pyhtin, O. O. Onyshchuk, Yu. V. Hrydasov, M. M. Novikov, U. O. Paliienko, I. A. Domin, O. M. Yeshchuk,]; under the gen. ed. Of V. V. Halunko. – Kherson: KhLU of KhNUIA, 2010. - 376 p. , p. 114, etc.

[8] O. V. Ivanenko, The System of Sources of Civil Law: a Modern View / O. V. Ivanenko // Scientific Bulletin of Kherson State University. Series Jurisprudence. – 2013. – Issue 5 – Vol. 1. – P. 84-86.

law[9], notary law[10] that is always mentioned about one of its species – the Constitution of Ukraine. Such an approach is unjustified, because it leads to the emasculation of the role and significance of the Constitution of Ukraine in the regulation of social relations in the country, reducing it to the norms and standards of other branches and subbranches (institutions) of the national law. Provisions of the Constitution of Ukraine are norms of constitutional law, namely the Constitution is its central source. We believe that all colleagues agree with this conclusion, sharing, consequently, the opinion that one and the same norm may not be the same time constitutional and administrative norm, namely the Constitution can not be, as a consequence the source of constitutional law, on the one hand, and the source of several dozens of other areas of law, on the other hand. As a result, in the context of talking about the sources of administrative law the Constitution of Ukraine can act and actually acts:

first, the basis for forming the system of sources of administrative law;

secondly, the basis for filling the sources of administrative law with a specific content;

thirdly, the basis according to which there is a checking of norms placed in the sources of administrative law on their constitutionality.

It is clear that the foregoing does not exclude and does not reduce the obligation of the Constitution of Ukraine for public administration, and equally for other participants of social relations in Ukraine. In other words, the Constitution of Ukraine, not being a source of administrative law, does not lose its regulatory significance for the sphere of functioning of public administration.

We have to formulate almost similarly the answer to the question about whether international treaties that have been ratified in Ukraine, the sources of administrative law. We note that, again, most domestic authors answer the formulated question affirmatively,[11] what we personally can not agree. In this regard, we find support in the position of O.V. Ivanenko, who, referring to H.V. Ihnatenko writes that the forms of law of one system can not be at the same time the forms of law of other system, and if so, first, inner-state regulatory act can not be a source

[9] M. S. Polishchuk, Sources of Legal Regulation of Labor Relations under the Draft of the Labor Code of Ukraine / M. S. Polishchuk // Legal Bulletin of Ukrainian Academy of Banking. – 2012. – No. 2 (7). – P. 65-69.

[10] K. I. Chyzhmar, The Constitution of Ukraine as a Source of Notarial Law / K. I. Chyzhmar // Comparative and Analytical Law. – 2014. – No. 2. – P. 89-91.

[11] Sh. N. Hadzhyieva, The Place and Role of a Code in the System of Sources of Administrative Law / Sh. N. Hadzhyieva // Legal Scientific Electronic Journal. – 2014. – No. 1. – P. 72-75.

V.I. Kurylo, On the System of Sources of Administrative Law / V. I. Kurylo // Legal Bulletin. – 2009. – No. 2 (11). – P. 30-33.

of international law and, secondly, international treaty or a custom is not a form of inner-state law[12]. We believe that the foregoing equally applies also to the decisions of the European Court of Human Rights that form, in fact, the source base of European law.

The foregoing means that the sources of administrative law (at the level of regulations) may be submitted only as such legal acts or their parts (sections, articles, paragraphs, etc.), which combine purely the norms of administrative and legal nature, i.e. those that 1) determine the administrative and legal status of the entities of public administration; 2) consolidate the procedures of their activities in the form of public administration; 3) regulate relations of public administration with private entities or other entities of public law.

However, the formulated position still can not be considered final as there is an issue at the present day about the structural form of the system of sources of administrative law. So, now there is still the common idea about the impossibility (inexpedience) of including decisions of judicial authorities in general, and the decisions of the Constitutional Court of Ukraine, in particular, the legal doctrine, customs and traditions into the system of sources of administrative law. In some extent demonstrative in this regard are the words of R. Kuibida and V. Shyshkin, who emphasize that "judicial precedent is not a source of law in the legal system of Ukraine according to Continental doctrine". Certain exceptions to this rule they make only concerning the decisions of the Constitutional Court of Ukraine. As for the legal customs, the scholars, not rejecting the possibility of transferring them to a range of sources of administrative law, however, note that "there are no cases of direct authorization by the state of legal customs in the field of public administration in Ukraine, since they have been already transformed into norms of current administrative law"[13]. These points of view are quite well represented in other literary sources on administrative law.

Without going into this perspective, because the issue of the system of sources of administrative law is technical in nature for us, we formulate our own position on this issue in the form of completed conclusions, emphasizing the following:

first, the imagination about the general system of sources of law and sources of administrative law in particular can and should change over time, because it is largely determined by our attitude to understanding

[12] O. V. Ivanenko, Ther System of Sources of Civil Law: a Modern View / O. V. Ivanenko // Scientific Bulletin of Kherson State University. Series Jurisprudence. – 2013. – Issue 5 – Vol. 1. – P. 84-86.

[13] Fundamentals of Administrative Justice and Administrative Law / under gen. ed. Of Kuibida R.O., Shyshkin V. I. – K.: Staryi Svit, 2006. – 576 p, p. 136.

the category "law". Leaving the normative kind of legal awareness in favor of the theory of natural law, which has found, in fact, official recognition at the level of the judgement of the Constitutional Court of Ukraine in case on more lenient punishment[14], and the inclusion the decisions of the European Court of Human Rights to the range of binding in Ukraine, which, according to the s. 5 of the Art. 19 of the Law of Ukraine "On execution of decisions and application of the practice of the European Court of Human Rights"[15], the national public administration must coordinate their administrative practices and making mandatory conclusions of the Supreme Court of Ukraine for the subjects of authorities adopted by the results of cases of unequal application by the court (courts) of cassation of the same norms of material or procedural law (the Art. 244-2 of the Code on Administrative Justice of Ukraine)[16], all this is obvious evidence that the system of the sources of administrative law has undergone fundamental changes;

secondly, it is necessary to include the decisions of the Constitutional Court of Ukraine into the system of sources of administrative law. Moreover, in this case, it is not so much about so-called "negative lawmaking"[17], but about the activity of the Court associated with the official interpretation of the Constitution and the laws of Ukraine. In our view, the results of this interpretation, where the Court extends (clarifies, specifies) regulatory base, become the apparent nature the sources of the relevant area of law, including with the regard to their binding character.[18] Such a conclusion is consistent also with the positions of European authors who characterize the interpretation as a mean of searching the law[19], which obviously has to exist in some form – the judgment of the Court;

thirdly, the legal doctrine, no doubt, also acquires the character of the sources of administrative law[20], as formulated provisions

[14] The Judgement of the Constitutional Court of Ukraine in the Case under the Constitutional Petition of the Supreme Court of Ukraine Concerning the Conformity of th Constitution of Ukraine (constitutionality) to the provisions of the Art. 69 of the Criminal Code of Ukraine (the case of more lenient punishment) dated from November 2, 2004 No. 15–rp / 2004 // Official Bulletin of Ukraine. – 2004. – No. 45. – P. 2975.

[15] On the Execution of Judgements and Use of the Practice of European Court of Human Rights: the Law of Ukraine dated from 23.02.2006 No. 3477-IV // Bulletin of Verkhovna Rada of Ukraine. – 2006. – No. 30. – P. 260.

[16] The Code of Administrative Justice of Ukraine // Bulletin of Verkhovna Rada of Ukraine. – 2005. – No. 35-36, No. 37. – P. 446.

[17] O. V. Nikolska, The Legal Nature and Legal Properties of the Acts of the Constitutional Court of Ukraine / O. V. Nikolska // Legal journal of Donetsk University. – 2013. – No. 1. – P. 53-61.

[18] . On the Constitutional Court of Ukraine: the Law of Ukraine dated from 10.16.1996 No. 422/96-VR // Bulletin of Verkhovna Rada of Ukraine. – 1996. – No. 49. – P. 272.

[19] Harald Bogs Die verfassungskonforme Auslegung von Gesetzen. W.Kohlhammer Verlag, Stuttgart 1966. – 164 s., p. 15

[20] O. B. Chornomaz, Sources of Administrative Law: Current State and Prospects of Development / O.B. Chornomaz // Scientific Bulletin of Uzhgorod National University. Series Law. – 2015. – Issue 30 – Vol. 2. – P. 89-91.

within its frames are laid in the underground of the relevant decisions both by public administration and administrative courts. The scientific interpretation of the law norms and the relevant legal categories, ascertainment of the nature and content according to defined and not defined concepts, which are operated by the subjects of law-making, finds expression in appropriate scientific conclusions and recommendations, which, in turn, become the basis for the adoption of a solution. In this regard, the legal doctrine can be considered as a baseline in the system of sources of administrative law, which provides the necessary theoretical basis for direct law-making and law enforcement practice of public administration's subjects. In other words, the legal doctrine is acting as not a principal, but as an additional accompanying source of administrative law, representing a separate subspecies of "regulatory formula" of the behavior of administrative and legal relations' participants. So there are no grounds to ignore its normative character;

in-fourth, speaking about customs as a source of administrative law, we have to agree with R. S. Melnyk, who rightly emphasizes on the fact that in the current state of regulatory of public administration activities there is relatively little space to informal sources of administrative law, but this does not exclude the possibility of their existence. To recognize morals, traditions and customs as the sources of administrative law the following prerequisites are necessary: their continued and general practice (objective element); general conviction that their use is lawful (subjective element); the possibility of their formulating in a form of legal norm (content certainty)[21].

So, taking into account all stated, we can say that the sources of administrative law are only one of the elements (certainly the largest under the content) of the system of legal controllers, which lays the foundation for administrative and legal mechanism of realizing the concept of a social state. The rest of the elements that are also equally binding for public administration entities, being represented by the Constitution of Ukraine, international legal acts ratified by Ukraine, decisions of the European Court of Human Rights, provide this system with a complete shape.

Speaking about the system of legal controllers, which provide a basis for administrative and legal mechanism of realizing the concept of a social state, we can not avoid the problem of their subordination or void. This aspect is extremely important, because the subjects of public administration fulfilling their task in the social sphere should clearly understand: what legal controllerss are

[21] R. S. Melnyk, General Administrative Law / R. S. Melnyk, V. M. Bevzenko: Textbook / Under gen. ed. of R. S.Melnyk. – K.: Vaite, 2014. – 376 p., p. 104

fundamental in their activities, how they should address the cases of competition of law norms, in case they arise, and what kind of legal acts they have to guide primarily by implementing own law-making and enforcement powers.

Opportunely, we note that cases of wrong decision on the validity of regulations in general and in the field of social protection of people in Ukraine, particularly in the practice of the national public administration occur relatively frequently. So, as an example, we turn to litigation, within which there have been cases for claims of victims of the Chernobyl disaster to the offices (departments) of labor and social protection of people in their respective districts and cities about the obligation to pay the debt from the annual aid for rehabilitation and other indemnities stipulated in the Articles 37, 39 and 48 of the Law of Ukraine dated from February 28, 1991 No. 796-XII "On status and social protection of citizens affected by the Chernobyl disaster" (hereinafter – the Law No. 796-XII). In this category of cases the problem was the fact what the minimum wage should we proceed during the calculation of this aid, namely taking into account the size of specified by the decree of the Cabinet of Ministers of Ukraine dated from July 26, 1996 No. 836 "On compensatory payments to persons affected by the Chernobyl disaster" (hereinafter – the decree of CMU No. 836) or specified by the Law of Ukraine dated from December 26, 2002 No. 373-IV "On setting the minimum wage for 2003" or by the relevant laws of Ukraine on the State Budget of Ukraine for the appropriate year, which set the minimum wage much more higher than the decree of CMU No. 836.[22] Obviouse, in this case, is the fact that various subjects of public administration decided differently this competition of legal norms that as a consequence, has lead to violations of the right of individuals on their social protection, forced to seek protection in the administrative courts.

The issues of validity (hierarchy) of normative regulators of social relations or their subordination on the one hand, is not new to the domestic legal doctrine, but on the other – to believe it completely solved is impossible because there still exist scientific opinions that clearly do not meet the realities of present day. Looking a little ahead, we note that we have a fundamental objection about the position of those authors who emphasize in a peremptory manner that the Constitution of Ukraine has the highest legal force (the highest level) in the hierarchy of legal acts.[23]

[22] M. Smokovych, Problems of Determining the Validity of Regulations while Settling Administrative Disputes / M. Smokovych // Bulletin of the Supreme Administrative Court of Ukraine. – 2009. – No. 1. – P. 15-27.

[23] I. A. Krasiuk, Specification of Law in Guaranteeing a Hierarchy of Legal Acts / I.A. Krasiuk

As a basis for such a statement we provide the provisions of the c. 2 of the Art. 8 and c. 2 of the Art. 9 of the Constitution of Ukraine, where, we recall, it is stated that the Constitution of Ukraine has the highest legal force, and the conclusion of international treaties that contravene the Constitution of Ukraine is possible only after appropriate amendments to the Constitution of Ukraine. This approach to solve such cases of the competition of the provisions of the Constitution and the norms of international treaties being based on the theory of dualism, are quite common in the world practice. According to the mentioned theory international treaties affect the states only indirectly, creating liability only under international law and without affecting in any way (without an appropriate action of competent authority) on domestic law.[24]

However, at the present day, which is characterized by active formation of not only international but supranational law (the law of the European Union, the central place within which takes European Convention on Human Rights), the theory of duality increasingly inferior place to the theory of monism, which is characterized by the fact that the impact of international treaties on domestic law is direct and they are considered as a source of domestic law immediately after the entry into force.[25] Thus, it is still hard within the Council of Europe "to find an example of the priority of the Convention over the provisions of the national constitutions", nevertheless, there is increasingly assigned "a special approach to the correlation between international and domestic law in the field of human rights protection", which is manifested, in particular in the fact that national legal systems accepted de facto the changed role of the European Court as the subject of norms control.[26] Obviously, the presence of such a function in the European Court can not occasionally lead to contradictions between the Convention in its interpretation by the European Court and norms of the national constitutions in their interpretation by the constitutional control agencies.[27] In such situations, it is obvious the priority has to be provided to the Convention

// Urgent Problems of State and Law. – 2013. – Vol. 70. – P. 127-134.

R. P. Lutskyi, Hierarchy of Legal Sources (Regulations) as the Reflection of Being of Positive Law / R. P. Lutskyi // Journal of Kyiv University of Law. – 2012. – No. 2. – P. 18-21.

[24] S. O. Zvieriev, International Treaty as a Source of National Law / S.O. Zvieriev // Scientific Notes of NaUKMA. Jurisprudence. – 2010. – Vol. 103 – P. 41-44.

[25] S. O. Zvieriev, International Treaty as a Source of National Law / S. O. Zvieriev // Scientific Notes of NaUKMA. Jurisprudence. – 2010. – Vol. 103 – P. 41-44.

[26] M. A. Filatova, Strasbourg Court: Is there Any Way between "sovereignty" and "activism" / M. A. Filatova // Judge. – 2011. – No.10. – P. 59-60.

[27] V. V. Lapaieva, The Problem of Correlation of the Validity of the Constitution of Russian Federation and the European Convention on Human Rights (in the case file of "K. Markin vs Russia") / V. V. Lapaieva [Internet resource] / Access: http : //www.igpran.ru/articles/2957/#_ftn6

and the judgments of the European Court, because without this rule it is impossible to provide the planning of a single legal awareness and perception at the level of the European continent, and therefore a single legal order, universally recognized by all members of the EU.

Regarding above stated, the decision of the Constitutional Court of Russian Federation, which stipulates that in case of conflict between the Constitution of Russian Federation and decisions of ECHR the priority will have the norms of Russian Constitution, was of abrupt criticism by officials of Ukrainian state. In other words, in such cases, Russia refuses to perform the "controversial" decisions of the Court. The assessment of the constitutionality of ECHR judgments will provide the Constitutional Court of Russian Federation at the request of state authorities of Russian Federation.[28] "The Ministry of Foreign Affairs of Ukraine expresses its deep concern about the specified resolution of the Constitutional Court of Russian Federation and considers it as a deliberate impact on the system of protecting human rights in Russian Federation and on the European continent in the whole".[29]

As an intermediate conclusion we should emphasize that we support the priority position of the decisions of the European Court of Human Rights in the case of regulatory standards of public relations over the norms of the Constitution of Ukraine. At the same time, we note that this conclusion should be extended to the Convention on Human Rights and Fundamental Freedoms. Thus, the states that have ratified the Convention according to the Art. 1 of the Convention undertook obligations to guarantee everyone within their jurisdiction the rights and freedoms defined in the Section 1 of this Convention. According to the Section 3, paragraph (b) of the Art. 31 of the Vienna Convention on the Law of International Treaties dated from 1969, ratified by Ukraine May 14, 1986, together with the agreement is taken into account the following practice of its application, which establishes the agreement of the participants on interpretation. Besides, according to the Art. 32 of the Convention the issue of interpretation and application of the Convention belongs to the exclusive

[28] A. Mykhailova, The Constitutional Court Established Priority of the Constitution over the Judgements of ECHR / A. Mykhailova [Internet resource] // Access: http://top.rbc.ru/politics/14/07/2015/55a4ba1b9a7947eaa4e8427e

[29] The Foreign Ministry of Ukraine: the Decree of the Constitutional Court of Russian Federation on the Application of Judgements of ECHR – a Targeted Attack on the System of Human Rights Protection [Internet resource] / Access: http://www.unian.ua/politics/1100851-mzs-ukrajini-postanova-ks-rf-pro-zastosuvannya-rishen-espl-tsilespryamovaniy-udar-po-sistemi-zahistu-prav-lyudini.html

competence of the European Court of Human Rights, which operates under the Convention. Thus, decision of the European Court is an integral part of the Convention as the practice of its application and interpretation,[30] which, consequently, makes the Convention itself mandatory to the unconditional execution on the territory of Ukraine. In support of this conclusion we can additionally state the provisions of the Art. 27 of the above mentioned Vienna Convention, where it is stated that the party of the Convention may not invoke the provisions of internal law as justification for failure to perform the agreement.[31]

Regarding this position, we note that the exception of the formulated rule can probably take place in a situation, when the Constitution of Ukraine will better (in a larger extent) protect (guarantee) the rights of a man and citizen. However, this conclusion should be made officially by the Constitutional Court of Ukraine guided such data and grounds that will be accepted by the European community.

Thus, the system of legal principles of administrative and legal mechanism of realizing the concept of a social state has the following form: Convention on Human Rights and the European Court of Human Rights; the Constitution of Ukraine; judgements of the Constitutional Court of Ukraine; international treaties of Ukraine ratified by Verkhovna Rada of Ukraine; laws and regulations of Verkhovna Rada of Ukraine; decrees and orders of the President of Ukraine; regulations and orders of the Cabinet of Ministers of Ukraine; orders of the central executive authorities; normative acts of the public administration subjects on regional and local level; decisions of the Supreme Court of Ukraine and higher specialized courts of Ukraine; legal doctrine; traditions and customs.

We hope that formulated positions and conclusions will contribute to a more modern view of the nature and content of legal principles of administrative and legal mechanism of realizing the concept of a social state, which in turn will have a positive impact both on the process of its scientific study and regulatory support.

[30] The Explanatory Note to the Draft of the Law of Ukraine "On Amending Some Legislative Acts of Ukraine Concerning the Protection of Human Right on Pre-Trial Proceedings, Court Hearings or Executive Proceedings within Reasonable Term" [Internet resource] / Access: www.rada.gov. ua

[31] Vienna Convention on the Law of International Treaties: International Document dated from 05.23.1969 // Bulletin of Supreme Council of the Ukrainian SSR. – 1986. – No. 17. – P. 343.