

UDC 349.2

DOI <https://doi.org/10.32849/2663-5313/2022.6.08>**Kostiantyn Harbuziuk,***PhD in Law, Police Colonel, Dean of the Faculty № 2, Kharkiv National University of Internal Affairs, 27, Lev Landau avenue, Kharkiv, Ukraine, postal code 61080, Harbuziuk_Kostiantyn@ukr.net***ORCID:** orcid.org/0000-0002-6714-5074

Harbuziuk, Kostiantyn (2022). The essence and content of labour-law principles of the legal regulatory framework for the National Police staffing in Ukraine. *Entrepreneurship, Economy and Law*, 6, 56–60, doi: <https://doi.org/10.32849/2663-5313/2022.6.08>

THE ESSENCE AND CONTENT OF LABOUR-LAW PRINCIPLES OF THE LEGAL REGULATORY FRAMEWORK FOR THE NATIONAL POLICE STAFFING IN UKRAINE

Abstract. The *purpose of the article* is to establish the essence and content the labour-law principles of the legal regulatory framework for the staffing of the National Police of Ukraine.

Results. The article, relying on the review of scientific perspectives, conducts a general theoretical analysis of the concept of principles and legal principles. A theoretical and conceptual perspective on the essence of the principles of labour law is formed. The content and essence of labour principles of the legal regulatory framework for the staffing of the National Police of Ukraine are determined and classified. It is established that important principles of the legal regulatory framework for the National Police of Ukraine staffing are special labour-law principles inherent exclusively in this area of legal influence, and not in the entire labour law. These principles include the following: a) the principle of stability (the staffing is systematic and accompanies the entire labour process of all employees of the National Police of Ukraine); b) the principle of comprehensiveness (the staffing should not be limited to the documental preparation of personnel actions, but also constantly monitor the personnel problems of the National Police of Ukraine and develop ways to solve them); c) the principle of the primacy of police officers' labour interests (the staffing of the National Police of Ukraine should be aimed primarily at an enabling environment for the police officers provided and guaranteed to them by the Constitution of Ukraine and legislation on labour rights, and then at the personnel policy of the leadership); d) human capacity development principle (the staffing should be aimed at continuous development of the qualifications and professional skills of the police personnel with a view to improving the performance of duties and functions by the police; as well as strengthening the requirements for candidates to serve in the National Police of Ukraine).

Conclusions. It is concluded that, to date, only a few of these principles have been incorporated into the legal framework governing the procedures for staffing the National Police of Ukraine. This reveals the inadequacy and ineffectiveness of the legal regulatory framework for the performance of police officers, as a result of which there is room for violation of their labour rights and the interests guaranteed by the Constitution and other labour legislation of Ukraine. We argue that one way of remedying this negative point is to legislate the system of principles proposed above in a separate, special document – the Law of Ukraine “On Police Performance”.

Key words: National Police of Ukraine, staffing, labour-law principles, legal principles.

1. Introduction

Principles are general fundamentals of any legal phenomenon or category. Moreover, legal principles are diverse in their purpose and sector and are divided into many groups. For example, the study of the theoretical and methodological fundamentals of the staffing of the National Police of Ukraine requires to consider the ideological side of the legal regulatory framework for this category. In addition, given that the latter tends to labour law, it is the labour-law principles that are of particular importance in this context.

The issue of labour-law principles of the legal regulatory framework for the staffing of the National Police of Ukraine is generally little covered in the scientific sphere. Some aspects of this problem were only superficially considered in the works by K.S. Belskyi, E.A. Sukhanov, O.F. Skakun, M.I. Inshyn, V.L. Kostiuk, V.P. Melnyk, A.F. Nurtdinova, O.P. Orlovskiyi, K.P. Urzhynskiyi, O.V. Smyrnov, M.V. Molodtsov, O.M. Krapyvin, V.N. Tolkunova, etc. However, despite a large number of scientific achievements, the legal literature

review reveals a lack of research on the characterisation of the principles of the legal regulatory framework for the staffing of the National Police of Ukraine.

Consequently, the purpose of the article is to establish the essence and content the labour-law principles of the legal regulatory framework for the staffing of the National Police of Ukraine.

2. The essence and content of labour-law principles

Frequently, principles in law are interpreted as fundamentals, underlying ideas, characterised by universality, general significance, supreme imperativeness and reflecting the essential provisions of the theory, doctrine, science, the system of domestic and international law, political, state or public organisation (Shemshuchenko, 2011, pp. 110–111). Following this theory K.S. Bielsky understands the principles of law in modern scientific literature as the underlying sources, the key ideas of law that reflect its essence and content, determine the basic rules of scientific knowledge and consolidate the general order of practical activities (Bielskyi, 1998, p. 7). According to E.A. Sukhanov, the legal principles are the bases, the most general guidelines of law, which, by virtue of their legislative consolidation, are generally binding. Such bases are peculiar both to law in general (legal system) and to individual legal branches, as well as sub-sectors and even institutions and sub-institutions (Bakhnovska, 2013).

However, for example, O.F. Skakun does not agree with this interpretation, she understands the principles as the basic generally accepted norms-ideas (underlying sources), which express the essence of law, regularities of its development and have a high authority, that is indisputable requirements for the participants of social relations to meet with the aim of establishing a social compromise and order. Public relations with a view to establishing social compromise and order. According to the scholar, the principles are a unique coordinate system, within which law develops, and at the same time a benchmark, determining the vector of its development. The principles concentrate the world's experience in the development of law, the experience of civilisation (Skakun, 2009).

Therefore, the legal principles are constants formed by society, guiding ideas dissolved throughout the legal system, the basic provisions of law, defining its essential aspects of the essence, mechanism of influence on social relations, structural ties and, in general, a public perception of the content and purpose of law in the state.

At the same time, the principles of law generally do not specify in themselves the ideas of individual branches of legal reality, each

of which has its own purpose and specificity. An example is labour law, under which labour-law principles have been developed. The latter, while relevant to leading legal ideas in general, include a large number of features that express their uniqueness.

The particular importance of labour-law principles is confirmed by the existence of a separate group of scientific approaches to defining their concept. For example, M.I. Inshyn, V.L. Kostiuk, V.P. Melnyk's perspective implies that the principles of labour law are a system of basic, guiding provisions, trends, which are determined by the status of society and state development, trends aimed at ensuring an effective legal regulatory framework for labour relations in order to ensure the unity, integrity, and systematisation of labour law (Inshyn et al., 2016). A.F. Nurtdinova and O.P. Orlovskiy interpret labour law principles as the basic ideas, starting points or general sources, expressing the essence of labour law, defining the unity and general trend of the branch (Dmitrieva, 2004). According to K.P. Urzhinskii, the principles of labour law are an interpretation explicitly legislated in legal provisions or derived from them that evolves a guideline (idea) reflecting the regularities of labour law framework (Urzhinskiy, 1968, p. 124). Similarly, A.V. Smirnov defines principles of labour law as the fundamental guiding ideas, enshrined in the legislation in force, which express the essence of the provisions of labour law and the main trends in public policy on the legal regulatory framework for social relations in the functioning of the labour market, application and organisation of employment (Smirnov, 1997, p. 23).

Therefore, it is important that the labour-law principles governing the staffing of the National Police of Ukraine are dissolved in the provisions of labour legislation, basic, fundamental, objectively existing, guiding ideas of the legal regulatory framework for social labour relations, which include standards of conduct of actors of labour law in the context of their activities related to staffing a special category of employees – police officers.

Moreover, the comprehensiveness of the basic principles noted above raises questions about their composition and list. Legal experts in labour law have different opinions on the classification of labour-law principles in general. For example, M.V. Molodtsov and O.M. Krapivin group the principles of labour law into: 1) principles of fairness, providing for fair working conditions, including limitation of working hours, provision of daily rest, holidays, paid annual leave, adequate wages, etc.; 2) principles of equality of actors of labour relations; 3) principles

of democratic security and labour management (Molodtsov et al., 2001).

K.N. Husov and V.N. Tolkunova propose to classify labour-law principles into the principles governing the staffing, employment and use of labour; the principles of high standards of working conditions and protection of labour rights; principles of industrial democracy and employee personality development (Gusov, Tolkunova, 1999). O.V. Smirnov advocates this perspective. In his study, the scientist groups of principles of labour law into: principles expressing state policy on legal labour market and effective employment; principles containing guidelines for the determination of work by an employee; principles governing the use of labour by employees; principles governing the protection of employees' labour rights. Considering this classification, the author formulates the principles of freedom, active participation of workers and trade unions in establishment of working conditions, certainty of work function, stability, discipline, remuneration without discrimination, guarantee of labour rights (Zolotukhina et al., 2014).

In our opinion, the labour-law principles governing the staffing of the National Police of Ukraine cannot be equated with any of these classifications, because as to the content and the list, they constitute a separate group of underlying ideas under labour law. The latter are general scientific principles, the content of which is adapted to labour law, directly some sectoral principles of labour law, as well as special underlying ideas arising exclusively in the field of police staffing.

The basic general labour-law principles of the legal regulatory framework for the staffing of the police are interrelated underlying ideas of the rule of law and legality. Both principles are reflected in the Constitution of Ukraine, as well as in the Law of Ukraine "On the National Police" of July 2, 2015 № 580-VIII (Verkhovna Rada of Ukraine, 2015). For example, the Basic Law states that the principle of the rule of law is recognised and is in force in Ukraine. The Constitution of Ukraine has supreme legal force. Laws and other legal regulations are adopted on the basis of the Constitution of Ukraine and shall be consistent with it. The provisions of the Constitution shall be the rules of direct effect. Recourse to the court for protection of constitutional rights and freedoms of an individual and citizen directly on basis of the Constitution of Ukraine shall be guaranteed. Moreover, the legal order of our State is based on the principle that no one may be forced to do anything that is not provided for by law. Public authorities and bodies of local self-government and their officials shall be obliged to act only on

the grounds, within the powers, and in the manner stipulated by the Constitution and the laws of Ukraine (Verkhovna Rada of Ukraine, 1996).

3. Principles of the staffing of the National Police of Ukraine

In accordance with the departmental legal regulation, the police are guided by the rule of law, according to which an individual, his/her rights and freedoms are recognised as high values and determine the content and area of the state's activities. In addition, the police act solely on the basis, within the powers and in a manner prescribed by the Constitution and laws of Ukraine (Law of Ukraine "On the National Police" (Verkhovna Rada of Ukraine, 2015)).

In the context of police staffing, these principles are expressed in several ways:

- first, the basic regulator of the legal relations in the field of police performance and its support is law exclusively, the influence thereof is expressed through the provisions and the institution of labour law;

- second, the activities of the staffing actors of the National Police of Ukraine should be carried out in full compliance with the provisions of the legislation of Ukraine in force.

These principles are supplemented by the sectoral principle of labour law, that is, the principle of unity and differentiation in regulating labour relations. According to the latter, the basis of the staffing of the police is a system of provisions of legal regulations governing general employment, defining standards and regularities of regulatory framework for work of all categories of employees, as well as special documents, that is, departmental legal regulations that determine the specifics of the labour process of police officers only. The basis of this principle can be found in the Code of Labour Laws of Ukraine, which allows for the existence of both general labour legal provisions and regulations, and special ones (Verkhovna Rada of the Ukrainian SSR, 1971).

The next labour-law principle of the legal regulatory framework for the staffing of the police should be the equality of labour rights of Ukrainian citizens. According to article 2-1 of the Labour Code of Ukraine, any kind of discrimination in employment is prohibited, in particular violation of the principle of equality of rights and opportunities, and direct or indirect restriction of workers' rights on the basis of race, colour, political, religious or other beliefs, gender identity, sexual orientation, ethnic, social and foreign origin, age, health, disability, suspicion of or presence of HIV/AIDS, family and property status, family obligations, place of residence, membership in a trade union or other association of citizens, participation in a strike, applications or inten-

tions to apply to the court or other bodies for protection of their rights or providing support to other employees in the protection of their rights, reporting on possible facts of corruption or corruption-related offences, other violations of the Law of Ukraine “On the Corruption Prevention”, as well as assistance to a person in the implementation of such reporting, on language or other grounds, not related to the nature of the work or the conditions of performing it (Verkhovna Rada of the Ukrainian SSR, 1971).

Another important guideline for the legal regulatory framework for the staffing of the NPU is the principle of fair and safe conditions of work and recreation, implying that the performance of duties in the police bodies should be in proper, safe and healthy conditions and paid in a timely and full manner, ensuring a decent living for an individual and his/her family; recreation should be provided, including limitation of working hours, daily rest, holidays, non-working days and paid annual leave, taking into account all the specifics of police activities and the risks involved (Melnyk, 2014).

Important principles of the legal regulatory framework for the National Police of Ukraine staffing are special labour-law principles inherent exclusively in this area of legal influence, and not in the entire labour law. These principles include the following:

- the principle of stability: in accordance with this principle, the staffing is systematic and accompanies the entire labour process of all employees of the National Police of Ukraine;
- the principle of comprehensiveness: in accordance with this underlying source, staffing should not be limited to the documental preparation of personnel actions, but also constantly monitor the personnel problems of the National Police of Ukraine and develop ways to solve them;

- the principle of the primacy of police officers' labour interests, implying that the staffing of the National Police of Ukraine should be aimed primarily at an enabling environment for the police officers provided and guaranteed to them by the Constitution of Ukraine and legislation on labour rights, and then the personnel policy of the leadership;

- human capacity development principle: the staffing should be aimed at continuous development of the qualifications and professional skills of the police personnel with a view to improving the performance of duties and functions by the police; as well as strengthening the requirements for candidates to serve in the National Police of Ukraine.

4. Conclusions

Consequently, the set of guidelines is the system of principles for the legal regulatory framework for the staffing of the police. In our opinion, the above-mentioned fundamentals fully show the legal relationship between the staffing as a separate institutional entity of labour law, and at the same time the uniqueness of this phenomenon and the peculiarities of police performance.

Unfortunately, to date, only a few of these principles have been incorporated into the legal framework governing the procedures for staffing the National Police of Ukraine. This reveals the inadequacy and ineffectiveness of the legal regulatory framework for the performance of police officers, as a result of which there is room for violation of their labour rights and the interests guaranteed by the Constitution and other labour legislation of Ukraine. We argue that one way of remedying this negative point is to legislate the system of principles proposed above in a separate, special document – the Law of Ukraine “On Police Performance”.

References:

- Bakhnovska, I.P.** (2013). Pytannia spivvidnoshennia pryntsyypiv i norm prava ta yikh mistisia u mekhanizmi pravovoho rehuliuвання [The question of the relationship between principles and provisions of law and their place in the mechanism of legal regulation]. *Universytetski naukovy zapysky – University scientific notes*, no. 1, pp. 43–47 [in Ukrainian].
- Bielskyi, K.S.** (1998). Pro zasady administratyvnoho prava. Administratyvne pravo ta administratyvnyi protses: stari i novi problemy [On the principles of administrative law. Administrative law and administrative process: old and new problems]. *Derzhava i pravo – State and law*, no. 8, pp. 5–32 [in Ukrainian].
- Dmitrieva, I.K.** (2004). Osnovnye printsipy trudovogo prava [Basic principles of labour law]. *Candidate's thesis*. Moscow [in Russian].
- Gusov, K.N., Tolkunova, V.N.** (1999). *Trudovoe pravo Rossii [Labour law of Russia]*. Moscow: MAUP [in Russian].
- Inshyn, M.I., Kostiuk, V.L., Melnyk, V.P.** (eds.) (2016). *Trudove pravo Ukrainy [Labour law of Ukraine]*. Kyiv: Tsentr uchbovoi literatury [in Ukrainian].
- Melnyk, K.Yu.** (2014). *Trudove pravo Ukrainy [Labour law of Ukraine]*. Kharkiv: Disa plus [in Ukrainian].
- Molodtsov, M.V., Krapivin, O.M., Vlasov, V.I.** (2001). *Trudovoe pravo Rossii [Russian labour law]*. Moscow: NORMA – INFRA-M [in Russian].
- Shemshuchenko, Yu.S.** (ed.) (2011). *Yurydychna entsyklopediia [Legal encyclopedia]*. Kyiv: Yurydychna dumka [in Ukrainian].

- Skakun, O.F.** (2009). *Teoriia prava i derzhavy [Theory of law and the state]*. Kyiv: Alerta [in Ukrainian].
- Smirnov, O.V.** (ed.) (1997). *Trudovoe pravo [Labour law]*. Moscow: Prospekt [in Russian].
- Urzhinskiy, K.P.** (1968). K voprosu o printsipakh pravovogo regulirovaniya obshchestvennykh otnosheniy [On the question of the principles of legal regulatory framework for public relations]. *Pravovedenie – Jurisprudence*, no. 3, pp. 123–126 [in Russian].
- Verkhovna Rada of the Ukrainian SSR** (1971). Kodeks zakoniv pro pratsiu Ukrainy vid 10.12.1971 № 322-VIII [Code of Labour Laws of Ukraine of 10.12.1971 № 322-VIII]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/322-08#Text> [in Ukrainian].
- Verkhovna Rada of Ukraine** (1996). Konstytutsiia Ukrainy vid 28.06.1996 № 254к/96-ВР [The Constitution of Ukraine of June 28, 1996 № 254к/96-ВР]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text> [in Ukrainian].
- Verkhovna Rada of Ukraine** (2015). Pro Natsionalnu politsiiu: Zakon Ukrainy vid 02.07.2015 № 580-VIII [On the National Police: Law of Ukraine dated 02.07.2015 № 580-VIII]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/580-19#Text> [in Ukrainian].
- Zolotukhina, L.O., Lezhnieva, T.M., Obushenka, N.M., Chernopiatov, S.V.** (2014). *Trudove pravo Ukrainy [Labour law of Ukraine]*. Dnipropetrovsk: Dnipropetrovsk State University of Internal Affairs [in Ukrainian].

Костянтин Гарбузюк,

кандидат юридичних наук, полковник поліції, декан факультету № 2, Харківський національний університет внутрішніх справ, проспект Льва Ландау, 27, Харків, Україна, індекс 61080, Harbuziuk_Kostiantyn@ukr.net

ORCID: orcid.org/0000-0002-6714-5074

СУТНІСТЬ ТА ЗМІСТ ТРУДОПРАВОВИХ ПРИНЦИПІВ ПРАВОВОГО РЕГУЛЮВАННЯ КАДРОВОГО ЗАБЕЗПЕЧЕННЯ ОРГАНІВ НАЦІОНАЛЬНОЇ ПОЛІЦІЇ УКРАЇНИ

Анотація. Мета статті – з'ясувати сутність і зміст трудових принципів правового регулювання кадрового забезпечення органів Національної поліції України.

Результати. У статті з огляду на наукові погляди вчених здійснено загальнотеоретичний аналіз поняття принципів та принципів права. Сформовано теоретико-концептуальну позицію щодо сутності принципів трудового права. Визначено зміст і сутність трудових принципів правового регулювання кадрового забезпечення Національної поліції України, а також проведено їх класифікацію. Встановлено, що важливими принципами правового регулювання кадрового забезпечення Національної поліції України є спеціальні трудові принципи, які притаманні виключно цьому напрямку юридичного впливу, а не всій галузі трудового права. З-поміж зазначених принципів варто виділити такі: а) принцип стабільності (кадрове забезпечення здійснюється систематично та супроводжує весь трудовий процес усіх працівників Національної поліції України); б) принцип комплексності (кадрове забезпечення має не тільки виражатися в підготовці паперів для здійснення тих чи інших кадрових заходів, а й постійно відстежувати кадрові проблеми Національної поліції України та формувати шляхи їх вирішення); в) принцип пріоритету трудових інтересів поліцейських (кадрове забезпечення органів Національної поліції України має бути спрямоване насамперед на формування найбільш сприятливих умов для реалізації поліцейськими наданих і гарантованих їм Конституцією України та законодавством трудових прав, а вже потім кадрової політики керівництва); г) принцип розвитку кадрового потенціалу (кадрове забезпечення повинне спрямовуватися на постійне підвищення кваліфікації та професійних навичок кадрового складу поліції з метою поліпшення виконання поліцейськими своїх трудових і службових функцій, а також посилення вимог до кандидатів на службу в Національній поліції України).

Висновки. Констатовано, що на сьогодні лише окремі із зазначених принципів закріплені в нормативно-правовій базі, яка регулює процедури кадрового забезпечення Національної поліції України. Це свідчить про неповноцінність і неефективність правового регулювання трудової діяльності працівників поліції, унаслідок чого є поле для порушення їхніх трудових прав і гарантованих Конституцією та іншим законодавством України інтересів у сфері праці. Один зі шляхів виправлення цього негативного моменту ми бачимо в закріпленні запропонованої вище системи принципів в окремому, спеціальному документі – Законі України «Про трудову діяльність поліцейських».

Ключові слова: Національна поліція України, кадрове забезпечення, трудові принципи, принципи права.

The article was submitted 20.07.2022

The article was revised 10.08.2022

The article was accepted 30.08.2022