



PRINCIPLES OF CONTROL IN THE PROVISION OF SECURITY SERVICES

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SUMMARY

This article is dedicated to the definition etymological origin of the term "principles" describes the theoretical design principles of law, its principles of control in the provision of security services, described the most important of them. Providing security services means that such activities should be made only on the basis of the Constitution and laws of Ukraine, and in accordance with the regulations and do not contradict them in any case. Moreover, the principle in the above field means that a control taking their subordinate administrative acts shall take account of the fact that they are issued on the basis of the law and its implementation.

Key words: principles, principles of law, security services, law, rule of law, transparency, regulation.

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Статья посвящена выяснению этимологического происхождения термина «принципы», охарактеризована теоретическая конструкция принципов, определены принципы контроля в сфере оказания охранных услуг, охарактеризованы наиболее важные из них. Предоставление охранных услуг означает, что такая деятельность должна осуществляться только на основе Конституции и законов Украины, а также в соответствии с требованиями нормативно-правовых актов и не противоречить им в любом случае. Кроме этого, данный принцип в вышеприведенной сфере означает, что субъекты контроля, принимая собственные подзаконные административные акты, должны учитывать тот факт, что они выдаются на основе закона и в его исполнении.

Ключевые слова: принципы, принципы права, охранные услуги, законность, верховенство права, гласность, правовое регулирование.

Statement of the problem. Defining the principles that underpin the implementation of control activities in the provision of security services is one of the most important values for effective administrative and legal regulation of such activity in general.

Analysis of recent research and publications. Some problems of the principles of control have been the subject of scientific research such renowned scholars as V. Aver'yanov, O. Andrew, A. Bandurka, Y. Bytyak, V. Garashchuk, G. Kalyuzhnyi, T. Kolomoets, T. Komzyuk, A. Muzychuk, O. Syniavska, S. Stetsenko, A. Tikhomirov, M. Tishchenko, and many others, but some aspects control principles in the provision of security services have remained unexplored.

The purpose of the study. The study aims to determine the etymological origin of the concept of principles, analysis of the concept of control principles in the provision of security services, characteristics of control principles in the provision of security services.

The study examined the principles of control in the provision of security services.

The main material. In philosophical dictionary notes that the principle (from lat. – First) – this is the original theoretical and methodological position that underlies certain knowledge and defines the way of its construction, formulated on the basis of human belief terms, short abstracts or statements which it follows in their

actions [8, p. 167]. In legal encyclopedia, the word «principle» to understand the basic principles, the original ideas that are characterized by versatility, overall significance, the highest imperative, and reflect the essential tenets of the theory, doctrine, science, internal and international law, policy, government or NGO. Principles inherently abstract patterns reflect social reality, which makes them a special role in the structure of a wide range of phenomena. The principle is the source of many phenomena or findings relating to him as to the cause of action (the principle of real) or as the consequences of the base (the principle of ideal). Principle – this inner conviction of man that determines its relation to reality, and the social ideas of [17, p. 110-111].

Note that in legal theory often used the term «principles of law», which refers to the basic common rules expressing properties of law and have supreme legal force that is acting as a compelling requirement imposed on participants in public relations in order to establish social compromise. We can say that observes AF jumper that principles of law – a kind of coordinate system within which develops the right, while the vector that defines the direction of its development. The

principles are the normative foundations of law (positive obligation), which put in its content, serve as benchmarks of its formation, reflecting its essence and basic connections that actually exist in the legal system [16, p. 253].

Control activities should be based on clearly defined principles, as this allows for its proper organization. Principles for determining supervisory activities, outline its scope. They seem to appreciate within project activities, allowing to determine what types of actions are allowed and the most effective [7, p. 60].

A. Muzychuk gives the general features of the principles of control, which offers scientists include the following:

1. directly or indirectly contained in the regulations, so you can view them as rules, principles, violation of which entails legal liability, especially disciplinary;
2. in contrast to the goals and objectives of control, its principles into regulations by more consistently and in most of them;
3. determine the nature, essence and content control, its main purpose;
4. apply to all areas of regulatory authorities, defining organizational and legal bases of their construction and operation.
5. are binding, ensuring its effectiveness and efficiency;
6. reflect the most common features of control;
7. their main purpose is legalization and regulation control action, since they



determine the base idea of rules and regulations under which the monitoring shall be carried out [6, p. 160-161].

It should be noted that the legislation of Ukraine for the principles of control have also found their consolidation. Thus, according to the article. 3 of the Law of Ukraine «On Principles of State Supervision (Control) in Economic Activity», state supervision (control) is performed on the principles of:

- Prioritizing safety in matters of life and health, functioning and development of society, the environment and life over any other interests and objectives in the area of economic activity;

- Accountability and accountability of state supervision (control) the appropriate public authorities;

- Equality of rights and legitimate interests of all entities;

- Guaranteeing human entity;

- Objectivity and impartiality of state supervision (control);

- The grounds specified by law for state supervision (control);

- Openness, transparency, planning and systematic state supervision (control);

- Inadmissibility of overlapping powers of state supervision (control);

- Non-interference by the State Supervision (Control) in the statutory activities of the entity, if it is within the law;

- Accountability of state supervision (control) and its officials for damages caused as a result of the entity violation of law;

- Compliance with the international treaties of Ukraine;

- Independence of state supervision (control) of political parties and of any other associations;

- The presence of one organ of state supervision (control) in the central authority [12, p. 10].

According to Art. 4 of the Law of Ukraine «On democratic civilian control over the military and law enforcement agencies» dated June 19, 2003 civilian control over the military and law enforcement agencies is based on:

- The rule of law, strict compliance with the law, which regulates civil-military relations, the Armed Forces of Ukraine and other military formations and law enforcement agencies;

- The division of functions and

powers of the political leadership of the state military organization and law enforcement activities and professional military of the Armed Forces of Ukraine and other military units, law enforcement, prevent duplication of their functions;

- Interaction and responsibility of state and military command and law enforcement agencies within the limits set by law, the implementation of defense policy and in strengthening the rule of law and public order in a timely and comprehensive material and financial support to the Armed Forces of Ukraine and other parts of the Military organizations, law enforcement agencies to carry out their functions;

- Depoliticization and deideologization control. Services (job) persons exercising functions of control in defense and national security and law enforcement can not be bound by the decisions of political parties and civil society organizations;

- Transparency of national security and defense, law enforcement, recovery and elimination of weapons Disasters and emergencies;

- Implementation of the Armed Forces of Ukraine and other military formations on the principles yedynonachalnytstva and strict discipline;

- Open to the public information activities of the Armed Forces of Ukraine and other parts of the military organization, police state, which is not a state secret, subject to certain laws of the specific state law enforcement agencies;

- Responsibility of officials for the timeliness, completeness and accuracy of the information provided and to respond to citizens' petitions, public organizations, and the media [11].

Control in the provision of security services primarily based on general legal principles such as the rule of law and legality. Thus, in accordance with Art. 8 Constitution of Ukraine recognized and effective rule of law [2]. Contents of the constitutional rule of law is revealed in the Constitutional Court of Ukraine in the case of the constitutional petition the Supreme Court of Ukraine regarding the conformity to the Constitution of Ukraine (constitutionality) of the provisions of Article 69 of the Criminal Code of Ukraine (case on the court more lenient punishment). Thus, the Constitutional Court of Ukraine said that the rule of law

– a rule of law in society. The rule of law requires the government to implement its law-making and law enforcement activities, including the laws that its content must be imbued with first ideas of social justice, freedom, equality and so on. One manifestation of the rule of law is that the law is not limited to law as one of its forms, and includes other social regulators, including moral norms, traditions, customs, etc., are legitimated by society and reached historically conditioned cultural level of society [14]. Thus, the rule of law in the exercise of control in the provision of security services means that the subjects of such control in their activities, must first take into account the fact that the rights, freedoms and legitimate interests of the controlled object is immutable, highest social values, and therefore unlawful attacks on them are not allowed in any form and in any way.

The legal definition of the principle of legality, as the law is absent [9, p. 35]. Ukraine Constitution enshrined the principle of the rule of law as one of the main principles of the legal society. In particular, its reflection can be found in a number of articles of the Basic Law. Thus, p. 3 of the Constitution of Ukraine stipulates that the rights and freedoms and their guarantees determine the essence and orientation of the state. The state is responsible to the people for their activities. The promotion and protection of rights and freedoms is the main duty of the state. In Art. 6 of the Constitution of Ukraine states that the legislative, executive and judicial power exercise their authority within the limits established by this Constitution and in accordance with the laws of Ukraine. According to Art. 113 of the Constitution of Ukraine, the Cabinet of Ministers of Ukraine is guided by the Constitution and laws of Ukraine, decrees of the President of Ukraine and the Verkhovna Rada of Ukraine adopted in accordance with the Constitution and laws of Ukraine. According to Art. 19 of the Constitution of Ukraine, bodies of state power and local self-government, their officials shall act on the basis and within the limits and in the manner envisaged by the Constitution and laws of Ukraine [2, 13, p. 32].

Legitimacy as a principle of control in the provision of security services means



that such activities should be made only on the basis of the Constitution and laws of Ukraine, and in accordance with the regulations and do not contradict them in any case. Moreover, the principle in the above field means that a control taking their subordinate administrative acts shall take account of the fact that they are issued on the basis of the law and its implementation.

Due to the fact that control is defined as one of the common functions of government [5, p. 290] it conveys and principles of public administration in general, among which is to be distinguished:

- Openness – is one of the most important manifestations of the democratic state, the basis of democracy, its foundation, because only awareness of people makes them able of skill to participate in government [3, p. 5]. Consequently, the authorities in charge of supervisory activities in providing security services to inform the public about the results of the work and activities that were to take;

- Unity of command and collegiality. This principle means reasonable combination in management practices sole leadership appointed or elected leader who is endowed with significant competences and is personally responsible for the results of the public authority and the general panel – a group of people who have equal rights and obligations, or the rights of the advisory matters within the competence of the executive body [5, p. 196];

- Centralization and decentralization of the apparatus of government. Monitoring should be built on the basis of a reasonable value for the concentration of power and its decentralization as a violation of the balance in any direction leads to adverse consequences. The vast centralization creates lack of initiative of the lower parts of the executive branch and excessive decentralization leads to a breach in the unity of the formulation and implementation of public policy, uniform requirements, standards and assessments, and thus a prerequisite for the disruption and unmanageable management system [5, p. 197];

- Effectiveness. Performance monitoring should be understood as result-set to control activities aim at the highest possible terms;

- Planning. Planning control in the provision of security services is mandatory planning such activities regulatory bodies and departments.

- Versatility. Universality means that the control, including the provision of security services should cover all areas of the state, economic, social and cultural development. Not controlled areas, structures or individuals in public administration should not be [1, p. 155.]

It should agree with the positions DV Luchenko and A. Ruban is that in their studies distinguish a special group of principles of control – special or specialized principles. Scientific principles are determined based on the generally accepted principles of international control, in particular those set in the Lima Declaration of Guidelines on Surveillance adopted IX Congress of the International Organization of Supreme Audit Institutions in the 1977 Declaration called analysis made it possible to name specific principles of modern international understanding:

1) the independence of supervisory authorities;

2) the principle of taking into account the control of the separation of powers;

3) the principle of the priority of the previous control;

4) the principle of the priority of financial control;

5) The principle of adequate legislative activity in the field of state control;

6) The principle of information, research and staffing of state control;

7) The principle of responsibility to the state of the controlling entity and controlled object;

8) The principle of surprise control;

9) the principle of controlled object help in correcting errors) [4, p.114, 15, p. 38].

Conclusions. Thus, the principles of control in the provision of security services include principles: the rule of law, legality, transparency, collegiality and unity of command, centralization and decentralization of management, performance, planning and control of surprise, universal control, independent control of and responsibility for the commission of misconduct during the control.

Under the principles of control in the provision of security services

should be understood enshrined in regulations Ukraine foremost, the unshakable foundation and guiding the implementation of such controls that determine the rules of its conduct and regulate the behavior of its members.

Principles of control in the provision of security services are of great methodological importance, as they determine and declare how should exercise supervisory activities in this area, and in the imperative form relationships governing the behavior of subjects.

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ПОНЯТИЕ И СОДЕРЖАНИЕ РЕСТИТУЦИОННОГО ОБЯЗАТЕЛЬСТВА В ГРАЖДАНСКОМ ПРАВЕ УКРАИНЫ

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SUMMARY

This article is devoted to the investigation of the concept and content of obligations of the restitution in civil law of Ukraine. The rights and responsibilities that define the essence of the obligations arise as a result of improper conduct of the parties of the deal, which was invalid. The emergence of obligation of the restitution is not dependent on the willingness of parties of invalid deal, because the consequences of invalid transactions are explicitly stated in the law, they apply imperative and does not provide any alternative courses of action to parties of deal. Considerable attention is paid to the analysis of the concept of restitution in the broad and narrow sense. The understanding of the difference between broad sense and narrow sense of the restitution contributes to the correct application of the legal institution of civil restitution in practice. Position that restorative obligation, like any other, is implemented in the framework of civil relations, and is characterized bilateral and reciprocal nature was justified in this article.

Key words: law of restitution, restitution claim, obligation of the restitution, unjust enrichment, vindication, a claim of unjust enrichment, bilateral.

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Данная статья посвящена исследованию понятия и содержания реституционного обязательства в гражданском праве Украины. Права и обязанности, которые определяют сущность данного обязательства, возникают в результате неправомерного поведения сторон сделки, которая явилась недействительной. Возникновение реституционного обязательства не зависит от желания сторон недействительной сделки, так как последствия недействительной сделки прямо указаны в законе, они применяются императивно и не предусматривают каких-либо альтернативных вариантов поведения сторон реституционного обязательства. Значительное внимание уделено анализу понятия «реституция» в широком и узком понимании, так как понимание этой разницы способствует правильному применению гражданско-правового института реституции в практических ситуациях. В статье обосновано, что реституционное обязательство, как и любое другое, реализуется в рамках гражданских правоотношений, особенностью которых является синаллагматичность.

Ключевые слова: право реституции, реституционный иск, реституционное обязательство, неосновательное обогащение, виндикация, кондикция, взаимный характер.

Постановка проблемы. Понятие «реституция» следует рассматривать в широком и узком значениях. В широком смысле – это возвращение сторон недействительной сделки в прежнее состояние, в котором они находились до совершения правонарушения, путем взаимного самостоятельного (добровольного или принудительного) восстановления ими имущественной сферы друг друга. В узком смысле реституция представляет собой обязательственное правоотношение между лицами по возврату имущества (или денег, если происходило пользование имуществом, выполнение работы или оказание услуг), полученное по недействительной сделке, заключенной между этими же лицами. Определение сущности реституционного обязательства является важным шагом к формированию единой точки зрения на правовую природу реституции в целом.