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THE CONCEPT AND PRINCIPLES OF «GOOD GOVERNANCE»: UKRAINIAN AND FOREIGN APPROACHES TO UNDERSTANDING

Abstract. *The article considers the concept of «good governance». the approaches of international institutions and foreign scholars to the definition of «good governance» are analysed. the principles of good governance are studied. the analysis of domestic approaches to understanding good governance is provided.*

Keywords: *governance, good governance, principles of good governance.*

Problem statement. The establishment and development of the rule of law requires the formation of an effective system of public authorities. For Ukraine, it is important to take into account the experience of European democracies in view of the European integration course declared by our country. Good governance is recognised as one of these standards. Despite the fact that the substantive characteristics of good governance and its definition are

not equally understood in either domestic or foreign doctrine, the means of ensuring good governance are constantly being improved.

Analysis of recent studies. The idea of good governance has become a subject of scientific research on many occasions, and the means of its implementation determine the activities of many international organisations. However, the list of such means is constantly being supplemented, as good governance is a dynamic category. Therefore, the study of approaches to the definition of good governance, as well as its principles, is an important scientific task.

The purpose of this article is to analyse Ukrainian and foreign approaches to the concept of «good governance» and to define the principles of good governance.

Outline of the main material. The process of reforming the Ukrainian state requires solving one of the main tasks – the formation of a more effective system of state power, whose activities are based on strict adherence to the principle of legality. In view of the European integration course declared by Ukraine, such transformations should be based on the standards of activity developed both in the national legal systems of democratic European countries and in international institutions. The ultimate goal of applying such standards is the functioning of the state to serve the interests of society, respect for human and civil rights and freedoms, including the right to good governance.

The term «good governance» is associated with the World Bank's studies of the early 90s of the last century. These studies established a link between the quality of the governance system in a country and sustainable economic and social development. The fundamental concepts of democracy and the rule of law are considered to be the basis for the formation of this concept. According to the researchers, the implementation of good governance principles should facilitate the interaction of the state, civil society and business in the process of effective and responsible management of public affairs in developing countries.

The concept of good governance and its essential characteristics have been the subject of research by many international organisations, including the Organisation for Economic Co-operation and Development (OECD), the European Commission for Democracy

through Law or the Venice Commission, the World Bank, the United Nations (UN), and the European Commission. However, there are different approaches to its definition in the scientific literature and among international organisations dealing with good governance.

For example, as defined by the Council of Europe, good governance is the responsible conduct of public affairs and the management of public resources [1]. The United Nations Office on Drugs and Crime defines good governance as the process by which public institutions conduct public affairs and manage public resources in a manner that promotes the rule of law and the realisation of human rights (civil, political, economic, social and cultural rights) [9]. And the Regional Section of the International Organisation of United Cities and Local Governments emphasises that good governance aims to minimise corruption, take into account the views of minorities, listen to the voices of the oppressed in decision-making, and actively respond to the needs of the community now and in the future [4]. There are also different definitions of good governance in the national literature. In particular, it is defined as a concept that regulates legal relations between civil society, public administration and the private sector on the basis of basic principles of democracy and the rule of law of law [7, p. 5]. In other words, the definitions of good governance place different emphasis on certain aspects of state governance aimed at implementing the principles of the rule of law, legality, and human rights. Also, different approaches to good governance focus on the application of the concept in the public authorities or on the involvement of civil society institutions.

There are no single approaches to the principles of good governance either. For example, some international organisations, including the Economic and Social Commission for Asia-Pacific and the aforementioned Regional Section of the International Organisation of United Cities and Local Governments, identify eight such principles: participation, rule of law, transparency, responsiveness, consensus-based, equity and inclusiveness, efficiency and effectiveness, and accountability [4]. In turn, the UN Human Rights Council identifies only five key features of good governance: transparency, responsibility, accountability, participation, and responsiveness to people's needs [2]. On the contrary, the Council

of Europe identifies an extended list of twelve principles of good governance: fair elections, responsiveness, efficiency and effectiveness, openness and transparency, rule of law, ethical behaviour, competence and capacity, innovation and openness to change, sustainable development and long-term orientation, good financial management, human rights, cultural diversity and social cohesion, and accountability [1].

The main characteristics of good governance are mentioned in the documents of various international institutions, although there is currently no established list of such characteristics. For example, the United Nations (UN) recognises the following as the main components of good governance: transparency, responsibility, accountability, participation, responsiveness to human needs [12]. And the White Paper on European Governance (these documents are issued by the European Commission and contain proposals for measures in certain areas) names openness, participation, efficiency, coherence and accountability as the main principles of good governance [13].

It should also be added that the concept of «good governance» was not enshrined in law before the adoption of the Charter of Fundamental Rights of the European Union of 07.12.2000 (hereinafter – the Charter). The Charter in its Article 41 establishes the right of everyone to good administration, i.e. the right to an impartial and fair hearing within a reasonable time by the institutions and bodies of the European Union [9]. It includes the right to be heard, access to administrative acts, and the obligation of administrative bodies to justify their decisions. It is worth noting that this document uses the term «good administration» rather than «good governance», which is not accidental.

According to experts of the Venice Commission, the concept of good administration is a component of good governance, but it is based on clearly defined procedural rights, and therefore is a legal concept. Domestic scholars see the significance of the Charter's normative enshrining of the right to good governance in the fact that it has transformed «some elements of the objective principle of legality into a subjective right to good governance» [8], introduced the possibility for a person to demand behaviour from public authorities

based on the rule of law, and created legal grounds for protecting this right in judicial institutions.

However, the implementation of the concept of good governance in the activities of supreme public authorities should, in our opinion, also include certain preventive mechanisms of influence on government institutions. They should be able to either prevent the occurrence of damage at all or ensure the removal of government institutions from public administration after the commission of unlawful acts before the occurrence of damage is proved in court, which does not exclude compensation in the future, but will prevent further offences. It is believed that such preventive mechanisms can be found, in particular, in the constitutional and legal responsibility of public authorities. And since the implementation of the concept of good governance in domestic practice is often associated with the constitutional and administrative reform of the executive branch of power, the establishment of constitutional and legal responsibility of the government is of paramount importance.

The practical implementation of the principles of good governance also depends on finding an optimal and effective system of tools, including e-governance [5]. A similar position is shared by a number of international institutions. For example, the United Nations Development Programme in Serbia identifies four main areas of good governance: public financial management, rule of law and public administration reform, inclusive political processes and public participation, and digital innovations [10]. And among the areas of good governance implementation, the Organisation for Security and Cooperation in Europe (OSCE) identifies the implementation of e-government solutions [3]. The latter, in turn, is related to the exercise of citizens' voting rights through electronic voting (e-voting).

Modern foreign studies also suggest that e-parliament should be included in the list of means of ensuring good governance. For example, scientific papers focus on the connection between good governance and e-government, as the latter contributes to the efficiency of the functioning of public authorities [6], and the 2010 UN report on the implementation of e-parliament in the world states that e-parliament should be based on the strategic goals of strengthening democracy and good governance [14].

Thus, it can **be concluded** that although the concept of good governance is currently in need of clarity and a more precise categorical apparatus. Definitions of good governance focus on its application in public administration or in the civil sector as well; on the focus of good governance on achieving goals such as the rule of law, democracy, anti-corruption, etc. At the same time, good governance is gradually acquiring its own content and guarantees of implementation. The constitutional and legal liability of public authorities in various forms, including in the form of judicial liability, may become one of the elements of the mechanism for exercising this right. The means of ensuring good governance include the use of modern electronic technologies both in the formation of government bodies (e-voting) and in their functioning (e-parliament).

The means of ensuring good governance include the use of modern electronic technologies both in the formation of government bodies (e-voting) and in their functioning (e-parliament). The use of such technologies will obviously expand to include the executive branch of the government, as well as the institution of the head of state. Therefore, the concept of good governance will remain a relevant issue for further research.

References :

1. 12 Principles of Good Governance / Council of Europe. URL: <https://www.coe.int/en/web/good-governance/12-principles>
2. About good governance / The Human Rights Council. URL: <https://www.ohchr.org/en/good-governance/about-good-governance>
3. Good governance / OSCE. URL: <https://www.osce.org/good-governance>
4. Good governance: definition and characteristics / United Cities and Local Governments Asia-Pacific. URL: <https://uclg-aspace.org/good-governance-definition-and-characteristics/>
5. Grag P. (2008). E-governance — a way to good governance. *The Indian Journal of Political Science*, Vol. 69, No. 1 (JAN. — MAR., 2008). pp. 43–48. URL: <https://www.jstor.org/stable/41856390>
6. Mohammad Abdul Salam. (2013). A Dissertation Submitted in Partial Fulfillment of the Requirements for the Degree of Master of Arts in Governance and Development. February 2013. URL: <https://core.ac.uk/download/pdf/61804691.pdf>
7. Pavlov N. S. (2022). Kontseptsiiia «nalezhnoho vriaduvannia»: suchasne rozuminnia ta stan yii realizatsii v Ukraini. *Pivdennoukrainskyi pravnychyi chasopys*. № 4. Part. 3. pp. 3–7.

8. Pohrebniak S. (2012). Kontseptsii good governance ta good administration (mizhnarodnyi, yevropeiskyi ta natsionalnyi dosvid). *Filosofia prava i zahalna teoriia prava*. № 1. URL: <http://phtl.nlu.edu.ua/article/view/183714>
9. The Charter of Fundamental Rights of the European Union (2000/C 364/01). URL: https://www.europarl.europa.eu/charter/pdf/text_en.pdf
10. UNDP in Serbia. Good Governance. URL: https://www.undp.org/serbia/good-governance?gad_source=1&gclid=CjwKCAiAsIGrBhAAEiwAEzM1C3jUsH7tvJIfdBrAW6YgVCTZxQS-jioWiM-nnPj5YhcoPybbyBzX9xoCrCgQAvD_BwE
11. What is good governance? / United Nations Office on Drugs and Crime. URL: <https://www.unodc.org/e4j/zh/anti-corruption/module-2/key-issues/what-is-good-governance.html>
12. What is good governance? URL: <https://www.ohchr.org/en/good-governance/about-good-governance>
13. White Paper on governance. Communication from the Commission of 25 July 2001 «European governance – A white paper» [COM(2001) 428 final – Official Journal C 287 of 12.10.2001]. URL: <https://eur-lex.europa.eu/EN/legal-content/summary/white-paper-on-governance.html>
14. World e-Parliament Report 2010. URL: <https://publicadministration.un.org/publications/content/PDFs/E-Library%20Archives/World%20E-Parliament%20Report%20series/EParliament%20Report%202010.pdf>

Список використаних джерел :

1. 12 Principles of Good Governance / Council of Europe. URL: <https://www.coe.int/en/web/good-governance/12-principles>
2. About good governance / The Human Rights Council. URL: <https://www.ohchr.org/en/good-governance/about-good-governance>
3. Good governance / OSCE. URL: <https://www.osce.org/good-governance>
4. Good governance: definition and characteristics / United Cities and Local Governments Asia-Pacific. URL: <https://uclg-aspac.org/good-governance-definition-and-characteristics/>
5. Grag P. (2008). E-governance – a way to good governance. *The Indian Journal of Political Science*, Vol. 69, № 1 (JAN. – MAR., 2008).. URL: <https://www.jstor.org/stable/41856390>
6. Mohammad Abdul Salam. (2013). A Dissertation Submitted in Partial Fulfillment of the Requirements for the Degree of Master of Arts in Governance and Development. February 2013. URL: <https://core.ac.uk/download/pdf/61804691.pdf>
7. Павлов Н. С. Концепція «належного врядування»: сучасне розуміння та стан її реалізації в Україні. *Південноукраїнський правничий часопис*. 2022. № 4. Ч. 3. С. 3–7.

8. Погребняк С. Концепції good governance та good administration (міжнародний, європейський та національний досвід). *Філософія права і загальна теорія права*. 2012. № 1. URL: <http://phtl.nlu.edu.ua/article/view/183714>
9. The Charter of Fundamental Rights of the European Union (2000/C 364/01). URL: https://www.europarl.europa.eu/charter/pdf/text_en.pdf
10. UNDP in Serbia. Good Governance. URL: https://www.undp.org/serbia/good-governance?gad_source=1&gclid=CjwKCAiAsIGrBhAAEiwAEzMIc3jUsH7tvJIfdBrAW6YgVCTZxQS-jioWiM-nnPj5YhcoPybbyBzX9xoCrCgQAvD_BwE
11. What is good governance? / United Nations Office on Drugs and Crime. URL: <https://www.unodc.org/e4j/zh/anti-corruption/module-2/key-issues/what-is-good-governance.html>
12. What is good governance? URL: <https://www.ohchr.org/en/good-governance/about-good-governance>
13. White Paper on governance. Communication from the Commission of 25 July 2001 r. «European governance – A white paper» [COM(2001) 428 final – Official Journal C 287 of 12.10.2001]. URL: <https://eur-lex.europa.eu/EN/legal-content/summary/white-paper-on-governance.html>
14. World e-Parliament Report. 2010. URL: <https://publicadministration.un.org/publications/content/PDFs/E-Library%20Archives/World%20E-Parliament%20Report%20series/EParliament%20Report%202010.pdf>

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Поняття та принципи «належного врядування»: українські та зарубіжні підходи до розуміння

***Анотація.** У статті розглянуто поняття «належне врядування». проаналізовано підходи міжнародних інституцій та зарубіжних науковців до визначення поняття «належне врядування». досліджено принципи належного врядування. надано аналіз вітчизняних підходів до розуміння належного врядування.*

На початку дослідження зазначено, що процес реформування української держави має одним із своїх завдань формування ефективної системи державної влади, діяльність якої ґрунтується на неухильному дотриманні принципу законності. З огляду на проголошений Україною євроінтеграційний курс, такі перетворення мають ґрунтуватися на стандартах діяльності, вироблених як у національних правових системах демократич-

них європейських країн, так і на міжнародному рівні. Метою застосування таких стандартів є функціонування держави в інтересах суспільства, повага до прав і свобод людини і громадянина. Таким узагальнюючим стандартом є належне врядування, яке виникло як всеохоплююча концепція, спрямована на покращення державного управління, надання публічних послуг та покращення взаємодії держави, бізнесу, громадянського суспільства.

Термін «належне врядування» асоціюється з дослідженнями Світового банку, проведеними на початку 90-х років минулого століття. Ці дослідження встановили зв'язок між якістю системи врядування в країні та сталим економічним і соціальним розвитком. Основою для формування цієї концепції вважаються фундаментальні поняття демократії та верховенства права. На думку дослідників, впровадження принципів доброго врядування має сприяти взаємодії держави, громадянського суспільства та бізнесу в процесі ефективного та відповідального управління державними справами в країнах, що розвиваються.

Концепція належного врядування та її основні характеристики були предметом дослідження багатьох міжнародних організацій (Організації економічного співробітництва та розвитку, Європейської комісії «За демократію через право» або Венеціанської комісії, Світового банку, Організації Об'єднаних Націй, Європейської комісії тощо). Однак підходи до поняття належного врядування різняться. В них акцентується увага на різних суб'єктах належного врядування, а також на різних цілях, досягненню яких сприяє концепція.

У роботі проаналізовані підходи до визначення належного врядування, а також до окреслення кола його принципів. Зауважено, що реалізація принципів належного врядування залежить від набору інструментів реалізації. В часи поширення інформаційно-комунікаційних технологій до таких інструментів почали відносити електронного врядування, оскільки останнє сприяє підвищенню ефективності функціонування органів державної влади. Останнє, у свою чергу, пов'язане з реалізацією виборчих прав громадян через електронне голосування. Також до таких інструментів варто віднести е-парламент та засоби його реалізації.

На основі проведеного дослідження зроблено висновок, що концепція належного врядування все ще потребує уточнення та більш чіткого категоріального апарату. Водночас, належне врядування поступово набуває

власного змісту та гарантій реалізації. Використання сучасних інформаційних технологій, розширення їх переліку та можливостей потребуватиме також розширення кола державних інститутів, діяльність яких сприятиме впровадженню електронного врядування і, як наслідок, реалізації ідеї належного врядування. Тому концепція належного врядування залишатиметься актуальним питанням для подальших досліджень.

Ключові слова: *врядування, належне врядування, принципи належного врядування*