

KEY FACTORS IN THE FORMATION OF SYSTEMS OF INTERACTION BETWEEN LEGAL SERVICES IN CIVIL LAW IN UKRAINE

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Abstract. *The purpose of this study is to examine the functioning of government control and civil service in Ukraine and developed countries. The aim of the research is to conduct a comparative and legal analysis between civil service institutions in various countries and identify any issues with reforming the field in Ukraine. The methods involved comparison, legal analysis, retrospective analysis, induction and deduction along with a cross-analysis of various sources. Results from this research have allowed for an individual assessment on improvements which can be made regarding current regulations affecting civil service in Ukraine and protecting the rights of those employed in this sector. This report serves as an essential stepping stone for proposing constructive changes based on the ideas provided*

Keywords: *legal systems, state assessment, civil regulation, service mechanisms in state law*

Introduction

Civil service has emerged and exists where a state exists. It is the basis of state power and a legal mechanism for managing society. In many developed countries of the world, civil service is one of the key elements of the system of public administration, the effective functioning of which provides the observance of the constitutional rights and freedoms of citizens, consistent and sustainable development of the country. It is the source of regulation of most social problems and it varies depending on the social and economic level of each country, their regime and forms of government. Without the civil service, it is impossible to realize the various tasks and functions that are entrusted to the state, developed countries will simply lose the legal mechanisms for managing it and will not be able to exist in a stable way (Beryslavska & Minaieva 2014, p. 104-108; Petrov & Serdyuk 2008, p. 189-223).

Creating an effective and efficient government control mechanism is a priority task for any country in the world. Thus, in 1991, after Ukraine's independence was proclaimed, our society also raised the question of finding the optimal political, legal and managerial model of state building. The Ukrainians demanded from the state makers to abandon the totalitarian Soviet model of government and began building a new democratic mechanism of government. The main issue that needed a conceptual solution was the demand of society for the reorientation of the state apparatus. Thus, the public service should become not only a structural mechanism that implements the state will, but also turn into an effective mechanism for managing society for which the care of its citizens, safeguarding their constitutional rights and creating appropriate socio-economic conditions for their comfortable living in their country will be of paramount importance (Harust et al. 2019a, p. 145-162). It must be consistent with the generally recognized value system and be oriented towards social fixation on the formation of civil society. That is why the already initiated structural changes require a revision of socio-political priorities, which, in its turn, leads to new forms of interaction between the legal space, the state power and the institutions of civil society and requires improvement of the mechanisms of the system of public needs and interests' realization (Hrainer 2015, p. 104-115; Yaroshenko et al. 2019, p. 719-734).

The civil service is one of many professions that require professional skills and knowledge, beliefs and compulsory special education for employees. The fulfillment of the tasks and functions of the state by the civil servants on a professional basis should be accompanied by the stability of the civil service relations, the impeccability and efficiency of the administrative activity, its independence from possible political changes (Kovbasiuk 2012). After the declaration of Ukraine's independence, the modernization of the entire public administration system and the renewal of the civil service institute has begun (Harust et al. 2019b, p. 104-108; Harust et al. 2019c, p. 63-69). The government system in Ukraine for a long time was built on the model of the Soviet times, did not meet the requirements of the times and needed change. The Law of Ukraine "On Civil Service" (2015) was adopted, which redefined the designation of the state and the civil service as a whole, its content defining the general principles of activity and the status of civil servants working in state bodies and their apparatus.

The formation of state policy will be possible only in the presence of a professional, efficient, effective and accountable society of the state power system. An effective system of government is also one of the basic prerequisites for democratic governance, based on the rule of law. That is why for young and independent Ukraine the creation of an effective civil service as a mechanism for governing the country is a paramount issue (Syroid et al. 2019, p. 74-82; Tatsiy & Serohina 2018, p. 101-122). The permanent change of the Governments of Ukraine (which changed 19 times over the past 29 years, that, in fact, means that every half a year a new CM of Ukraine is appointed), indicates the absence of an effective state mechanism for governing the country. The adoption of the Law of Ukraine "On Amendments to Some Laws of Ukraine on Restarting Power" (2019) by the Verkhovna Rada of Ukraine in the autumn of 2019 proves that the civil service in our country is ineffective and needs major changes. Given the new public administration reforms, it is important that the rights of civil servants in public service are not violated when conducting new systemic reforms. This is the problem that our study addresses, in which we compare the mechanisms of protection of civil servants in Ukraine and developed European countries, and try to offer an effective administrative and legal mechanism for the protection of civil servants.

Materials and Methods

The following methods were used during the research: general theoretical (analysis, synthesis, concretization, generalization, analogy method, modeling); empirical methods (research of functioning of the civil service institute experience in Ukraine and abroad, research of normative-legal and scientific-methodical literature on the subject, scientific researches and conclusions). The legal basis for the emergence and functioning of the civil service institute in Ukraine is the Constitution of Ukraine (1996) and the special Law of Ukraine "On Civil Service" (2015). Article 1 of this law defines that public service is a public, professional, and politically impartial activity in the practical fulfillment of the tasks and functions of the state. Section 2 of Article 38 of the Basic Law guarantees all citizens the right of access to public service, as well as to the service in bodies of local self-government, and item 12 of part 1 of article 92 provides for a legal norm about exclusive regulation by laws of questions of organization and activity of bodies of executive power and bases of public service. But according to the law, only a citizen of Ukraine, who is fluent in the state language, has a proper education and has passed a competition for the position, can enter the civil service. In addition to the implementation of national and sectoral programs, civil servants of local state bodies also ensure the implementation of regional programs approved by local executive authorities together with the relevant local self-government bodies.

In the modern world, many different models of public service are being implemented, depending on the form of government in the country. In our opinion, for a meaningful and comprehensive study of these issues, studying basic civil service models can be very useful. That is why in our research we analyze the classical ways of organizing civil service in countries such as France, Germany and the United Kingdom. In France the process of

centralization was completed earlier than in other Western European countries, there was a separation of state apparatus from civil society, and a professional bureaucracy based on the specification of functions, division of labor and differentiation of roles originated there. It is in this country that a specific kind of public service system has emerged. The legal basis of the civil service in France is the Constitution of France (1958), the Law of France dated 13 July, 1983 "On the Rights and Obligations of Servants" (1983), the Law of France dated 11 January, 1984, which contains the "Statute of the General Statute of the Central Civil Service" (1984) and the Law of France dated 26 January, 1984, "On Local Public Service" (1984).

The French law contains a term such as "official", which applies exclusively to civil servants. A key element of a bureaucratic career in France is the guarantee of gradual promotion over the years of service or seniority in government. Public service promotions are reflected in increased salary depending on the official's length of service and the assessments he/she has received. Promotion can be done in two ways. Firstly, by entering the officials in the annual list of promotions, which is made after the decision of the administrative parity commission on the basis of the annual estimates received by the official, taking into account the years of service. Secondly, based on professional selection, which is done with the help of a special exam (Berezhnyi 2011, p. 1-8). In France, officials are completely under the control of the Head of State and Government. The current legislation enshrines a clear hierarchy for the positions and ranks of civil servants, as well as the principle of their subordination to bodies of political power. In general, the system is focused on the fact that when the person, who enters the civil service, stays there throughout his/her working life, gradually progressing through career paths. Therefore, public service in France is an exemplary model of government for unitary centralized states.

Among the European countries with a federal type of administrative and public control, Germany is the most influential. First of all, it should be noted that this is a parliamentary federal republic in which the power of the President is limited and most of the powers vested in the Chancellor. Thus, historically the first in Europe professional civil service was in Germany. It was built on the principles of dedication, legality, unity, professionalism and stability. The German civil service is governed by the provisions of the Basic Law of Germany – the Constitution of Germany dated 23 May, 1949 (Constitution of Germany 1949). Part 2 of Article 33 of this Law establishes equal access of citizens to all state bodies: "every German has equal access to any state position in accordance with his or her abilities and professional qualifications", and part 3 of Article 33 of the Basic Law of Germany establishes the principle of equality in the civil service, and that no one can be restricted in their rights by virtue of their religion or outlook (Lopushynskiy 2011, p. 48-51). The basic principles of the civil service, the legal status of the civil servant and the promotion of the civil service are set out in more detail at the level of federal laws, namely, the General Law "On the Legal Status of Civil Servants", the Law "On the Official", and the Law "On Federal Civil Servants". According to them, a characteristic feature of civil service management in Germany is the close interaction between the political and administrative spheres. Thus, under German law, civil servants have the right to participate in political party activities and pursue a political career (Lopushynskiy

2011, p. 52). It should be noted that in Germany there is no concept of “civil service” (Staatdienst), which after the Second World War was superseded by the concept of “public service” (öffentlicher Dienst), which is firmly embedded in the theory and practice of social life. Nowadays, “public service” in the functional plan is understood as an activity for the purpose of fulfilling national tasks of management. In institutional terms it means a certain number of persons and positions whose performance of public functions is the content of their activity (Lopushynskiy 2011, p. 53-54).

It is in the Basic Law of Germany that the basic principles of public service are laid down (Constitution of Germany 1949). The main ones include: the principle of equal access of citizens to each state position in accordance with his / her qualification, professional training, abilities and business qualities; the principle of loyalty to the state and the principle of political neutrality of officials; protection by the state of the legal position of officials in the event of causing harm to them; social security at the expense of the state and payment of financial security corresponding to the position occupied; freedom of thought and freedom to form public associations.

According to the Law “On the Official” (1953), as amended in 1985, public service in Germany covers the legal regulation of special public-law relations, which are divided into two main groups: relations with officials and relations with employees – public servants and employees of public institutions. According to this Law, the category of “official” includes not only civil servants who work in the state apparatus but also judges, teachers of schools and institutions of higher education, servicemen, postmen, employees of railways and state banks. At the same time, the legal form of employer organization is decisive for the concept of “civil service”. Public service is only an activity in the service of a legal person governed by public law. Thus, under the civil service in Germany the activities of federal and land authorities are considered. The very model of civil service management in Germany is the oldest in Europe.

The United Kingdom is one of the most developed countries in the world, which is a state with a constitutional monarchy. There is no presidential institution in this state, and the Queen, Her Majesty Elizabeth II, is the Head of State. In this country, civil service is referred to in the regulations as “civic service” (Harper 1984). In this country, there is no single constitution in the form of a single document, and traditions, Parliament’s legislative acts and judicial precedents have a constitutional significance for legislation. In the UK legislation is a non-systematic and very peculiar set of rules, consisting of a series of parliamentary charters and acts, Queen’s decrees in Parliament, various decrees, instructions from individual ministries. Therefore, there is no single consolidating civil service law yet, as only some of the most important aspects set out in the Civil Service Code (1995) are regulated (Bakhurynskiy 2018). In the United Kingdom, the public service management model consists of three autonomous entities: Her Majesty’s Civil Service, Northern Ireland’s Civil Service and Her Majesty’s Diplomatic Service. Unlike in France, in the UK there is still local self-government within a unitary state. All counties and cities elect their own councils, which form permanent administrative committees, each responsible for a specific area of government: police, health care, education, social affairs (Kovbasiuk 2012). In Britain, as noted by D. Harper: “civil servants are obliged to

maintain loyalty to a government in power and to serve faithfully the government that adheres to opposing political beliefs” (Harper 1984).

Results and Discussion

Building a national model of civil service is an important task for establishing Ukraine as a rule of law, social and democratic state. At the same time, priority is given to the formation of a proper legal framework for the functioning of the public service in Ukraine, ensuring the fundamental rights of citizens associated with the public service. Building Ukraine as a democratic rule of law in line with European standards places considerable expectations on the civil service as an effective administrative mechanism for governing the state (Harust et al. 2019b, p. 108-112). It is the civil servants, on the European integration path of Ukraine, that should be the basis of all new transformational administrative and legal transformations. They should become state guarantors of priority of human interests in the country, improvement of relations between the state and the citizen and free participation of civil society in the management of their state. After all, civil servants are professional workers whom the people of Ukraine hired to work for the purpose of quality and effective management of the country aimed at improving the life of society.

Part 2 of Article 1 of the Law of Ukraine “On Civil Service” (2015) clearly states that a civil servant is a citizen of Ukraine, who holds a civil service position in a public authority, another public authority, its apparatus (secretariat), receives a salary at the expense of the state budget and exercises the powers assigned to him/her for that position, directly related to the performance of the tasks and functions of such public authority, and adheres to the principles of public service. Only citizens of Ukraine who are 18 years of age, fluent in Ukrainian and have a bachelor’s degree in higher education are eligible to become civil servants.

Traditionally, disclosure of the issue of the status of civil servants involves the presence of such elements as rights, obligations, restrictions, guarantees, encouragement, responsibility. Thanks to these elements, the activity of a civil servant, its functioning in the civil service system, professional and personal development, disclosure of professional, creative and personal potential is ensured. Service activity assumes that the officials who commit it are not only empowered by the service, but they also perform certain duties. According to the Law of Ukraine “On Civil Service” (2015), duties are a set of duties of a civil servant, the rules of internal official regulations of the respective state body, authority of the Autonomous Republic of Crimea or their apparatus and their duties. The main duties of civil servants are defined in Art. 8, and the rights of public servants – in Art. 7 of this Law. However, specific responsibilities and rights for civil servants in accordance with their positions and qualifications are set out in the standard in the official instructions and regulations on the state body, which are approved by the heads of the relevant state institutions within their competence and in accordance with the current legislation. However, the legislation of Ukraine stipulates that a civil servant is obliged to execute orders (decrees), instructions of a supervisor issued within the limits of his/her powers, except when the civil servant has doubts about the legality of such an order.

Public service positions in public bodies are divided into categories (A, B, C) and subcategories, depending on the order of appointment, nature and scope of authority, the content of the work and its impact on the final decision, the degree of official responsibility, the required level of qualification and professional competencies of civil servants. Ukrainian law provides for career advancement for civil servants. Thus, the passing of a civil service is a set of legal facts related to the emergence, change and termination of public service relations, namely, the acceptance of a public office, career and termination of service. This process is ongoing and has a stage character (Horzov 2017, p. 54-60; Luchenko & Georgiievskiyi 2021, p. 7-31). In our opinion, it includes three main stages: acceptance into service, promotion and termination of service. This is the simplest way of classifying the stages of civil servant passing the civil service. In the legal literature, there are also optional (nonbinding) stages – transfer to another position, prosecution, extraordinary assignment of rank, etc.

It is during the civil service that the relationship between: a civil servant and the state; the state (represented by a civil servant) and citizens; civil servants working in state bodies of different levels and branches of government; civil servants (state bodies) and structures of civil society self-organization occurs (Lutsenko 2017, p. 103-112). Essentially, a career is a judgment of an employee about his or her future, expected ways of self-expression and job satisfaction; gradual promotion of career ladders within the organizational hierarchy, changes in skills, abilities, qualifications, and rewards associated with employee activity. Recruitment to the civil service, promotion of civil servants, and other issues related to the service are carried out taking into account the categories of public service positions and the ranks of civil servants assigned to them. The ranks of civil servants are a type of special ranks. Nine ranks of civil servants are established. Ranks are assigned to civil servants by the subject of appointment, except in cases provided for by law.

According to the results of the evaluation, Ukraine received even higher scores than the average Western Balkan states in the areas of civil service and human resources management and organization of the system of central executive bodies (Vashchenko 2019, p. 71; Tomashevski & Yaroshenko 2020, p. 41-49). According to the SIGMA proposals, the main priorities for reforming the civil service for the next period are: introduction of a transparent and targeted classification of civil service posts and the salary system in public administration; improving accountability of the various central executive bodies and ensuring effective organization of ministries; adoption and implementation of the Law on General Administrative Procedure, etc. (Vashchenko 2019, p. 72-75; Honcharuk 2019, p. 42-50). It should be noted that the need for reform and modernization of the civil service and human resources management was caused by its insufficient ability to effectively fulfill its obligations to society, citizens of Ukraine, poor quality of both the civil service and quality of public services rendered to the citizens of Ukraine. Thus, according to the indexes of the Global Competitiveness Index 2019, Ukraine ranks 85th among 141 countries and 132nd according to the indicator “public institutions”. Ukraine’s low position in world competitiveness ratings is related to the current situation in the management of the state apparatus, which leads to insufficient management of human resources in the public service (Honcharuk 2019, p. 50-52; Borysova et al. 2019, p. 66-84).

In foreign countries there are two main models within which the management of career advancement of civil servants is carried out: closed and open. Each of the systems has both advantages and disadvantages, as it differently considers the types of personnel work, such as the selection of staff, its adaptation, training and development, career growth and innovation. The closed model of the civil service is characterized by an elitist approach to the selection and appointment of civil servants who have received special education. This approach is more typical for Germany and France (Sokolova 2011, p. 87-92). In a closed model, a civil servant spends his/her professional life in a hierarchical structure with high job security guarantees. The closed model is sometimes called a career model. In this model, career ladder promotion is of a smooth, somewhat automatic nature, and implicitly gives benefits to its "insiders". One of the main criteria for a civil servant's value in a closed system is years of service (Dubenko 1999). An open civil service model is characterized by the free selection and appointment of staff to any position. The main conditions for career advancement are the suitability of existing knowledge, skills and abilities to a specific position. This model is widely used in the UK. An open model of public service is called by some researchers as official or positional. Its main feature is the presence of public positions with clearly defined duties and conditions of their employment, opportunities for career advancement, and the main criterion for promotion of career ladder – the availability of specialized knowledge and professional achievements. Career management features of civil servants in Germany, France and the UK are best exemplified by the given models (Novikovas et al. 2017, p. 369-377). According to the legislation of Germany, the official is called "one who is in public-office relations on the basis of the oath of allegiance with a legal entity of public administration and performs on behalf of the latter public and legal functions on a permanent basis" (Dubenko 1999). Unlike in other countries, a public servant's career is not an alternative to a political career, but on the contrary, it is often a prerequisite for successful political activity. German law specifies that civil service relations are public-law relations, with one official acting on one side and federal, land-based authorities and other public bodies on the other.

The main normative act governing the legal status of bureaucracy is the Federal Law on officials, adopted in 1953 and still in force as amended in 1985. This law gives a general definition of the legal status of officials, it defines the principles of their appointment, promotion, defines the rights and obligations, conditions that an official must meet, and defines the special qualities that allow to claim the title of civil servant. In particular, it is stated that a person applying for a civil servant position must provide guarantees of his/her political credibility and possess the necessary level of professional training, which is determined according to the level of the official hierarchy (Novikovas et al. 2017, p. 378-380). The German legislation provides four categories of positions of officials (lower, medium, higher, high) and 16 grades, which are replaced by competitive selection after passing the probationary period. In France, civil servants include all employees of the state – its legislative, executive, judicial bodies. In addition to the civil service, the 1984 law also introduced public service to local communities (Dubenko 1999). The term "civil service" broadly means in France "the pursuit of a professional activity in the service of the state, the territorial community, a public institution and, in general, any

administration". In the narrow sense of the term "civil servant" excludes the categories of military, judges and applies only to those who are employed in a permanent position in the public administration and are included in the state, that is, have permanent positions. The legal status of these employees is governed by the General Statute of the servants of the state and local communities (Shapoval et al. 2018, p. 295-306).

In France, there is a concept of "corps" of employees. It brings together employees who perform the same job and occupy the same positions (for example, the control corps brings together all inspectors). In addition to classes and corps, there are grades that are assigned to a civil servant as a result of competitive examinations. UK regulations do not have a well-defined concept of "civil servant". However, based on documentary sources, researchers attach broad and narrow meanings to this notion. Civil servants in a broad sense include all public sector employees – employees of state ministries and agencies, the armed forces, the police, as well as public corporations, local authorities, the health care system, school education, etc. (Chochia et al. 2018, p. 115-139; Sannikov 2017, p. 1-11). In a narrow sense, civil servants are considered as persons who work in the administrative bodies of public administration and receive wages at the expense of funds allocated by parliament.

The civil service in Ukraine is one of the key institutions in the formation and development of statehood, which depends on the functioning of the whole socio-political system, the solution of various tasks and functions of the modern state. It is the basis of modern state building and it exerts its influence on all major constitutional and legal formations. As an integral part of public administration, public service is aimed at meeting the needs of society, ensuring the protection of fundamental rights and freedoms of man and citizen, the consistent and sustainable development of the country and its gradual accession to the European community. Obviously, public service is an essential prerequisite for a strong democracy, an important tool for ensuring the rights and needs, freedoms, interests of the individual and the citizen, shaping and implementing public policy. It is the basis for the country's consistent and sustainable development, its competitiveness on the international market and its gradual entry into the European community.

Conclusions

Summarizing the results of the study, we believe that in order to create a new model of civil service of the European model, the following questions need to be addressed:

1. Streamlining public competences and functions, administrative procedures in decision-making and providing public services.
2. Consolidation of indicators of institutional, social, economic, marketing effectiveness of public authorities' activity evaluation.
3. Ensuring the maximum respect for European standards of work with the civil service personnel in the field of regular training, use of training products aimed at improving skills and improving core competences.

4. Application of anti-corruption mechanisms, tools of conflict of interest management for overcoming personnel deformations in public authorities in accordance with the requirements of Article 7, paragraph 4 of the UN Convention against Corruption.
5. Use of technologies of managerial leadership, reputation management, strategic partnership.

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