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SOME OF THE CONTROVERSIAL ISSUES CONCERNING CIVIL SERVICE REFORM IN UKRAINE

ДЕЯКІ СУПЕРЕЧЛИВІ ПИТАННЯ СУЧАСНОГО РЕФОРМУВАННЯ ІНСТИТУТУ ДЕРЖАВНОЇ СЛУЖБИ В УКРАЇНІ

The article deals with the issue of the national legislation improving in the field of public service. It analyzes the current legal acts and the consequences of the implementation for public servants of the judiciary.

Key words: *reform, civil service, public employees in courts.*

У статті розглядаються питання щодо удосконалення національного законодавства в галузі державної служби. Аналізуються актуальні нормативно-правові акти та наслідки їх реалізації для державних службовців судової гілки влади.

Ключові слова: *реформування, державна служба, державні службовці в судових установах.*

В статье рассматриваются вопросы совершенствования национального законодательства в области государственной службы. Анализируются актуальные нормативно-правовые акты и последствия их реализации для государственных служащих судебной ветви власти.

Ключевые слова: *реформирование, государственная служба, государственные служащие в судебных учреждениях.*

Formulation of the issue. According to the public and local government strategy of reformation in Ukraine for the period up to 2017 (approved by the Cabinet of Ministers of Ukraine on March 18, 2015 № 227) an integral component of strategic transformations initiated in Ukraine is an approximation to the European public service principles which are required to the countries – candidates for EU accession, and the principles of “proper management” that are fixed by decisions of the European Council [1].

That’s why the reality of public service, especially in the judiciary indicates the urgent necessity of legal and regulatory framework reloading, current system revision, and its elements improvement based the Euro standards.

Among set issues of the public service we can highlight the issue of corruption manifestations by public officials, the problem of competitive selection system for public service positions, the definition of criteria for them, and the issue of career promotion and professional competence; the issue of implementation a fundamentally new mechanisms of legal liability of public servants for violations of legislation on their activities; social problem, material security and of remuneration; aspects of preparation, training, education; reconsidering the role of personnel departments on of Human Resource management; general authority and image of the public service in Ukraine.

Analysis of recent researches and publications.

A variety of issues concerning the public service have been explored in the works of such scientists as V. Averyanov, O. Andrew, M. Anufriev, G. Atamanchuk, D. Bachrach, V. Belous, A. Berlach, K. Belsky, J. Bytyak, V. Venediktov, V. Hizhevskyy and other.

The main goal of research. To study the functioning of the public service under conditions of administrative reform and European integration processes.

The main material of research. There are several vectors of improvements, considering the branching of the public service and the specifics of the public servants, but in general can be defined a course on improving the quality of public service, optimizing the functions of governmental bodies and rational distribution of powers among public servants.

We have a complicated situation in the field of public service today. The point that it is very difficult to analyze and predict ways to implement enhancements in this field of legal relationships, because public authorities for the last 5 years very often changed landmarks regarding the evolution of public service. This pluralism of views, obviously caused by the permanent change in the accents regarding the development, due to lack of orderliness of the external and internal policy of the state.

On the one hand all matters of public service (up to May 1, 2016) are regulated by the Law of Ukraine “On public service” on December 16, 1993 № 3723-XII with outdated, irrelevant rules and regulations.

On the other hand the Law of Ukraine “On public service” on November 17, 2011 № 4050-VI with essentially new foundations permanently postponed the entry into force during 4 years. As a result the Law didn’t come into force. Evidence of this became the initiation by the Cabinet of Ministers the alternative draft law “On public service” on March 30, 2015 № 2490 [2].

Eventually, this act received the support of Parliament December 10, 2015 and was signed by the President of December 31, 2015. The peculiarity became a condition of the Verkhovna Rada to postpone enactment of the Law of May 1, 2016, because the government should finalize regulations for its entry into force in time.

There is a dissonance in reference points that prevents to clearly define which direction to head up in

reforming and improving of particular aspects, because despite previous experience of lawmaking, it can be assumed that the law number 889-VIII of December 10, 2015 expects a similar fate as the previous law № 4050-VI of November 17, 2011.

Therefore there is a necessity in determining the direction of improvement in national legislation on the administrative and legal regulation of civil servants especially in the judiciary.

By analyzing Law of Ukraine “On public service” № 889-VIII primarily we may notice changing the status of certain categories of public service. Specifically, the scope of the Law extends to public officials of Secretariat of the Cabinet of Ministers of Ukraine, ministries and other central executive authorities, local state administrations, prosecutor’s office, military government, foreign diplomatic establishments in Ukraine.

A separate article identifies employees of state bodies with peculiarities in service passage. This article extends to heads of local state administrations, Head of Staff (Secretariat) of the Verkhovna Rada of Ukraine, auxiliary bodies established by the President of Ukraine, representative office of President of Ukraine in the Autonomous Republic of Crimea, the Antimonopoly Committee of Ukraine, The State Committee for Television and Radio Broadcasting of Ukraine, Ombudsman of the Verkhovna Rada of Ukraine on Human Rights, the State Property Fund of Ukraine, the Constitutional Court Ukraine, The Supreme Court of Ukraine, the high specialized courts, the High Council of Justice, the High Qualification Commission of Judges of Ukraine, National Agency on Corruption Prevention, The Council for National Security and Defense Council of Ukraine, the Accounting Chamber, and state collegiate bodies, positions of heads and members that do not belong to the civil service [3].

In turn, beyond the sphere of the Law have remained President of Ukraine, the head of the Presidential Administration of Ukraine and his deputies, the Permanent Representative of the President of Ukraine in Crimea and his deputies, members of the Cabinet of Ministers of Ukraine, first deputies and deputies of ministers; the Secretary of National Security and Defense Council of Ukraine and his deputies; The Chairman of the State Committee for Television and Radio Broadcasting of Ukraine and his deputies, the Chairman of the State Property Fund of Ukraine and his deputies; The National Deputies of Ukraine; the Ombudsman of Verkhovna Rada of Ukraine for Human Rights and his representatives; the officials of the National Bank of Ukraine; the deputies of the Autonomous Republic of Crimea, the Chairman of the Council of Ministers of the Autonomous Republic of Crimea and his deputies, the Ministers of the Autonomous Republic of Crimea; the local council deputies, the officials of the local government; the judges; the prosecutors; the state agencies that perform the functions of the service; the employees of state enterprises, institutions, organizations and other economic entities of state ownership and educational institutions founded by public authorities; of the Armed Forces Ukraine and other military formations created in accord-

ance with the law; ordinary personnel and officer corps of law enforcement bodies and staff of the other agencies, which are assigned special status, unless otherwise provided by law; the support services staff [4].

Within the context of judicial power the assistants of judges will be deprived of public servants status. For other positions of the apparatus officials, this rule does not apply. What’s the difference?

Preceding from the logic of government the assistant of judge is deprived of the status of public servant in connection with the auxiliary nature of the duties performed by him. Other words, in government’s opinion the assistant of judge activities are not directly related to the practical implementation of the tasks and functions of the state, and focused on compliance with the orders of their leader, not court. Then the question arises, how to qualify the following job descriptions as preparation of projects adjudication cases for review, making judgments to unified state register of judgments et al., because such duties entrusted to the judge’s assistant in its broader sense exactly by the state.

Again, guided by the logic of the government, in particular the Law of Ukraine “On Public service” № 889-VIII is fixed a proposal for classifying the assistants of judges to Patronage service. We remind that Patronage Service is a combination of public employees independently accepted by the Members of the Cabinet of Ministers of Ukraine, the Heads of local state administrations according to the staff list and the category that corresponding the post [5]. It should be noted that in the Law № 889-VIII position of the assistant of deputy and the assistant of the judge are almost identified, but it is obvious that by its nature and all indications they are incomparable, and therefore the concept of «deputy assistant» and “assistant the judge” is not equated and in its content and inner nature completely different.

Should be noted that unlike the real positions of patronage service (where the timeframe of the assistant are attached to the elective office of his superior, because the latter has specific time limit concerning their work) the assistant of judge are appointed a lifetime, as the position of judge assumes his permanent appointment. In addition, the specificity of duties performed by the assistant undoubtedly indicates that the state entrusts him with the function of administration of justice, preparing cases for consideration and draft judgments. Therefore, the assistant of judge should be considered as court staff, where he passes the public service, headed by the chief of staff of the court. So, we think it is not correct to attribute the assistants of judges to patronage service only by one basis -his appointment upon judge’s submission.

Not difficult to guess that deprivation of the status of public servants could lead to irreversible consequences negative. Because, they are working, so to speak, for an idea, while achieving the low salary in comparison with the judges.

According to the Resolution on March 9, 2006 № 268 “On the organization of the structure and terms of labor remuneration for executive bodies, prosecution authorities, courts and other bodies” official salary for court personnel set at the minimum wage, amounting

to September 1, 2015 1 378 UAH, while the prices of livelihood in Ukraine are growing constantly [6]. The only thing that provides optimism to court personnel is the bonus payments. These payments are equal in size, and directly depend on the place of work. This means that if the official salary is a constant, the bonuses are distinguished by the size of the savings fund wages. Over time, such differences in labor remuneration was decided to equalize by making adjustments in the Law of Ukraine "On ensuring the right to a fair trial" on December 2, 2015 № 92-VIII. Accordingly, the official salary of the staff employee, whose position is assigned to the 6th category, is 30% of the official salary of a judge of a local court. The official salaries of staff attributed to each of the following categories are established with a coefficient of 1.3 to the previous one [7]. Thus, the official salary of the assistant of judge can achieve quite sufficient level, but the Cabinet of Ministers of Ukraine, almost simultaneously with the adoption of the Law "On the right to a fair trial" introduced Draft Law "On public service" № 2490, under which later was adopted the Law of Ukraine "On public service" № 889-VIII. In accordance with of this Law the norm of increasing the official salary of staff, it is proposed to remove from current legislation. Such a chaotic updating of legislation definitely may lead to complete irregularity in activities of public servants of the judicial sphere. And along with this would entail the problem of staff turnover, resulting in deterioration of the professional level of court staff.

Coming back to the issue of judicial assistants should be noted that, like other public servants of a court they are highly educated staff, professionals with practical experience in the legal field, are individually responsible for work, so their service can't be estimated as ordinary unqualified and marginally payable. Furthermore, according to anticorruption restrictions on combining and connecting with other activities they like public servants are not entitled to engage in any commercial or business activities and all activities that intended to making a profit, except teaching, research and creative activity, medical practice, instructor and judge practice of sport [8]. In other words, extra income concerning these persons is prohibited and prosecuted by law. Moreover, getting rid of the status of a public servant they automatically lose the guarantees of work and fall into job dependence on the chief-judge and of his attitude (is meant possibility of assistant's dismissal even for unreasonable desire of the judge). And besides losing guarantees they are simultaneously get rid of prohibitions, while gaining new rights of, protests, agitation, political affiliation, etc.

Also, the Law contains a fundamental innovation, such as the reorganization of the simplified division into positions of three categories: "A" (Senior Public Service), "B" (heads of departments), "B" (the other public service positions not assigned to the categories "A" and "B"). For one thing, really simplified system of classi-

fication can greatly improve the administration of the public service, but this article of the Law after all gives the unclear definition of positions "B" category – other public service positions not assigned to the categories "A" and "B".

Among the novelties also are requirements to political impartiality of public servants. Namely, the public official should impartially fulfill legal orders of managers irrespective of their own party affiliation and their political beliefs. A public servant is not entitled to demonstrate his political views and perform other actions or omissions in any way can attest his special attitude to certain political parties and adversely affect the image of public authority and credibility of the government or pose a threat to the constitutional system and territorial integrity and national security, health and protection of the rights and freedoms of others. [9]. Of course, according to the Constitution of Ukraine setting of some limitations for certain employees, including government officials, are permitted by law but only with the remark of the interests of national security and public order, protection of public health or the rights and freedoms of others. But the expression of their opinions has no direct connection with the protection of national security, public order, protection of public health or the protection of the rights and freedoms of others. Such constitutional freedom can't be "tabooed" fully concerning these people, because each public servant a citizen of Ukraine has the right to their own political views and opinions, the freedom guaranteed by the state and the fundamental law of the state.

Conclusions and prospects for further researches.

The bottom line is that updating of the legal framework in the field of public service generally is a positive development for the state. But nearby, in case of implementation of some legal rules, there are certain risks, inconsistencies and contradictions for the prestige and quality of public service. In particular, emphasizes on revision of attributing office assistant of the judge to the post of the patronage service, as it contradicts the very essence of tasks performed in judiciary institution and would lead to devaluation of the profession.

It is proposed in paragraph 3 of Part 2 of Article 6 of the Law of Ukraine "On Public Service" of December 10, 2016 № 889-VIII to provide more precise formulation of positions.

It is proposed to note in paragraph 8 of Part 1 of Article 4 and paragraph 2 of Article 10 that public officer in the context of the principle of political impartiality abstains of conviction or its own agitation the views of others, during the performance of official duties.

It is proposed to amend articles 91 and 92 of the Law of Ukraine "On Public Service" from December 10, 2016 № 889-VIII, namely in part 1 of Article 92 to remove the phrase "assistant judges", while paragraph 1 of Article 91 to supplement by this phrase.

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