

# **PUBLIC SERVANT: LEGAL AND ETHICAL DIMENSIONS IN THE CONTEXT OF CONTEMPORARY REALITIES**

**Nataliya M Onishchenko, V.M. Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine**  
**Serhii O Suniehin, V.M. Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine**

## **ABSTRACT**

*The issues of legal and moral (ethical) support of Ukrainian public servants' activities are studied in the article. The emphasis is placed on the gaps in legal regulation of public service in Ukraine and on the doctrinal interpretation of several ways to fill them. The role and meaning of moral (ethical) regulation of public servants' activities, and international experience of its proper support as well, are described in general terms. It is concluded that formation of effective public service institute in Ukraine is impossible without its moral (ethical) constituent, and until public servants realize moral principles of operation of any social unit, and society at large.*

**Keywords:** Public Service, Civil Service, Law, Moral, Legislation, Public Services, Ethics.

## **INTRODUCTION**

The reformation of many important spheres and branches of civil life objectively presupposes not only profound and comprehensive analysis of specific character and peculiarities of their establishment and development in particular temporal and spatial coordinates, but also identification of notions and categories, which are in the basis of this reformation activity and supporting of its complete character. One of such crucial categories of contemporary political and legal discourse, which is still at the stage of its theoretical and legislative codification under the conditions of current Ukrainian legal system functioning, is "public service".

A public service, as any other socially critical activity of corresponding subjects, objectively requires a proper, consistent legal support, clear identification of peculiarities of public servants' legal status in particular, including causes of acquisition of its status. Indeed, the most social expectations are held for legal regulations of certain civic relationships and statuses under the contemporary conditions of rule of law in the system of social regulation. It corresponds to the liberal democratic character of public development, where other traditional socio-normative systems, such as moral and religion, have no particular meaning. However, present complex and controversial realities show that scholars need to draw their attention to not only legal aspect of any activity, but also to its moral and ethical side, the role and meaning of

moral coordinates in behavior and activity of a person, especially whose functions are socially important.

The aim of this article is to identify the peculiarities of the legal regulation of public servants status in Ukraine and to determine the role and meaning of ethic (moral) foundation of public servants' activities.

### **Legal Dimension of the Public Service in Contemporary Ukraine**

Nowadays, it is possible to talk about the public service as about legal category both in the context of its legislative definition and from different sides of its doctrinal interpretation. For instance, the Code of Administrative Proceedings of Ukraine (later on CAP of Ukraine) defines the category "*public service*" as an activity in the government political positions, in government collective bodies, professional activity of judges and prosecutors, military service, alternative (non-military) service, other civil service, executive support service in government bodies, service in government bodies of Autonomous Republic of Crimea and local government bodies. The need to add this notion to CAP of Ukraine depends on, firstly, absence of certain law, which would determine principles, legal and organizational concepts of public service provision, and secondly, jurisdiction of disputes concerning acceptance into public service, the following process and discharge from public service (article 19 CAP of Ukraine) (Verkhovna Rada of Ukraine, 2005).

As we can see, the definition of public service proposed by a legislator points only at its most significant and widespread kinds according to its subjects. The meaning is related primarily to activity in corresponding positions in government bodies, and to exercise of public and administrative functions under the legislation. However, the fact of alternative (non-military) service included into public service shows that the term "*public*" is beyond administrative relationships and also consists of, according to legislation, socially important and useful activity with the view to perform certain duty to society. In addition to this, it is necessary to pay attention to that according to the proposed definition, any civil service is public. Taking into account the aforementioned, there is needed to establish corresponding criteria to identify certain socially significant activity as public service (Kolesnikov et al., 2018).

In this context provision of article 3 of Law of Ukraine "*On Prevention of Corruption*" is of special interest. According to it, the law reaches people who are authorized to exercise functions of government or local government, and specifically people, who are not state employees, civil servants in local government, but they render public services (statutory auditors, notaries, private executors, appraisers, and experts, court-appointed receivers, arbitrators in the line of duty, other people conferred by the law) (Verkhovna Rada of Ukraine, 2014). Obviously, mentioned categories of servants are not civil in accordance with the definition, but are considered equivalent to them only due to the expansion scale of such social phenomenon as corruption and the need to provide appropriate legal conditions, in order to prevent and resist this socially dangerous phenomenon. Meanwhile, the fact that mentioned subjects renders public services, which sense is, unfortunately, is not described by the current legislation, and is reasonable. Without resorting to the analysis of corresponding doctrinal definitions of the notion "*public services*", we think that they should mean legally and socially significant actions, which are mostly of administrative and imperative character, cause legal effects, are rendered by

government bodies, local government bodies and other subjects conferred in the legislation in the interests of society, state and civilians.

In this context it is logical and reasonable that the public services rendered by an authorized subject can be considered as one of the criteria for the qualification of corresponding service as socially useful activity of certain categories of people as public one, that is which has social meaning in general, and where social and public interest has its place. As some contemporary scholars rightly say, *"the subject of the public interest is the good, which is necessary and desirable for the complete functioning and development of society, separate social groups. At the same time, it is unacceptable to consider interests of even big social groups or units, corporate interests as public, if they contradict fundamental social values, and their realization leads to violation of legitimate interests of the rest of the society or its considerable part"* (Maslakov, 2009). In addition to this, in our opinion, the public interest cannot be understood as an assembly of some private interests, since it includes not only interests of different social groups, but also private and, obligatory, state interests. The latter means that public interest always includes certain *"general good, which for every person is important to own"* (Sharnina, 2005).

Statutory and doctrinal provisions about organizational and legal aspects of public service functioning in Ukraine mentioned above conclusively provide the evidence of legal vacuum in the regulation of this significant and necessary for the society and civilians activity. In fact, the legal regulation of issues, which are related to the functioning of public service in Ukraine, concerns only legislative definition of this notion, which is necessary in the context of the corresponding category of cases. Meanwhile, taking into consideration contemporary tendencies of legal system development in Ukraine, and its European integration course in particular, the ensuring of systematic legal regulation of domestic public service, which can be realized, for instance, by adoption of certain Law of Ukraine *"On Public Service"*. Apart from clear definition of organizational and legal aspects of public service establishment and functioning in Ukraine, which need mentioning in the proposed law, it is also necessary, in our opinion, to introduce the section concerned with ethical fundamentals of its exercise.

### **The Ethical Constituent in Public Service Subjects Activity**

It has to be stated that problems of ethical dimension of any significant activity remain unaddressed not only from the side of government administrators of certain level, but also from the side of the representatives of domestic humanities. Even though nowadays certain rise of scientific interest in ethical dimension of human behavior and activity, in terms of civil service in particular, is noticed, we think that it is not enough, taking into account relevant problems of functioning of public institutions, including those, which are related to corruption that is still quite widespread in the domestic public administration.

In the mentioned context, it is necessary to point out that the problem of the formation of professional and conscientious manpower in public service is complex and conditioned upon imperfection of current legislation, some problems of proper and quality logistics support, and financial support as well, and questions of moral (ethical) sense. They are connected not only with considerable reduction of influence of moral as special system of social regulation over society and civilians, but also with peculiarities of contemporary worldview system, which follows democratic development and targets more on unappeasable primacy of individualism in

social relationships. Therefore, the solution of this problem requires complex actions with the direction to both improvement of legal regulation of public service and moral consciousness rise of the authorized to carry out certain public functions.

It is necessary to consider it axiomatic that the absence of public servants', especially civil ones', stable and time-honored moral principles considerably causes such negative phenomena as malpractice, dishonest performance of official duties, misfeasance in office, corruption etc. In its turn, it leads to reduction of people's trust in public service institute in general, to expansion of different kinds of deformation of civilian's juridical awareness, to legal nihilism and legal idealism initially. Meanwhile, it is well known that civilians trust in public institute, hence in civil service, in any country is the basis of democracy and the pledge of state's stable development.

According to scientific literature, democratic principles of civil society and law-governed state cannot be implemented as absolute of spirituality beyond the culture. The culture, which is based on such humanistic values as good, faith, truth, beauty, freedom, equity, justice, tolerance, love etc., determines humanistic vector of public service and inspires all the spheres of society's activity and social interactions system (Ostapets, 2011).

Consideration must be given to that moral ideals define people's behavior in any professional activity not to lesser extent than corresponding legislative or legal norms. What is more, moral ideals define internal motivation of any person's actions, whereas legal norms are focused on the regulation of the external expression of these actions. Taking into account that fact that the majority of public servants are leading state politicians, who ensure the interaction between the state and its civilians, the role and meaning of moral ideals in their professional activity are hardly overestimated.

As early as in the latter half of XX century A. Shveitser rightly thought that any reforms of civil or social life are no panacea and have only relative value. They can be useful only in that case, when we can breathe new life in our time. Even those complicated problems, which completely belong to material and economic sphere, in the end may be solved only by making convictions ethic. The actual feeling of reality consists in realization of incontestable truth that we can come to normal relationships with reality only through ethic ideals based on mind (Shveitser, 1973).

A morality as one of the factors that define the level of sociality and democratic character of public service, its authority, plays a special role in the formation of society's trust in public institutions, and to government bodies as well. Without it the stable and effective development of the state itself, its competitive ability in the world community, effective development of such important spheres of public services as notarial system, audit and other expert activity, execution etc. Obviously, huge amount of natural and legal person's rights, freedoms and legitimate interests cannot be exercised, if there are no requirements of ethical character to public servants, concerning conscientious performance of their official duties in particular.

The devaluation of categorical moral imperatives in the public servants' consciousness leads to the loss of strong value orientations and to the formation of distorted image of freedom, which starts contradicting anything disciplined. Consequently, such fundamental values of modern world civilization as justice, equity and humanism get a distorted meaning too. It is obvious that such a distorted perception of human freedom, which accompanies development of Ukrainian society, is connected initially with weakening of society's moral immune. Because

when giving to a person the freedom of choice, the moral rests responsibility for meeting of or failure to meet the morality requirements on them. A moral potential of a person consists in not only goodwill, commitment, but also personal responsibility for meeting moral requirements in the most productive way.

It is the level of moral consciousness of subjects, who implement authority or duties of public service, that is key to not only efficiency of all the governmental and administrative activities, but also to real enforcement of rights, freedoms and civilian interests in the majority of spheres of human activity. In order to confirm the aforementioned, it is necessary to give thought to such questions: why is there no sign of rise of public service efficiency level in current conditions of permanent improvement of legislation, which regulates various aspects of rendering public, and civil service in particular, of quite widespread staff turnover and restarting public institutions, the establishment of new legal prohibitions, such as of anticorruption character, and in some cases in conditions of legally enforced mechanism of prosecution of those, who perform functions and tasks of public service? Why is it still impossible to talk about proper efficiency of all of these measures? Obviously, one of the significant reasons of this state is unsatisfactory or low level of public servants' moral consciousness, which lose the ability to realize the need of honest and conscientious service to reach the harmony between social and personal goods.

Inasmuch as law as a special social regulator is characterized by formal definiteness and normative orientation, that is it is officially confirmed, in order to establish common rules of conduct of general character, its statutes can always, or at least potentially, be exposed to any broad subjective interpretation depending on context of one or another real situation at hand. In addition to this, if motives of such "*subjective*" interpretation devoid of the influence of moral principles and norms, then law will come into force in opposition to its purpose to ensure stable and strong development of person, civil society and state.

All the aforementioned makes necessary not only clear legal support of public service, but also the rise of meaning and authority of main moral (ethical) values of human life and of moral constituent in public servants' activity. This context brings up a question: how can the ethical constituent are raised in the public servants' activity? In our opinion, there are two main ways.

First of all, it should be admitted that one of the factors of the formation of public servants high moral culture is development of applied ethics, professional codes of ethical conduct based on fundamental advances of moral thought. One should agree that comparing to law codes; codes of ethical conduct have certain advantages. To be more exact, legal codes require definite formulation, which describes concrete actions of public and civil servants. The specific character of public service consists in that it is not possible to create full and formalized list of do's and don'ts, without mentioning restricted procedural possibilities of legally significant evidences of infringement. Unlike legal codes, codes of ethical conduct are based on morality. It is easier to associate departure from it, its certain measure and character with public reality. The specific character of many allegedly evident disciplinary and administrative offences on public service, brutality and disrespect towards civilians in particular, consists in that in many cases it is enormously complicated to prove public servant's guilt, what makes it impossible to hold to account and use the sanction of legal norm. Moral sanctions, including colleagues or directors' moral condemnation, taking into account public servant's moral qualities when

considering promotion, during appraisals etc., are more effective in this case than admonition or deprivation of bonuses. Additionally, one should not overestimate the capabilities of law, since some human actions by their nature cannot be the subject of effective legal regulation, and are regulated by traditional public and individual morality, which are quite efficient tools with account of that they are basic elements of person's behavior (Obolonskii, 2004).

According to Ukrainian literature, this issue has been most successively solved in the USA, where the network of "ethical" legislation functions. The "ethical" government institution, which is meant to regulate, inquire into and chase public servants' unethical actions, is established and functions in accordance with and based on this network. In the US, special procedures of solving "ethical" cases and even mechanisms of ethical norm enforcement are introduced (Rudakevych, 2007). Apart from that, there are many acts, codes and ethical regulations for public servants in the USA. What is more, every branch of government has its own code of ethical conduct and special authorities of control, information acquisition etc. Most of State governments and local governments have also own codes of ethical conduct for public servants, who are under their jurisdiction. One of the most well-known and oft-cited in the USA is "*Standards of Ethical Conduct for Employees of the Executive Branch*" (active since 1993), which, apart from standards of ethical conduct for public servants, consists of other rules concerning ethics of public service: declaration of income routine; rules regarding misfeasance; principles of Office of Government Ethics and other standards (Sorokina and Serohina, 2014).

The professional ethics for public servants in EU countries is considered as practical instrumentation of moral and legal regulation of official activity, which is focused on effective performance of professional role for the benefit of civilians and society. To its basic principles belong service, legitimacy and responsibility, political neutrality and loyalty, honesty, transparency, which are represented in model Codes of Conduct for Public Officials recommended by the Committee of Ministers of the Council of Europe. The complex ethical system ensures the satisfaction of requirements (Sorokina and Serohina, 2014).

It has to be pointed out that positive meaning of such professional codes of ethical conduct consists in that they draw attention of those, to whom they are applied, to their moral status. In addition to this, codes of professional conduct create certain idea of valuable content of moral theory (Kanke, 2003; Tsybulievskaia, 2014). Certainly, legal adoption of these codes does not mean that all ethical standards will be maintained in the public servants activity. At the same time, the fact of their adoption will surely encourage improvement of communication climate in public service, correction of negative traits of human character etc.

Second, the mechanism of satisfaction of moral requirements to the activity of public servants of all the levels, primarily to civil servants, can bring benefits only if these moral requirements and ideals become every official's personal conviction. It means that the sense of moral duty and responsibility in the service to state, society and person should be cultivated before entering the corresponding public service. Soon this sense should be upgraded in the position. To our mind, in order to ensure such a mechanism, it is necessary to pay attention to higher education in the field of public service, and in civil service in particular (Solaz-Portolés et al., 2016).

Indeed, higher education establishments, which are meant to cultivate principles of academic culture within the framework of education of professionals in the sphere of public service, should take considerable effort in the direction of future officials' moral education. With

that in mind, it is necessary to not only provide proper higher education establishments with highly skilled teaching staff and create conditions for fair and responsible treatment of governmental and municipal bodies to apprentices, but also to depict the prestige of public service, public servants status, who perform certain functions and tasks (Onishchenko et al., 2014; Frolova and Martynova, 2016).

Surely, high level of public servants' moral consciousness is not gotten forever with the higher education. It should always be improved. Therefore, there are corresponding practices in highly developed countries. For instance, in 1989 the United States Congress founded the Office of Government Ethics as a separate institution in the system of executive branch. The Office regularly organizes trainings for public servants, provide methodological recommendations concerning different questions, and arrange annual conferences on ethics (Sorokina and Serohina, 2014).

## CONCLUSIONS

The outlined ideas of legal and ethical dimension of public servants' activity, for sure, are not comprehensive and can be added with other thought, such as about permanent and professional character of public service performance, special requirements to public servants' status and principles of public service performance, which are conferred by the law, etc. However, even this quick overview of the problem of moral and legal provision of public service in the context of contemporary realities conclusively provides the evidence of the need to improve legal fundamentals of its functioning and development in our country, obligatory taking into consideration contemporary assets of not only legal doctrine, including general-theoretical one, but also of main advances of ethical thought.

The establishment of the effective public service institute in Ukraine is impossible without its moral (ethical) fulfillment, without public servants realization of moral fundamentals of any social unit functioning, including society at large. The necessity to ensure ethicality of public service is connected with and, in fact, comes out of its purpose to serve social and civil interests. Without proper ensuring of the ethicality of public service, it will lose its own identity and specificity that fundamentally differs it from other organizations, primarily commercial ones, which the public service always at some point has connections with, at least in terms of character of functions and tasks, which, according to legislation, are of public servants' responsibility. Otherwise, that is with the help of adoption of "*better laws*", public servants' activity will barely be effective, especially in conditions of the expansion of its connections to private sector and sphere of their sole discretion. It is ethicality of public service that is the key to the increase of civilians trust level to political rule in society, which is one of the fundamental values of democracy.

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This article was originally published in a Special Issue 1, entitled: "**Legal and Regulatory Implications of Ukrainian Scholars**", Edited by Prof. Anatoliy V. Kostruba & Dr. Qazi Muhammad Adnan Hye.