

УДК 351:342.5.477

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**PUBLIC ADMINISTRATION REFORM IN UKRAINE:  
MAIN OBJECTIVES, CURRENT STATUS AND  
PROBLEMS TO BE SOLVED**

**Annotation**

*This article presents the current status and the main objectives of the public administration reform in Ukraine. On the basis of the analysis of the Ukrainian legislation, best national and international experience, the proposals and the recommendations concerning possible ways of further modernization of the civil service in Ukraine are highlighted.*

**Key words:** *public administration reform, civil service, administrative reform, National Agency of Ukraine on Civil Service, law on civil service, civil servants, service in local self-government bodies.*

**Анотація**

*В статті аналізується сучасний стан і головні завдання реформування державного управління в Україні. На підставі аналізу українського законодавства, кращого національного і між-народного досвіду, представлені пропозиції і рекомендації з приводу можливих шляхів модернізації державної служби в Україні.*

**Ключові слова:** *реформа державного управління, державна служба, адміністративна реформа, Національне Агентство України з питань державної служби, закон про державну службу, державні службовці, служба в органах місцевого самоврядування*

**Аннотация**

*В статье анализируется текущее состояние и главные задачи реформирования государственного управления в Украине. На основании анализа украинского законодательства, лучшего национального и международного опыта, представлены предложения и рекомендации по поводу возможных путей модернизации государственной службы в Украине.*

**Ключевые слова:** *реформа государственного управления, государственная служба, административная реформа, Национальное Агентство Украины по вопросам государственной службы, закон о государственной службе, государственные служащие, служба в органах местного самоуправления*

**Introduction**

An administrative reform was initiated by the President of Ukraine V. Yanukovich in late 2010 in order to implement system changes and to modernize the model for public administration that would make the government accessible, transparent and efficient. Increasing the efficiency of public administration by reforming the civil service and the executive power is one of the directions of the strategic changes established by the Economic Reform Program of the President, titled «Wealthy Society, Competitive Economics, Effective State».

The start to the administrative reform was put by the Decree of the President of Ukraine from December 9, 2010, «On Optimizing the System of Central Executive Power Bodies» [5].

On July 18, 2011 by the Decree of the President of Ukraine № 769/2011 «Issues of Civil Service

Management in Ukraine» the National Agency of Ukraine on Civil Service (NAUCS) was created with the aim to ensure the implementation of state policy in the sphere of civil service as well as the implementation of public administration reform.

The main objectives of the ongoing administrative reform in Ukraine are the followings:

1) optimization of the system of the state executive bodies;

2) reinforcement of the institutional capacity of the Ukrainian civil service in order to enable to implement the Presidential Program of Economic Reforms for 2010-2014 «Prosperous Society, Competitive Economy, Effective State»;

3) professionalization of the Ukrainian civil service; in particular by reforming the National Academy of Public Administration under the Office of the President of Ukraine; development

of the Concept of reform of training system of civil servants, local self-government officials; preparation of a pilot training program for civil service leaders in the frames of Presidential staff reserve «New Elite of the Nation»;

4) realization of the activities aimed at the adaptation of civil service to the standards of the European Union, and implementation of institution building instruments in Ukraine;

5) increasing the quality of the administrative services that are delivered by the state bodies to the citizens.

#### **Analysis of recent research**

During all years of the independency of Ukraine a high attention was paid to issues of the administrative reform and creation of the modern democratic system of public administration as an important element of the modernization of the Ukrainian State. Thus, we could point out the following researchers and scientists who devoted their works to the issues of the modernization of public administration: O. Amosov, V. Bakumenko, M. Bilynska, V. Chmyga, M. Kanavets, Y. Kovbasiuk, V. Kuybida, N. Nyjnyk, M. Pukhtynskiy, O. Rudenko, T. Pakhomova, O. Povajniy, S. Serioguin, A. Tkachuk and others. At the same time the administrative (public administration) reform, which was started in 2010, will require additional attention and researches concerning the issues of the modernization of civil service.

#### **Statement of research objectives**

The main objective of this article is to present and to highlight the main problems of the public administration system in Ukraine as well as the possible ways to solve the existing problem, in particular in the framework of the implementation of the administrative reform which was started in December 2010 by the President of Ukraine.

#### **Results**

Nowadays the system of public administration is not perfect. We can identify the following problems, which create the main challenges for further development of civil service in Ukraine:

- lack of professional top managers who can ensure the effectiveness of state policy realization;
- low motivation of civil servants;
- non-competitive salary;
- high staff turnover in the civil service;
- ineffective legislation;
- the system of professional training and retraining of civil servants does not meet actual needs and requirements [10].

As of January 1, 2011, the civil servants staff was almost 280 thousand employees, of which 60 % were female and 40% – male.

– the main problem for the civil service is stability, the integrated indicator of which is high staff turnover;

– between 2007 and 2010, the staff turnover rate for the civil service was 15%;

– the issue of the staff stability, succession and preserving institutional memory is possibly the most pressing one for the public administration. High staff turnover has a very negative impact on the quality of administrative services provided;

– another problem is education and advanced training. Statistics shows that between 2004 and 2010, the share of civil servants, who had received advanced training, was around 15.1 %;

– at the same time, the importance of the tasks and functions carried out by civil servants requires continuous system-wide professional improvement, as well as new approaches to educational programs and the advanced training system as a whole [2].

In this regard, one of the main missions of the National Agency of Ukraine on Civil Service is to prepare the implementation of the new Law on Civil Service, which was approved by the Parliament of Ukraine in late 2011 and was signed by the President of Ukraine on 10 January 2012 [1].

The new Law should enter into force from the 1st January, 2012. The main reasons of the adoption of this Law are the following:

– irrelevancy of current Law «On Civil Service» (1993) to the actual needs;

– weak capacity of civil service to ensure effective implementation of tasks, discrepancy of professional level of civil servants to leading public administration practices;

– non-prestigious status of civil service;

– low efficiency of corruption prevention mechanism;

– insufficiency of quality service delivery;

– absence of a transparent mechanism for the adoption and promotion in the civil service;

– absence of definition of professional competency and evaluation of civil servants.

The purpose of the Law is to improve legal regulation of the civil service according to the European efficient governance principles and in connection with the system reforms initiated by the President of Ukraine [3].

Unlike in the previous version of the Law, the founding principles of the civil service now also

include the supremacy of law, political impartiality and work transparency.

The Law determines the foundations of the civil service, the terms for entering the civil service, the procedure for carrying out and leaving the civil service, the legal status of civil servants, and the grounds of their social and legal security [8].

The above tasks are consecutively resolved in the provisions of the Law that envisage creating legal grounds for:

- creating a politically neutral civil service institution;
- increasing the prestige level of the civil service;
- regulating the status of a civil servant;
- increasing the quality of services provided by civil servants;
- implementing a transparent mechanism for hiring to the civil service;
- implementing a transparent corruption prevention mechanism;
- creating conditions for transparent work of the state power bodies;
- increasing the level of social and material security of civil servants.

The Law contains a range of principal amendments, which include:

- clear division of administrative public law and private law;
- introduction of a system-wide post classification, depending on the nature and extent of official duties;
- unified hiring standards;
- new approaches to personnel management and work evaluation;
- amendments related to the professional training of civil servants, the remuneration of their labor, benefits and incentives, as well as disciplinary and material liability.

At the same time we can point out the following innovative aspects of the new version of the Law on Civil Service [2]:

1. The Scope of the New Law. The new Law regulates relations arising in connection with entering the civil service, carrying out and leaving civil service, and determines the legal status of a civil servant. Currently, approximately 270 thousand civil servants are employed in Ukraine.

The Law clearly separates the civil service from political activity. It determines an exhaustive list of people to whom the civil service legislation does not apply (such as political posts; employees of the prosecutor's office with assigned class

ranks; judges; auxiliary and support employees of the state power bodies; employees of the state-owned enterprises, institutions and organizations; military servicemen; private and superior corps of the internal affairs and other bodies with assigned special ranks).

This allows to prevent the status of a civil servant being given to officials whose posts do not correspond to the criteria determined by the Law, and not only to decrease the number of civil servant staff, but also to prevent its further unfounded growth. Furthermore, the society will be able to clearly identify the circle of civil servants.

2. Public Regulation of the Civil service. Separating the spheres for applying principles and norms of the public and private law is one of the key principles of the European administrative space, which has been implemented through the Law on Civil Service, which regulates all the issues of entering, carrying out and leaving civil service (such as the formalities required for hiring and dismissing, vacations, social guarantees, etc.).

The necessity for the Law to distinguish between carrying out civil service and normal labor activity is caused by the fact that civil servants, while carrying out the tasks and functions of the state, enjoy a special status, ensure the rights and freedoms of the citizens, and protect the public interests. Their own rights, however, are limited, as they are basically working under a public agreement with the state. Therefore, the specifics of their official relations must also be determined by a special law.

The lack of a unified set of reasons for leaving the civil service in practice leads to the litigations and various types of misuse, including that of some civil servants who abuse their vacation or sick leave time in an attempt to avoid facing liability.

3. The Principal New Classification of the Posts, which will allow establishing a logical and transparent system for remuneration of labor, based on the principle of equal pay for equal work, and to overcome unfair inter-post, inter-departmental and inter-regional gaps in the remuneration of civil servants.

In general, all civil servants will receive higher ranks than they currently have. It is envisaged that after the Law takes effect, the heads of staff or heads of state bodies will assign a rank to each civil servant according to the new post classification, while taking the previous rank into consideration according to the procedure to be developed by the National Agency of Ukraine on Civil Service.

4. The Competences' Profile of the Civil Service Posts. The efficiency of public administration depends on the degree to which civil servants (on the central as well as local levels) understand the purpose of the reforms and possess the appropriate competence required to implement them. Unlike the previous version, the Law now utilizes a competence-based approach to evaluating the ability of civil servants to carry out the tasks defined in their job description. The new concepts (terms) have been established on the legislative level: the civil service post professional competence profile (a comprehensive characteristic of a civil service post that defines the content of the tasks carried out at this post and lists the special knowledge, skills and aptitudes required for the civil servant to carry out his or her official duties); and the personal professional competence level (a characteristic of a person determined by his or her education and qualification level, work experience, and the level of mastery of special knowledge, skills and aptitudes).

The professional competences' profiles expand the criteria of the post as established by the qualification requirements, taking into consideration not only the educational and qualification level and the term of service, but also the work experience and the mastery of special knowledge, skills and aptitudes required to carry out the official duty efficiently.

The above characteristics are tools to be used in the various human resource management spheres, including hiring, promotion, human resource planning, professional training, advanced training, career planning and career development, and work appraisal. Competence profiles will, firstly and foremost, become the basis for professional development of the civil servants: from determining personal needs for education to improvement of educational programs and approaches to improve the qualification system as a whole.

The procedure for determining special requirements to the educational profile, work experience, and the requirements to the professional competence level will be determined and approved by the Order of the National Agency of Ukraine on Civil Service.

5. Management of the Civil Service. In order to separate political and managerial activities, the Law envisages that the position of the Head of Civil Service should be introduced in the state bodies. The Head of Civil Service manages the civil service in the state power body and reports

to the Head of the appropriate body on the issues of the civil service functioning in the staff as well as in the state power body system as a whole. The functions of the Head include organizing for competitive hiring to fill the available vacancies, appointing people to the civil service posts and dismissing them from such posts, assigning ranks, making decisions related to the incentives for the civil servants, etc.

6. Competitive Hiring for Civil Service Posts. The Law establishes unified procedures for hiring to the civil service, regardless of the status of the body and the post, except for the specifics of hiring to group I civil service posts (the posts of the heads and deputy heads of a state body; members of a state collegial body with the jurisdiction covering the entire territory of Ukraine and their staff; the power bodies of the Autonomous Republic of Crimea; heads and deputy heads of a local state administration).

The mechanisms for the open, transparent and objective competition are improved by considerably detailing and regulating such issues specifically on the legislative level. In particular, the envisaged new approach to the competition is examination (testing) and interviewing, rather than testing of the knowledge of the Constitution of Ukraine and the Laws of Ukraine «On Civil Service» and «On Principles of Corruption Prevention and Counteraction».

According to the Article 11 of the Law of Ukraine «On Principles of Corruption Prevention and Counteraction», a special inspection is carried out in respect of contenders for the posts authorized to carry out the functions of the state or local self-government, which includes the inspection of data provided personally by them. The decision to assign or refuse to assign a contender to a civil service post is made after the special inspection, within 30 calendar days after the information on the winner of the competition had been made public.

7. Protection of Civil Servants Against Unlawful Actions of Superiors. The current legislation envisages only one way for protecting a civil servant, namely, the Article 11 of the Law envisages the right of a civil servant to hold an official investigation in order to remove accusations or suspicions that are unfounded in the opinion of the civil servant; however, the superior's decision to hold an official investigation is not mandatory.

The new law regulates a procedure for protecting the civil servants, which lies in adhering to a clear action plan of a civil servant in case of

receiving an unlawful order or instruction from their superior.

Article 12 determines that in case of a suspicion as to the lawfulness of an instruction received from a superior, a civil servant has the right to demand the written confirmation of such instruction; after receiving the written confirmation, the civil servant is obligated to follow the instruction. By this, the Law protects the public administration system and the principle of a single authority. In this case, the civil servant is relieved of the liability if the instruction is found to be unlawful according to the established procedure, except for the cases of following clearly criminal orders. The liability for the consequences that arise as a result of such instruction being followed is borne by the person who gave the order.

An important factor regulating the right of the civil servant to have their official interests protected is the fact that the Law allows a civil servant to contest the unlawful actions of the Head of a state body in a specially authorized central executive power body on the civil service issues; the latter must hold an official investigation according to the established procedure, in order to establish the fact of violation of the rights established by the Law, or lack of such violation, and take appropriate measures within the work sphere of the authorized body.

Another factor that makes it impossible for a superior to make a subjective decision when determining or implementing the reaction measures is establishing a procedure for holding an official investigation. A commission of at least seven people is formed by the Head of a civil service body in the state power body of the Autonomous Republic of Crimea or the civil service staff. This prevents bias and allows an objective and comprehensive process of review and decision-making in respect of a civil servant.

Therefore, the new Law envisages mutual liability of the head of the body and the civil servant, and ensures the collegial decision-making in the issues of reaction and influence measures, as well as the adherence of all the parties to the rule of law.

8. Increasing the Level of Professional Competences of Civil Servants. The Law establishes a new approach to the education of the civil servants, namely, increasing the professional competence level of the civil servants, which is done in the appropriate higher educational institutions by training, retraining and advanced training within

the professional programs, specialized courses, themed seminars, training sessions, practical training, or other training forms, according to the procedure determined by the National Agency of Ukraine on Civil Service.

The National Academy of Public Administration under the President of Ukraine is established to be the principal higher educational institution in the system of training, retraining and advanced training of the professionals in the «Public Administration» major.

Increasing the professional competence level should be organized by the Head of civil service in the state body, within the allocated expenses.

Increasing the professional competence level of the civil servants is carried out as necessary, but at least once in three years (according to the previous version of the Law – once in 5 years).

The Law envisages that professional competence profiles are developed for different civil service posts, therefore making it necessary to train the specialists according to the competence profiles, to ensure that the civil servants receive the specialized knowledge, skills and aptitudes required to carry out their official duties.

9. Civil Servant Labor Remuneration System. According to the practices of many European countries, the main part (80-90 %) of the civil servant compensation is made up by the official salary. In such countries, the main principles of the labor remuneration and the minimum guaranteed level of the minimum official salary are established by the law as a social guarantee.

The new law establishes the minimum amount of the lowest official salary as at least two minimum wages (for a subgroup V-4 civil service post), as well as the main parameters for creating the official salary scheme. This is almost 4.5 (!) times higher than the current official salaries of the specialists, particularly in the regional state administrations.

The elaboration of the new version of the Law on Civil Service opened broader debates in the Ukrainian society concerning the priorities of State policy on the personal development in all sectors. In this regard, it is important to note that on the 1st of February, 2012 the President of Ukraine signed the Decree № 45/2012 adopting the State Human Resource Policy Strategy for 2012-2020 [7]. It should be noted that this is a critical step aimed at ensuring a goal-oriented, system-wide and consistent policy in this field. A new philosophy for implementing the state human resource policy was outlined, based on the

principles of professionalism and integrity and on the advantages of the «knowledge economy», where intellectual resources create more value than natural ones.

The purpose of the state human resource policy should be to supply all spheres of state functioning with qualified personnel. In the social aspect, an efficient human resource policy must provide for a highly developed level of the state's human resource potential and satisfy the public need for the professional self-actualization and worthwhile compensation [11].

In the economic aspect, implementing the State Human Resource Policy Strategy must supply all fields of the social economy with the qualified staff and increase the welfare of the population.

A lot of attention is devoted to improving the normative and legal base, in order to implement the novel approaches in the human resource management and to develop the system for managing human resources based on the principle of social dialogue and partnership of the state and business entities.

Furthermore, the Strategy envisages improving the system for forecasting the need for training qualified employees and specialists with higher education in all spheres of the state functioning, and for forming and ensuring the fulfillment of the state order for training of qualified employees and specialists with higher education, according to the social and economic development priorities determined by the state.

The document also contains a number of important tasks, particularly related to implementing a continuous professional training of staff and a mentoring system, and to guaranteeing the first employment for the young people. Accomplishing these tasks is aimed at core modernization of the staff potential.

The state human resource policy strategy will be implemented in three stages and entails the following: developing and implementing the state human resource policy; creating the «New National Elite» President's staff reserve; developing measures aimed at preventing any conflicts of interest of the people authorized to carry out the functions of the state and regulating a conflict of interest in case it arises; implementing the electronic governance; and creating a mechanism for attracting investments for the development of the human resource potential.

The implementation of the Strategy will be financed from the funds of the State Budget of

Ukraine, local budgets, and other sources not forbidden by the law.

The Cabinet of Ministers of Ukraine is charged with the task to prepare the action plan for the implementation of the provisions of the Strategy and submit it for approval to the President of Ukraine on an annual basis.

It is important to note that the role of the National Agency of Ukraine on Civil Service in the implementation of the public administration reform should be also increased. It also includes all the activities related to the approximation of the Ukrainian Civil Service to EU standards, in particular by the implementation of the European institutional development instruments (Twinning, TAEX, CIB etc) responsible for the coordination of all Twinning related activities [2].

At the same time the realization of the administrative reform should be stressed by an important anti-corruption campaign [6].

One of the main objectives of the ongoing administrative reform is the adaptation of the Ukrainian civil service to the European standards. In this regard, we have to underline that Ukraine is a leader in the implementation of Twinning instrument among ENPI countries. Thus, in 2011 Ukrainian pipeline included 52 projects on different stage of preparation and realization:

- 14 Twinning projects (civil aviation, electricity regulation, norms and standards (technical regulation), internal financial control, competition, space, accreditation, transport (road safety and police), statistics, police and food safety, public finance, justice) – completed;
- 6 Twinning projects (gas regulation, civil service, investments, monetary policy, environmental protection and housing infrastructure) – implementation stage;
- 9 Twinning projects (judicial reform, aviation, accreditation, statistics and communications, social police, civil service and internal affairs) – contract signature stage;
- 1 Twinning projects (intellectual rights) on stage of call for proposal;
- 6 projects (transport, migration, finance, space sphere, phyto-sanitary norms and education) – Twinning Fiche preparation;
- 7 Twinning projects on stage of TOR preparation and 9 Twinning projects on identification stage [2].

During 2006 – 2010 4910 Ukrainian civil servants took part in 209 TAIEX activities. As for the spheres TAIEX is mostly involved for

internal market issues, infrastructure. The total number of the completed TAIEX events provided from 2006 to 2010 is 2009. New framework of cooperation between Ukraine and the EU, in particular, the Association Agenda, as well as the future Association Agreement, impose a number of obligations on Ukraine. TAIEX an Twinning instruments could become not only an efficient tool of for implementation of the Ukraine commitments under Association Agreement between Ukraine and the EU, but also an effective instrument for the implementation of the public administration reform in Ukraine.

### Conclusions

Ukraine started an important administrative reform in December 2010. The new National Agency on Civil Service was created by the Decree of the President of Ukraine on the 18th of July, 2011 with the important mission to ensure modernization and further development of the civil service and the service in local self-government bodies. The new Law on Civil Service was adopted by the Verkhovna Rada in the end of 2011. It was signed by the President of Ukraine on the 10th of January, 2012. During the same period other important decisions aimed at ensuring the modernization of the civil service were adopted by the main Ukrainian stakeholders (President, Parliament, Government etc.), in particular the new State Human Resource Policy Strategy.

At the same time, the main priorities for the next period of the implementation of the public administration reform could be the following:

- development of leadership in the civil service;
- combating corruption and ensuring transparency in the activities of executive bodies;
- development and implementation of new models of public administration;
- ensuring competitiveness of civil service in the labor market and optimization of payment of civil servants;
- promoting development of professional services in local self-government authorities;
- development of the integrated infrastructure of information system regarding the civil service;
- introduction of the modern approaches to the HR management in the system of civil service;
- development of tools to assess professional qualification level of officials during the selection to civil service positions;
- bringing the civil service of Ukraine in accordance with EU standards;
- increasing the prestige of civil service in Ukraine;
- improvement and simplification of the system of delivery of administrative services to citizens, including via electronic form;
- further improvement of Ukrainian legislation on civil service, in particular by the development of the secondary legislation.

### References

1. Official web site of the President of Ukraine [www.president.gov.ua](http://www.president.gov.ua)
2. Official web site of the National Agency of Ukraine on Civil Service [www.nads.gov.ua](http://www.nads.gov.ua)
3. Official web site of the Verkhovna Rada of Ukraine [www.rada.gov.ua](http://www.rada.gov.ua)
4. Decree of the President of Ukraine dated from 01 February 2012 № 45/2012 of «On State Human Resource Policy Strategy for 2012-2020».
5. Decree of the President of Ukraine dated from 09 December 2010 «On optimizing the system of central executive power bodies».
6. Decree of the President of Ukraine dated from 25 January 2012 № 33/2012 «On Principles of Corruption Prevention».
7. Decree of the President of Ukraine dated from 18 July 2011 № 769/2011 «Issues of Civil Service Management in Ukraine».
8. Law of Ukraine on the Civil Service № 4050- VI dated from 17 November 2011.
9. Law of Ukraine on the Service in Local Self-Government Bodies dated from 07 June 2001 № 2493-III
10. Kuybida V., Tkachuk A., Tolkovanov V. «Experience on the implementation of good governance standards on local level in Ukraine and other European countries», Kyiv, «Kramar», 2010, 317 p.
11. Encyclopedia of Public Administration in 8 tomes. Group of authors headed by Y. Kovbasiuk. Kyiv, National Academy of Public Administration under the President of Ukraine. Tom 6 «Civil Service». 2011, 524 p.

