

DOI : 10.14746/pped.2015.3.5

УДК 35.07:005.591.1(477)

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GENESIS OF EXECUTIVE POWER REFORMING OR WHAT HINDERS UKRAINE TO CONDUCT REFORMS

Ukraine's ratification of international treaties, including the Agreement on Association between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, new challenges such as democratization of society, urgent reforms, fight against corruption, purification and renewal of power, and other factors necessitated the creation of developed and stable democracy, market economy and also realization of political, social, economic, legal and institutional reforms, gradual adaptation of Ukraine legislation to the EU standards. The research results of genesis of executive power reforming in Ukraine are disclosed. Some main strategic documents, the creation of legislation system and processes that accompany the reforms in public administration and civil service are analyzed in time. Methodological approaches to the implementation of a new integrated mechanism of public administration that can solve any problems on the way of creation of legal democratic country were determined, scientifically substantiated and suggested. The necessity of setting up of an independent national organ with appropriate powers at the time of the public administration and civil service reforming was proved. Affective, transparent, open and flexible structure of public administration should be established. It is determined that the effectiveness of the reformed system will depend primarily on the availability of a sufficient number of trained public servants who have the skills to take management decisions in specialty "Public management and administration." It requires urgent work within national legislation adopted to the EU legislation, new standards and syllabi with European experience and requirements for training of future specialists of appropriate levels of training (Bachelor, Master, PhD, Doctor of Science). Also marked that is also needed to take into con-

sideration the deficiency of personnel - retraining of civil servants and local government officials to improve their professional competence for the proper performance of their duties.

Keywords: public management and administration, public administration, complex mechanism of public administration, administrative reform, decentralization, administrative and procedural code, Twinning, TAIEX, SIGMA programs, reforms in public administration and civil service.

Jemeljanow W.M., Stojan O.J. Co przeszkadza Ukrainie realizować reformy albo geneza reformy władzy wykonawczej.

W artykule przedstawiono wyniki badań genezy reformy władzy wykonawczej na Ukrainie, przeanalizowano kilka istotnych dokumentów strategicznych, tworzone ustawodawstwo i procesy, które towarzyszą reformie administracji publicznej i służby cywilnej. Ustalono, naukowo uzasadniono i zaproponowano podejście metodologiczne do wdrożenia nowego zintegrowanego mechanizmu administracji publicznej, zdolnego do rozwiązywania aktualnych problemów i zadań w procesie tworzenia demokratycznego państwa prawnego.

Słowa kluczowe: zarządzanie publiczne i administrowanie, administracja publiczna, złożony mechanizm administracji publicznej, reforma administracyjna, decentralizacja, kodeks administracyjno-procesowy, program Twinning, TAIEX, SIGMA, reforma administracji publicznej i służby cywilnej.

Ємельянов В.М., Стоян О.Ю. Що заважає Україні проводити реформи або генеза реформи виконавчої влади

У статті висвітлено результати досліджень генези реформи виконавчої влади в Україні, проаналізовано у часі деякі головні стратегічні документи, створення нормативно-правової бази та процеси, що супроводжують реформування державного управління та державної служби. Визначено, науково обґрунтовано і запропоновано методологічні підходи до реалізації нового комплексного механізму публічного управління, спроможного вирішувати будь-які проблеми та завдання на шляху створення правової демократичної країни.

Ключові слова: публічне управління та адміністрування, публічна адміністрація, комплексний механізм публічного управління, адміністративна реформа, децентралізація, адміністративно-процедурний кодекс, програми Twinning, TAIEX, SIGMA, реформування державного управління та державної служби.

Емельянов В.М., Стоян А.Ю. Что мешает Украине проводить реформы или генезис реформы исполнительной власти

В статье отражены результаты исследований генезиса реформы исполнительной власти в Украине, проанализированы во времени некоторые главные стратегические документы, создание нормативно-правовой базы и процессы, сопровождающие реформирование государственного

Statement of research objectives

The aim of this article is an attempt to analyze some major strategic documents, creation of legal system and processes that accompany the reform of public administration and civil service. "... When we talk about the success or failure of reforms in Ukraine, treason or victory we must start from the main things... From the reform of government start all further reform, without it they are doomed to failure and braking ... Therefore, the first and absolutely necessary reform is the reform of the government, or rather the system of executive branch of government... Internal contradictions, closure and isolation from society, excessive centralization, the remains of "sectoral approach", complexity of procedures, lack of coordination, low efficiency and corruption will be and are the specific features of Ukrainian state machine." [2]

Results

In support of the key words " will be and are " we will cite an assessment made in a study of the executive authorities in 2009-2010. "...Executive branch of power in general and government in particular do not fulfill their purpose - do not encourage social development ... Politicians are appointed to ministerial posts with no idea of the necessary reforms, they care mostly about their access to resources ... Total corruption and populism, manual control and work in the "firefighting" unsystematic character and financial insecurity of many government decisions make qualitative changes in the country impossible [3, c.132].

Such assessment of executive power effectiveness is inherent in all the governments of Ukraine, especially over the past 10-15 years. Since independence the society has not received almost any systematic reform. That is why there are major positive expectations both in Ukraine and abroad for reforming the government in the conditions of a great distrust of the executive branch of government (less than 2% according to social researches).

The European Union will provide Ukraine with assistance, including financial, to reform the civil service, said the Head of the EU Delegation in Ukraine Jan Tombinski "...EU assisted and can assist to improve a new service. But Ukraine will get this help providing a new law on public service will be adopted. This law is to clearly define the areas of reforms, tasks and strategies to achieve its performance" [4].

Unfortunately, the society has not been officially informed of the consequences or any other results of the reforms initiated in Ukraine after the implementation of the Concept of administrative reform (1998). The principles of this concept were the basis for public administration reform in Ukraine. The ultimate goal of the process of changes was the creation of fundamentally new modern and effective system of governance, its new institutions based on the best practices of developed democracies. By the way, the European direction of our country development was defined by strategic documents before the year 2000.

Among topical questions, the implementation of which provided the achievement of the goal, were:

- introduction of new ideology of executive power and local government that ensure the implementation of the rights and freedoms of citizens, as well as providing of state and public services;
- organization of public service and service in local government based on new principles;
- forming of an effective organization of power at all organizational and legal levels of government etc.

State Commission was created for organizational providing with administrative reform.

In the absence of official information, only thanks to scientific researches of Ukrainian scientists, who monitored the process of the administrative reform, we may ascertain that the reform occurred without standard program and action plan. Time frameworks and stages of reform implementation, list and terms for the preparation of draft of normative and legal providing, the amount of material and financial support were not defined. But the main drawback of this reform was not democratic nature of the process of reform and the lack of support from civil society [5].

On June, 8 2004 the Civil Service Development Program for 2005-2010 years was adopted by the Resolution of the Cabinet of Ministers of Ukraine № 746 (with amendments No. 776 as of 03.09.2008). The aim of this Program is to define and implement the measures aimed at ensuring of the effectiveness of government and achievement of European social standards according to Decree of the President of Ukraine No. 278 as of 05.03.2004 "On Concept of adaptation of public service in Ukraine to EU standards". The document is in force as of 11/24/2015 and quite seriously and thoroughly prepared, but there is no information about the program implementation.

National Agency of Ukraine on Civil Service as a central body of executive branch of government was established on July 18, 2011 according to Decree of the President of Ukraine No.769/2011 through the reorganization of the Main Department of Civil Service of Ukraine. The Law of Ukraine "On State Service" No. 4050 – IV has been passed on 17th November this year.

Concept of the State Target Program of Civil Service development was passed on June, 27 2012 by the Resolution of the Cabinet of Ministers of Ukraine No. 411-p, the State Target Program of Civil Service development up to 2016 was ratified on May, 13 2013 by the Decree of the Cabinet of Ministers of Ukraine No. 350. These legal acts are not in force as of 11.24.2015. Any information about the implementation of this program is also absent despite the fact that from April 2004 according to Decree of Cabinet of Ministers of Ukraine No.485 Center for support of the civil service institutional development

for information, analytical and organizational support of public administration, strengthening the institutional ability of the civil service in Ukraine and its adaptation to EU standards was created in Ukraine. It is interesting that the mission of the Center is precisely the development of new legislation in the civil service, the introduction of the principles and procedures of public policy for the realization of the rights and freedoms of citizens of Ukraine. Where are all the achievements of the Centre and information about them?

Taking into consideration Ukraine's commitments to the EU member states and intentions of the legislative branch of power prescribed in Section VII, paragraph 2 of the Coalition Agreement "Decentralization and reform of public administration," the Cabinet of Ministers of Ukraine, approving the Strategy of reforms in public service and service in local government for the period until 2017 (hereinafter called the Strategy) in Resolution No. 227-r as of 03.18.2015, defined an integral part of strategic transformation "... approaching to European principles which are put forward to candidate countries for accession to the EU as well as the principles of "good governance" which are consolidated by the decision of the Council of Europe.

As it is defined in the Strategy, its purpose is "... to establish adequate conditions of implementation of the civil service and local government reformation in Ukraine in the medium term," and the main direction of its realization is harmonization of conformity of new Ukrainian legislation on civil service and service in local government to international and EU standards [6]. In other words the adoption of two new laws and some legal acts aimed at implementing these laws will create appropriate conditions for the implementation of the scheduled reform. Is not this just another formal unsystematic reform? The change of only two, even important laws without a radical change of administrative law, including the adoption of necessary Administrative Procedural Code of Ukraine will not approach the executive power of Ukraine to European standards. In fact, the Strategy does not even hint at the need to solve these problems. Paragraph 6 of the Action Plan regarding Strategy implementation provides the analysis of functions, authorities, structure and number of employees of central executive bodies during 2015-2017. After summarizing the information they should develop proposals concerning optimization of executive power and deregulation of state functions. In our opinion it emphasizes the lack of systematic work, including the involvement of scientists for nearly 20 years of all previous attempts to reform the Public Administration and Civil Service in Ukraine and the lack of specific proposals at the beginning of the new reform. The question as to developments of the National Agency of Ukraine on Civil Service as the national coordinator of introduction of European instruments for institutional building of Twinning, TAIEX, SIGMA. Sigma program provides support for public administration reforms in candidate countries for EU accession. Coordinating Council

on the organization and governance assessment baselines SIGMA was established according to the Resolution of the Cabinet of Ministers of Ukraine No. 186-r as of 05.04.2006 (hereinafter - Council).

Numerous meetings with the participation of the ministers and heads of other departments of Ukraine were conducted. There is no assessment and proposals which are given by the Council according to the Resolution of CMU No. 196-r as of 10.04.2006 and No. 1072-r as of 06.08.2008. SIGMA program in the sphere of modernization of public administration can be provided in the condition of the development and implementation of administrative reform.

In 2005 the European Commission decided to distribute the Twinning program in Ukraine which made possible to obtain professional systematic assistance in harmonization and adaptation of Civil Service to EU standards and requirements. One of the basic principles of Twinning projects is the requirement to envisage the elements of institutional and structural reform that after the project completion should operate independently. The implementation of Twinning facilities was approved by the Decree of the President of Ukraine as of 06.10.2005 No. 1424 and CMU No. 154 as of 07.02.2007 and other legal acts. Weren't any projects finished in that period?

In January 2012 Twinning project "Support of Civil Service in Ukraine" started. It provided European expert assistance in the preparation of quality legal acts, according to the best European practices, that are necessary for the implementation of the Law of Ukraine "On civil service". Another program SIB, with its proper implementation, could receive substantial support from the European Union for the public administration reform in Ukraine.

So we can conclude that either we have completed administration reform and there are concrete results, which should be elaborated or work involving programs Twinning, TAIEX, SIGMA has not given any results and we should start from the beginning, as it is actually written in paragraph 6 of the Action Plan.

In our opinion it is also necessary to pay attention to the necessity for proper coordination while determining the order and complexity of the reform in accordance with the Strategy for Sustainable Development "Ukraine-2020", approved by the Decree of the President of Ukraine No.5 as of 01.12.2015, including:

- a "vector of development", which defines the priority of the civil service reformation and optimization of public authorities;
- a "vector of responsibility" outlines the priority of decentralization and public administration reform.

The main purpose of the reform of public administration is building of a transparent system of governance, a professional institute of public service and ensuring of its effectiveness. As a result an effective, transparent, open

and flexible structure of public administration should be established. On this basis, having declared the departure from the centralized model of governance, public administration and civil service reforms should be done simultaneously and comprehensively, using European principles of rule of law, public service, public administration, international standards, regulating the procedures of interaction between public authorities and participants of legal relations. In this process, it is necessary to mention the draft of Administrative Procedural Code of Ukraine as of 11.14.2012 No. 11472. Despite the position of the public, the legal profession and experience of EU member states it has not been accepted yet.

Only at the legislative level, after defining the limits of administrative authority, procedure of citizen relations with the state and regulating many administrative procedures might ensure the protection of human rights and interests. All developed democratic countries have laws and codes of administrative procedures that limit the self-will of officials. The existing Law of Ukraine “On Administrative Services” is only the first positive step, but it does not solve the main problem – consolidation of human rights and freedoms, which is the main function of the state. State priority over a person, a citizen must be left in the past [7].

Therefore, taking into consideration all given the above, a comprehensive reform of public administration and civil service should define the forms, methods, principles of activities of all executive authorities and their officials. This should be the standards of national legislation with international experience and the real possibilities of their implementation. It is obvious that conducting the reform in this way we may mention in the Strategy comprehensive systemic change of legislation and steps to be taken in implementing Ukraine’s legislation to EU one. Perhaps the situation with reforms can radically change the National Council of reforms established by the Decree of the President of Ukraine as of 07.23.2014 No. 614. The National Council of reforms is a special consultative - advisory body under the President of Ukraine, its main task is to prepare proposals for strategic planning of reforms, their coordinated implementation and monitoring of its implementation.

We think it is necessary to note the position of the relevant Committee of the Verkhovna Rada of Ukraine on state construction, regional policy and local government, who took the logical position in civil service reforming. The draft of the Verkhovna Rada Decree No. 2552-a “On taking measures concerning civil service reform in Ukraine” was rejected while voting in the Verkhovna Rada of Ukraine and set fully correct tasks for the Government of Ukraine.

Why do you think it is necessary to talk about the complexity of public administration reform and civil service?

The answer is obvious. This reform will essentially create a new integrated mechanism of public administration that is able to solve any problems and tasks towards the creation of a democratic country. In this process the institute of the

civil service will always be primary due to the fact that in the administration, as in a social phenomenon, a person is a subject and object of administrative influence serving. The organs of the executive branch of power have specific staff, the majority of whom are civil servants who held post and perform their functional duties in accordance with the Law of Ukraine “On civil service”. By changing the legislative, implementing a series of coordinated measures on completion of reforms we will be able to get the institute and new organizational structure of public administration.

The world scientific thought and practice developed a peculiar concepts and categorical apparatus, including: public government and politics, public administration and public management, public service and public administration bodies, the principles of public administration etc. The essential distinction of the principles of public administration is that they are always secured by various legal acts and this gives them the necessary weight in the relationship between public authorities and citizens. It is necessary to improve current legislation, not only on the civil service and service in local government, but also the system of public administration and administrative law because of the lack in Ukrainian existing laws of these concepts, legal definitions, the role of which is very great. By the way it relates to the new draft legislations No. 2490-1 and No. 2489 (“On Civil Service” and “On service in local government”).

Ukrainian scientists-specialists in public administration, lawyers have sufficient theoretical and practical developments, including in administrative and legal science, knowledge on the legislation of EU member states, especially in the sphere of European principles of administrative law. They can provide the necessary counsel and a real help to the authorities in public administration and civil service reforming.

Among scientists, there is also reasoned viewpoint regarding the terms of the European model of public administration realization in Ukraine, in particular:

“... We need to understand that the European model of governance is the result of long-term development of European countries, permanent scientific researches, experiments and coordination of innovation with civil society.... We can achieve it after a long and deliberate Europeanization of our own public and state entity. Despite the attractiveness of the European model of governance, it has become clear that it can’t be implemented in the current situation of Ukraine, as society and the state lack two things: the necessary level of economic, political, social, institutional maturity and good health in these aspects”. [8]

Perhaps at this point the Strategy defines the goal as the creation of the appropriate conditions for implementing civil service reform in the medium term. That is, without specifying in time and creating only proper conditions.

And the following, writing out of European principles and the principles of “good governance” in our laws and legal acts is not a big problem for the

executors. There is no need to develop the Strategy and spend a lot of time on it. Our scientists say that: "... Classification of the main European principles of administrative law in the relationship between public administration and citizens is developed with the participation of experts from the Council of Europe (CoE) and published in the manual CoE "Administration and You" (1996). It provides isolation of two main groups of relation principles between public administration and citizens ... 1) material principles ... 2) procedural principles ... that helps to clearly understand their meaning and application features ... previously mentioned classification should be refined and expanded considering the latest researches conducted under the auspices Council of Europe and the EU aimed at creating of Modular code of good administration [9]

Perhaps nevertheless, the essence of the reforming process in paragraph 1 of main part of the Strategy of the civil service and local government reforming in Ukraine till 2017 "... An integral part of strategic reforms, initiated in Ukraine, is approaching of civil service and service in local government to the European principles which apply to candidate countries for accession to the EU as well as principles of good governance which are enshrined by the decision of the Council of Europe". It leads to questions:

- Will Ukraine get reform completed or will it be another "approaching"?
- What is the limit of this approaching? And how must it be formulated in legal documents?

Conclusions

Summing up, it is necessary to state that:

1. For more than 20 years of Ukraine independence the system of power has not been stabilized. Frequent changes of the Constitution of Ukraine and national laws and directions of internal and foreign politics made the country weaker. The lack of legal succession in processes of initiated reforms, including involving of European instruments of institutional development with changes of membership of the Verkhovna Rada of Ukraine, President of Ukraine and the Government of Ukraine, hinders or stops the sequential development of the state with developed and stable democracy, market economy, in which the rule of law, good government dominates, respect for the rights and freedoms of citizens ensures;

2. Ukraine definitely needs a radical change in the existing system of executive power, but establishment of a new system requires systematic and coordinated cooperation of Ukrainian and foreign experts in the theory and practice of management, administrative and private law, as well as civil society participation;

3. In conditions of uncompleted process of separating governance from political influence and politics from business, the executive branch of government can not be reformed by its own. Obviously we need an independent national

organ with appropriate powers at the period of reforms. World experience has such precedent;

4. Reforms always require time, significant additional financial and human resources, support in society and it requires reasoned action plans and appropriate proposals;

5. The low quality of civil servants proficiency and local government officials hinders the successful reforms. The effectiveness of the reformed system will depend primarily on the availability of a sufficient number of trained public servants who have the skills to take management decisions in specialty “Public management and administration.” It requires urgent work within national legislation adopted to the EU legislation, new standards and syllabi with European experience and requirements for training of future specialists of appropriate levels of training (Bachelor, Master, PhD, Doctor of Science). We should also take into consideration the deficiency of personnel - retraining of civil servants and local government officials to improve their professional competence for the proper performance of their duties. We hope that work on the creation of a National qualifier, the scope of training in the field of knowledge “Management and Administration” and specialty “Public Management and Administration” will be completed in Ukraine in a short period time according to the Strategy. It can ensure a high-quality training of specialists, taking into account the world experience on the principles of public administration and sustainable democracy. To complete our analysis, we consider the interview of European Commissioner for European Neighbourhood Policy Johannes Hahn to publishing house “European truth” 11.19.2015 to be appropriate in the part concerning civil service reform:

“... In fact – yes, civil service reform is very important ... Our state needs it, and we do plan to invest the most effort here ... But we will not finance it as long as there is no concept of reform. Ukrainian authorities must finally understand it. Until authorities in Kiev understand it, we will not reach the goal. We need concretization, which is not sufficient. And do not forget that there are well-qualified people in the civil service. This is exactly what we need to change the relations with Ukraine. In the past, we often financed promises. It is time to finance only results. Now there is not a civil service law, but the question is not only in it. Legislation is just a top. We must have a clear vision of where there is a need, where a problem. What are the threats to the success of the reform; what qualification requirements; what will happen in case of discharge of working people. All this should be in a reform concept.” [10].

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