

# Civic institution influence on formation of public service principles in Ukraine

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#### Abstract

The article contains considerations on public service principles in Ukraine, since a new approach is developed to define both fundamental principles of public authority activity and their content due to public power decentralization and deconcentration. The main idea of the article is to determine possible ways to improve interaction of civic institutions with the authorities; to define a unified concept of humanization and democratization of public administration and to stipulate specific recommendations for reforming the existing system of public service principles in Ukraine. During this research, general and special methods of scientific knowledge were used: systematic analysis, dialectical, formal-logical, structural-functional, and empirical methods. The authors concluded that public service principles in Ukraine were poorly represented. In order to increase the positive effect of new forms of society participation in public administration, the basis of the public service functioning in Ukraine should be learned. The article may be useful for relevant public administration subjects while creating a mechanism for a public administration system and, in particular, for involving citizens, since it is part of government strategies and development programs. It can also be useful for researchers of social and legal processes related to civil society development. The analysis of the digitalization process in the country and in the world helped to identify problems requiring special attention and to find solutions for implementation of project activities on the creation of a modern management structure. The novelty and originality of the research is in description of the basic principles of public service considering tendencies in the public administration development.

**Keywords:** principles, public service, civil society, Ukrainian civil society, institutional and legal foundations

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#### INTRODUCTION

Democratic models are believed to predominate in functioning of social and political institutions serving as an archetype of the society development for mediation of the humanistic type of power relations within the subordination system (On Promoting Civil Society Development in Ukraine 2016). The unconditional advantage of the management democratization is primarily in the long-term lag, flexible and ensured by effective feedback between citizens and authorities regarding a managed object. The role of public authority should be reconsidered because citizens have new social roles, increased legal awareness, and on the one hand the legal culture is formed (Van Gestel et al. 2019) and on the other, welfare in society should be ensured (Torres et al. 2019).

Foremost this affects the rethinking of public service principles in Ukraine. Transforming factors affect the public power functioning and give new characteristics. Among other things, this requires effective forms of participation of civic institutions to be integrated in the management of state affairs (Bila-Tiunova et al. 2019). Under political instability, imperfect current legislation, ineffective interaction of public authorities and civic institutions, international best practices seem to be urgent for attracting the public to the administration.

The concept "public service principles" (from Latin "Principium" - main, general, initial provisions) contains basic features, essential characteristics, content and meaning of public service. The public service principles are believed to be fundamental ideas, expressing objective laws and determining scientific directions for competence, tasks and functions of the public service, and public servants' powers. It should be noted that principles are considered to be a subjective concept, since they are formed with such essential factors as

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legal culture, experience, basic provisions of the legal system, and the legislation development level. The public service principles are stipulated at the national level in the Constitution of Ukraine: Articles 3, 17, 19 – responsibility of executive authorities (officials) for the assigned tasks before people and the state, Art. 6 – division of powers into legislative, executive and judicial, Art. 8 – the rule of law, Art. 17 – social protection of employees, Art. 24 – equal rights of citizens before the law, Art. 37 – political neutrality (Constitution of Ukraine, 1996) and article 3 of the Law "On public service" (On public service 2011). But, there is no single exhaustive list of regulatory principles. They are quite diverse, numerous and interdependent.

The essence of public service principles should be reassessed because of innovative technology for promoting management potential, integrated in order to develop a new style of resource provision for public authorities by highly professional leadership able to meet the population's needs by providing quality and effective management services. All this requires significant changes in the system of public service principles in Ukraine.

To examine the essence of the following public service principles seems to be reasonable: the law supremacy principle, the legality principle, the professionalism principle, the patriotism principle, the fairness principle, the efficiency principle, the principle of equal access to the civil service, the political impartiality principle, the transparency principle, the stability principle.

#### RESEARCH METHODOLOGY

#### **Research Methods**

The issue of reassessment of the principles of public power functioning in Ukraine seems to be relevant, however, currently there is no comprehensive study on the assessment of impact of the civic institutions development on basic public service principles or determination of the concept of public service principles at modern stage.

The public service principles are studied herein as a systematic tool for democratization processes in Ukraine. For consistent coverage of the issue, contextual blocks are allocated to characterize a homogeneous group of public relations regarding the definition of the public service principles, namely: theoretical and legal foundations of the principles of the rule of law, of professionalism, legality, patriotism, fairness, efficiency and others, and the influence of participation of civic institutions in public administration on reassessment of the essence of public service.

During the research, the following methods were used: theoretical, empirical, structural and systematic analysis, statistical and economic, expert evaluation, general scientific methodology.

Theoretical methods (analysis, synthesis) allowed to identify structural elements of management in the public service sphere, to consider chosen principles in their unity, to present a factor base for public service formation and development in Ukraine.

The mechanism of influence of the civic institutions functionality on the implementation of public service tools has been studied basing on the historical-logical method, the objective process of society development and progressive technologies. The induction method was used to summarize social facts in order to organize researches on perception of public servants by the society. Fundamental terms forming the basis of the requirements and recommendations on creation of effective public service were derived with the deduction method.

Measures for development of e-participation of citizens in public administration are based on empirical methods.

### **Research Stages**

The research was conducted in several stages:

**Stage 1:** Detailed analysis of the regulatory framework, statistics and research results followed up by determination of theoretical and practical aspects of the research; selection of the research issue, purpose and methods, development of the research plan;

**Stage 2:** Discovering of tendencies in the modern functioning of public service, determination of the main role of the development of information and communication technologies;

**Stage 3:** Analysis of the participation of civic institutions in public administration; this helped to identify reasons for the poor development of management competencies.

**Stage 4:** During the work on the system of public service management, aspects determining the essence of each principle of its functioning were highlighted.

**Stage 5:** Determination of principles of using electronic technologies as one element of citizens' accessibility to public authority activities; theoretical and practical conclusions, summarization and systematization of the final results.

#### **RESULTS AND DISCUSSION**

# The Law Supremacy Principle

Sometimes principles contradict each other like support of administration issues such as the electoral process and promotion of the majority principle; granting voice to minorities, inclusivity and freedom of opinion expression; free press and political culture (Chigudu 2019). These disagreements make the principle of the rule of law a priority among the principles of public service.

It should be noted that the principle of the rule of law is recently envisaged by legislative acts as the fundamental idea of the functioning of a certain public

**Table 1.** Interpretation of the rule of law by the European Convention for the Protection of Human Rights and Fundamental Freedoms according to the interpretation of the European Court of Human Rights

Law quality	The law should be accessible (unambiguous, clear, clear), adopted with the established procedure.
Protection against arbitrariness	An effective mechanism should be developed to ensure the individuals' rights and freedoms against unlawful encroachment by public authorities; a system of judicial control and judicial protection authorities should be established
	to provide objective, independent, impartial protection of the citizen in accordance with certain legal procedure.
Equal access to court	Everyone has equal rights to apply to an independent court, to a judicial remedy, to a lawsuit, to a lawful decision; no
	one has the right to interfere with the administration of justice.
Legal certainty	Court judgments should be binding, not abolished by any state authority except as prescribed by law.
Non-interference by the legislatur	re The legislative power represented by the Verkhovna Rada of Ukraine and other legal and natural persons shall not
with the administration of justice	interfere with the administration of justice in order to reach a certain judicial decision.

law institute (Law of Ukraine, 2005; On the Cabinet of Ministers of Ukraine 2014, On the Central Executive authorities 2011). At the same time, none of these legislative acts defines the concept of the rule of law, which indicates the ambiguity and complexity of this task.

In accordance with the Decision of the Constitutional Court (2004) of Ukraine of 02.11.2004, *the rule of law* is considered to be the supremacy of law in society. The rule of law requires the state to be involved into law-making and law-enforcement activities, in particular into laws containing, above all, the ideas of social justice, freedom, equality, etc. (Judgment of the Constitutional Court of Ukraine 2004).

The rule of law means that law is not limited to legislation as one of its forms, but also includes other social regulators, in particular norms of morality, traditions, customs and etc. which are legitimized by society and conditioned by the historically achieved cultural level of society. All these elements of law are united by quality, appropriate ideology of justice, an idea of law reflected in the Constitution of Ukraine. Such understanding of law gives no grounds for identifying it with a law that can sometimes be unjust, including the restriction of a person's freedom and equality. Justice is one of the basic principles of law, decisive in defining it as a regulator of public relations, as one of the universal dimensions of law. Justice is generally considered as a characteristic of law, particularly expressed in the equal legal scale of behavior and in the proportionality of legal responsibility for the offense committed. The European Court of Human Rights, acting on the basis of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention for the Protection of Human Rights and Fundamental Freedoms 1950), interprets the rule of law as shown in Table 1.

### The Legality Principle

The legality principle is opposed to personal tendencies and authoritarian power forms, which serve as an antidote to oligarchic power (Santos et al., 2019). In fact, the legality principle is believed to be a general principle of activity of state authorities. Among others this principle is a civil servant's oath to "... observe the Constitution and laws of Ukraine, implement them ..." (On the Civil Service 2015). The civil service legality is in a civil servant's liability to execute professional duties

within the state authority powers. In other words, a civil servant can only carry out those actions as prescribed by the current legislation.

Another important manifestation of the civil service legitimacy is that a civil servant makes decisions within the authority and in compliance with the normative legal acts. One of the instruments for avoidance of violation of this principle is the prediction on restrictions on public servants, which are aimed at ensuring the legitimacy of the activity of public authorities in general and of the civil service in particular. Civil servants are obliged to follow orders and instructions of their leaders, to ensure this principle to be implemented. Nevertheless its implementation would not be complete if the right to refuse to execute an illegal order was not specified in Art. 60 of the Constitution of Ukraine (Constitution of Ukraine 1996). This constitutional postulate concerns, first and foremost, public servants.

#### The Professionalism Principle

The "professionalism" term is defined through "competent, objective and impartial execution of duties". Thus, the professionalism principle is considered to be complex in its content and includes elements different in nature. Civil service is a professional activity, and the exercise of public power is a profession that requires high qualification, special skills, acquired and maintained as a result of continuing education.

In juridical literature, the term "professionalism" means a deep and comprehensive knowledge and practical skills in a particular area of public activity. The essence of the concept of "competence", in turn, lies in the knowledge of the activity subject, vocational education, skills in work, learning, and best practices. Thus, due to professionalism, a civil servant should be constantly ready to execute official powers; to know well the subject of own public service; to know own duties and rights, to fully and qualitatively fulfill functions and powers stipulated by the legislation and official regulations and instructions; to know rules and procedures of activity in state power authorities; to be generally and professionally trained; to know legal and moral-ethical norms in the public service.

Besides, professionalism implies the possibility of introducing new technologies in the activities of the public administration subjects. Governments around the world are creating an online infrastructure to become the main channel for interaction with citizens. This new,

globally dominant orthodoxy in policy-making is closely tied to design-thinking, which claims that digital technology addresses the dual crisis of state capacity and public trust (Moore 2019).

It is important that civil servants were in proper conditions to improve their professional qualifications and to properly perform their official duties, that is, to implement the professionalism principle. In this regard, state authorities and their heads are obliged: at the regulatory level to clearly define the competence of the state authority and its structural units; to approve job descriptions for each civil servant; to maintain the staff professionalism and competence; to create conditions for sustainable service activities; to provide fruitful cooperation in the state authorities of new and experienced civil servants.

In addition, public access to public data should be available to the public. Public administration should consider the important role of accessibility and convenient use of public services in order to address the key task of ensuring equal access for all population groups through appropriate channels. Content-related service should be aimed at increasing transparency, participation and collaboration, raising and forming of appropriate expectations among people (Wirtz et al. 2017). The gap between e-government and ordinary government is still being challenged by both theorists and practitioners. At this point, a compromise can be noticed, and the idea is: e-government uses a one-way communication protocol (from government to citizens or the business environment), while e-government uses a two-way communication protocol (Profiroiu et al. 2019).

# The Patriotism Principle

The patriotism principle follows from Art. 3 of the Constitution of Ukraine, which established that "An individual, his life and health, honour and dignity, inviolability and security shall be recognized in Ukraine as the highest social value" (Constitution of Ukraine 1996). Patriotism is love, devotion and faithful service to the Ukrainian people. First of all, it is seen in the text of the Oath of a civil servant "... to faithfully serve the Ukrainian people, respect and protect the rights, freedoms and legitimate interests of man and citizen, the honor of the state ...". This means that all public service activities should be aimed at interests of each citizen and the whole nation. To serve the people' interests can be only in a legal regime of relations between state authorities and citizens which guarantees a person's rights and freedoms and reliable legal protection in case of violation. The public service shall ensure the implementation of the legal regime. One of the elements of such legal regime of relations is administrative services provided to citizens by executive authorities. This indicates that the state, through government officials, serves people to exercise their right or legitimate interest.

#### The Fairness Principle

The fairness principle is the newest for public service and literally means moral quality and goodness. However, its semantic charge is much wider and in a generalized way expressed through: patriotism, respectfulness, conscientiousness, diligence, discipline, dignity, gratitude, mercy, sincerity, responsibility. With regard to public service and public servants, this principle, first of all, means that the public servants' activity is to serve the public interests. So the fairness can be defined as the focus of public servants' actions solely on protecting the public interest and his refusal of private interests while executing official powers.

The fairness principle is reflected in the Oath of a civil servant. The fairness principle is determined by the need to eradicate a conflict of interest and corruption signs from the public service sphere (On Prevention of corruption 2014).

# The Efficiency Principle

The efficiency principle is also new for the public service. Its essence is determined by the article - "the rational and efficient use of resources to achieve the goals of public policy." It should be noted that efficiency is a managerial concept that correlates the result of an activity with its intended goals. There are several types of effectiveness: functional - calculated as the ratio of the result to the goals; economic (cost-based) - evaluates the result in terms of the optimal use of resources and the result-cost ratio: social - reveals the results of the public administration system functioning according to the basic needs of society. The effectiveness of public administration is the achievement of a certain social goal as a result of the activity of an authority, its structural units or officers with the great saving of social labor (Bilorusov 2005). During assessment effectiveness and efficiency of public administration, goals practically realized should be compared with goals determined by society; achieved goals with the results; results with public needs; public expenditures with government results: government capabilities with their real use degree. In the theory of public service, the public service effectiveness is generally accepted as characteristics of managerial actions, decisions, behavior, reflecting the results of how these actions lead to the desired result (Kivalov and White-Tiunova 2009). Evaluation of certain public service actions and their effectiveness depends primarily on the evaluation criteria as shown in Fig. 1.

# Effectiveness criteria

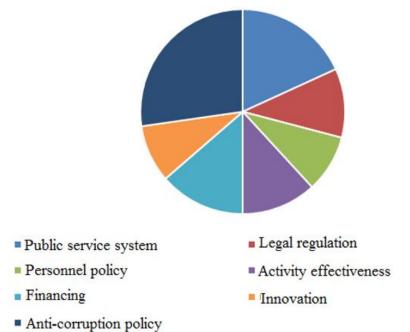


Fig. 1. Significance of criteria of public service effectiveness

# The Political Impartiality Principle

The previous law of Ukraine "On Civil service" did not provide for the political impartiality principle. However some laws governing certain types of public service provide for the non-partisanship principle (On the Security Service of Ukraine 1992, On State Secrets 1994, On the National Police 2015). The political impartiality principle of the public service in general, and of a public servant in particular, is determined by Article 35 (freedom of conscience) and 36 (freedom of association into political parties and organizations) of the Constitution of Ukraine. In the commented Law, the political impartiality principle was first envisaged for state administrative employees and aimed at ensuring the efficiency and effectiveness of public service (On the Civil Service 2015).

Political impartiality is the execution by a public servant of the official powers without taking into account:

- a) political motives or circumstances not related to the subject of the official activity;
  - b) personal affection or hostility to any person;
- c) personal political views or beliefs. A public servant should avoid demonstrating his political convictions or opinions.

#### The Stability Principle

The principle of stability of public service is new for the public service institution. The essence of this principle is that:

- 1) civil servants are appointed to public service positions indefinitely (On the Civil Service 2015);
- 2) civil service personnel are independent of changes in the political leadership of the state and state authorities. For this purpose, the structure of the

ministries provides for a deputy minister position - the head of the ministry apparatus, who is a civil servant supervising the civil servants of the ministry. The resignation of the minister does not lead to resignation of civil servants of the ministry (On the Central Executive authorities 2011).

A change in the structure of a state authority or of the heads of the state service and direct supervisors does not mean resignation of civil servants at the initiative of newly appointed leaders.

# International Experience in Determining the Public Service Principles

Considering the foreign experience in determining the public service principles shows that, depending on their legislative regulation, countries should be divided into three groups, those where:

- a) the principles are clearly defined by the law on civil service;
- b) the principles are not clearly defined, but they are provided as legal provisions in various articles of the special law;
- c) the principles of the law on public service are not defined at all.

Similarly to the Law of Ukraine "On Civil Service", a clear list of public service principles is stipulated in Art. 18 of the Law of Bulgaria "On a Public Servant", Art. 1 Code of Civil Servants of Greece, Art. 3 of the Law of Lithuania "On Civil Service". So, Article 18 of the Bulgarian Law determines that civil service is based on the principles of law, loyalty, responsibility, stability, political neutrality and hierarchical subordination. Article 1 of the Code of Greece, entitled "Principles of the Code of Civil Servants", defines that "The objective of the

present Code is to establish unified and universal rules governing the hiring and status of civil administrative servants on the basis of the principles of meritocracy and social solidarity, and the safeguarding of the maximum possible productivity in their word." The most comprehensive and clearly defined principles are in Art. 3 "The Basic Principles of the Ethics of Public Service and Public Servants" of the Law of Latvia, according to which the principles of civil service are: the supremacy of law, equality, loyalty, political neutrality, transparency, responsibility for decisions made, career development, and the principles of ethics of public servants are: respect for man and the state, justice, impartiality, decency, objectivity, responsibility, publicity, exemplarity.

Somehow veiledly the French Law "On rights and duties of employees" shows an example of defining the public service principles. According to Art. 6, no distinction, direct or indirect, among employees is allowed depending on gender. However, the article does not indicate that this provision is the principle of service. At the same time, clause 4 of the article stipulates that "no measure, especially in the selection, appointment, professional development, assessment, discipline, promotion can be applied to an employee on the basis of the actions directed against, contrary to the principles set out in clause 1 of the article". Only in this way the law determines that the provision specified in clause 6 is the service principle in France. The public service principles are regulated similarly in: a) Latvia: Art. 3 of the Law of Latvia "On State Civil Service" stipulates that "the purpose of this law is to determine the legal status of the civil service, loyal to the government, professional, politically neutral, which guarantees the rule of law and stability, effective and transparent functioning of the public administration"; b) Poland: Art. 1 of the Law of Poland "In order to ensure professional, reliable, impartial and politically neutral execution of tasks of the State, the Civil Service is hereby being established, and the rules of access thereto, principles of its organization, functioning and development are being defined."

In such countries as the Czech Republic, Estonia, Germany, the public service principles are not clearly and specifically defined, and the service organization and functioning is carried out on the basis of generally accepted principles of the functioning of state authorities. (Tymoshchuk and Shkolyk 2007).

# **CONCLUSION**

Formal determination of the public service principles without using by the public administration subjects in the practice adversely affects the mechanism of administrative and legal management in general. The

authors hereof determined the fundamental principles to be followed by public servants, namely:

- the law supremacy principle, focused upon the priority of human rights and freedoms of citizens in accordance with the Constitution of Ukraine, determining the content and direction of the civil servants duties while performing the state tasks and functions;
- the legality principle, which means a civil servant's duty to act only within the limits of powers in the manner prescribed by the Constitution and laws of Ukraine:
- the professionalism principle, which means competent, objective and impeccable execution of official duties, drilling by civil servants of their professional competence, fluency in the national language and, if any, regional or national minority language, as prescribed by law;
- the patriotism principle, which means devotion and faithful service to the Ukrainian people;
- the fairness principle, which means the focus of public servants' actions upon protection of public interests and refusal from private interest prevailing at execution of the powers;
- the efficiency principle, which means the rational and effective use of resources to achieve state policy goals;
- the principle of equal access to the civil service, which means prohibition of any discrimination, absence of unjustified restrictions or granting of unjustified benefits to certain categories of citizens when public service entering and passing;
- the political impartiality principle, which means exclusion of the politics influence upon civil servants' actions and decisions, as well as refraining from demonstration of own attitude to political parties, own political views while executing their duties;
- the transparency principle, which means openness to information on civil servants' activities, except in cases determined by the Constitution and laws of Ukraine;
- the stability principle, which means assignment of civil servants for indefinite duration, except in cases determined by law, independence of the civil service personnel from changes in the state political leadership and public authorities.

The research is believed to be relevant both theoretically for those studying Public Service, Constitutional Law, Administrative Law, Public Administration disciplines and practically for public servants. Moreover, every citizen should know how the public administration is supposed to function, since any violation of the activity principles can be appealed in court.

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