



CONCEPTUAL FOUNDATIONS OF MODELLING OF THE INSTITUTION OF PUBLIC SERVICE

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Summary

The article examines conceptual approaches to the formation of a model of public service in a democratic society, formation of public service in modern conditions of social reforms. The article analyzes scientific concepts of political governance as a basis for modeling of the institution of public service and presents the author's views on the process.

Key words: public service, public management, legal state, democracy, bodies of executive power, bodies of local government.

Аннотация

В статье рассматриваются концептуальные подходы к формированию модели государственной службы в демократическом обществе, формированию государственной службы в современных условиях социальных реформ. Анализируются научные концепции политического управления в качестве основы для моделирования института государственной службы и представлены взгляды автора на этот процесс.

Ключевые слова: государственная служба, государственное управление, правовое государство, демократия, органы исполнительной власти, органы местного самоуправления.

Definition of the problem.

Democracy is a type of political regime that forms a favorable environment for an effective public management system. Ideally, a democratic regime is able to regulate social relations optimally and has great potential for development. Attractive feature of democracy is that it is too flexible. Without addressing to its characteristics on the essential level (the election of representative bodies, observance of the rights and freedoms of citizens, provision of economic freedoms, lack of state intervention in the private lives of citizens), it can be transformed virtually into any of the known forms of government: monarchy, parliamentary, presidential, semi-presidential republic. One of the fundamental problems of modern democracy which is becoming more evident is the lack of efficiency of systems of public management of modern states, their insufficient high ability to solve acute economic and social contradictions that arise in communities of different levels. That is why in recent years the special attention of researchers is attracted to the problems of formation and functioning of effective systems of public political control in modern society.

The analysis of publications initiating the clarification of this problem. Discussion about interactions between the government and other elements of the system of executive power, the political institutions – parliament, parties, and pressure groups – continues

to the present time. The impression created is that political decisions are taken by ministers individually. This view is supported by the liberal-democratic constitutional theory: the government together with the parliament determines the policy (makes a decision), and the system of public management is implementing it (takes decision). Theoretically it was formulated and proved by two outstanding scientists in the late XIX – early XX century: by an American V. Wilson (principle of political-administrative dichotomy) and a German Max Weber (model of rational bureaucracy) [11, 12]. Simultaneously M. Weber in his work “Politics as a vocation” introduced the idea of differentiation between policy and management (administration) into the theory of social sciences. He believed that “... the true profession of an official must not be politics. He has to “manage”, first of all, impartially” [1, p. 666]. Sine ira et studio – without anger and partiality he has to do things ... but does not have to fight. Due to the fact that adoption of any point, struggle, passion are essential elements of the politician, especially, the political leader [1].

In fact, nowadays no one evaluates this view as well-justified. Scientists working in the various social sciences, debate mostly not about complete separation of political from managerial, but about the correlation of political and managerial process in the process of public management.

Scientists of different specialties conduct interdisciplinary search for the model or models of management that will allow, keeping benefits of democracy, simultaneously to solve the problem of creating a rational structure and effective management model that meets requirements of the XXI century, of sustainable development and social justice.

The aim of the article is the attempt of the author to introduce a proper approach to understand modelling of public service on the basis of the methodological analysis and given certain concepts of political governance.

Presentation of the basic material. In the process of public management it is necessary to take into account the fact that managed systems are not passive. They have the ability of self-organization, so there only such forms and structures may arise that meet their own trends, that are potentially laid there: managed objects should not impose strange, not inherited forms of organization and ways of development. Effective control of self-organization implies compulsory knowledge of internal trends, evolutionary processes, that are occurring in the systems and the implementation of such actions that help to display the managed systems on their own path of evolution.

However, regardless any approach, the problem of relationship between public service and political power remains, which is one of the fundamental



issues of modern science. Institutional and legal framework of public service, the principles of political neutrality and the ways of interaction between political power, public service and society in different political systems is the basis of formation of various models of public service.

First of all, public service is a service in the public authorities. Since the state represented by its institutions, is designed to represent and protect the common interests of all members of society, it can be argued that the main purpose of public service is the implementation of public interests and the achievements of socially significant results. Unfortunately, this situation is not reflected in the legislative definition of the concept. According to paragraph 15 of article 3 of the Code of administrative procedure of Ukraine, public service is the activity on state political positions, professional activity of judges, prosecutors, military service, alternative (non-military) service, diplomatic service, other state service, service in bodies of the Autonomous Republic of Crimea, bodies of local government [3]. It is obvious, that definition is introduced in the legislation only to ensure the possibility of resolving of public-legal disputes that occur during conducting the public service in accordance with the Code and it has no defining meaning.

In the legal literature the service is divided into public (which is regulated by public law, in particular, by norms of laws "About state service", "On service in bodies of local government" and private (which is regulated by the labor law).

Public service is a key element of power, regardless of the ruling political regime, form of government and territorial structure. It operates in almost all spheres (political, economic and socio-cultural), providing a mechanism of social control.

The phenomenon of public service has traditionally attracted the attention of scientists. Unlike the administrative science, that studies the internal problems of development of civil service and administrative aspects of the activities of the state, political science, using new approaches, focuses primarily on the "external dimension" of the service, analyzing the broader socio-political context. One of the central problems in this context is the interaction of the

political sphere and the bureaucracy, politicians and civil servants.

With the advent of the state and the differentiation of social structures into the managers and the managed, there is a further structuring of a management model. It is due to the presence of two basic features of the political governance, associated firstly with the key decision-making and, secondly, with their implementation: activities of state authorities and management is subdivided into politicians and administrators (i.e., service). In this case the primary (political) objectives are formed in politics, in their development, during the search of the correct way the involved administrative apparatus takes an active participation. It also creates a set of tools that allow to implement political decisions.

The differentiation generates the most important social problem – the ratio of political and administrative management, the definition of "borders" of intervention of the political elite-into solution of administrative issues and bureaucracy-into political activity [2, p. 66].

In a democratic regime, this problem is transformed into specific task-to ensure, on the one hand, the effective continuous operation of the state apparatus regardless of changing political parties and blocs, that are in power, and on the other hand – to realize the program of political forces that won the elections.

The replacement of political positions is based on competition during the elections, and, of administrative ones – only on the basis of evaluation of professional qualities (through open competition and mechanisms of career). Thus, an opened, included in the field of political competition, elite is formed, and professional, independent from the political situation, apparatus is designed to implement programs of political forces that won the elections, basing on the principle of loyalty. We note that practical implementation of this concept has contributed to create a professional bureaucracy in the West, which plays an important optimizing and stabilizing role in the system of public management and to realize the declared right of equal access to the service in the constitutions of democratic countries.

Criticism of the concept of the dichotomy of policy and service that is based on the study of actual managerial

practice, dispels the myth of the "rational bureaucracy", reacting to political impulses implicitly, following the principle of loyalty [10]. On the basis of empirical studies it was found that through a number of mechanisms (service providing advice and information, administrative regulation, a service initiative), public service and bureaucracy "are introduced in the policy". Due to involvement in the formation and implementation of public policy, employees are allowed not only to participate in political decision-making, but also to act as an independent political factor – to pursue their own political line. This specific power of the administrative apparatus, which, generally, is regarded negatively, the researchers noted in the XIX – early XX century. L.B. Hill, the publisher of the above work introduces the first opening words G. Laski from his introduction to the article "Bureaucracy" in the "Encyclopedia of social sciences": "the term" bureaucracy "is generally used in relation to the management system that is in the hands of state officials in the degree, that their power threatens liberty and rights of citizens" [10, p. 2].

Modern western political regimes have generally found the effective supportive mechanisms, not the classic dichotomy of "politics-service", but a situation when the state apparatus being involved in the political process is still accountable to both the political class and society. During structural reforms "political pressure" on public service is increased: serious reforms were implemented, in particular, during the "neoconservative revolution" [10, p. 15].

In modern domestic scientific and educational literature the well-known approaches of foreign authors to the modeling of public service are introduced:

- a selection of traditional, modern, transient models (acc. to S. Eisenstadt);
- the definition of a combination model of "party membership" and "political engagement" of public service as the most common in countries that are developing (acc. to F. Riggs);
- identification of principles of interaction of public service and political power on the basis of ideal, real and convergent models (acc. to George Eberbach);
- structure formation of a public service within the formal-constitutional, conformal-constitutional, political-



administrative and theoretical models (acc. to V. Niskanen).

These models may be used in the process of analyzing the current state systems of public services in different groups of countries, however, in the beginning of the XXI century, the states faced to the new challenges that require adjustments to the previously developed approaches.

The most relevant of all the above models is the model of S. Eisenstadt [6], the outstanding expert in the theory of rational bureaucracy of M. Weber. Eisenstadt includes the problems of modeling the public service into an extremely broad context of civilized and modernized development [8]. That's Eisenstadt, who emphasizes three ways of interaction between "bureaucrats" and "politicians" in terms of traditional, modern and transitional societies [7, p. 9]. The features of each of these models are present in the modern state service of Ukraine.

Features of the traditional model define the orientation for the government, and more specifically, to the President, as the government has no real power. The injustice of an official to political power is often rewarded by his outrage against society. There is no corporatism, it has no internal autonomy. In fact, modern Ukrainian official has no sufficient guarantees of his career, and this person becomes, as a result, the private servant of his superior. In these conditions, the formation of state service system is difficult, and development of this institute in the paradigm of public service is, more than likely, impossible.

It can't be denied completely, however, the fact that the gradual introduction into Ukrainian state service of the individual elements of the modernization model: in general, the commitment of employees to the interests of society, it is evident as manifest of more active and creative public moods, in the pursuit of specific outcome. The current legislation, though, which is not implemented completely in practice, promotes legal and social protection of employees, enhances their autonomy from political power. The formation of a more systematic legal framework provides employees with control over the budget of the state institutions, there are various forms of democratic control "from bottom". The process is extremely

conflict and difficult, but the planned changes should be noted.

The above facts do not exclude the fact that, the features of a transient model – "bureaucracy, self-referential" are most clearly presented in the state service of Ukraine at the current period, which is characterized by weak political and legal control over officials that are already out of the supervision of an authoritarian state, but are not controlled by a strong civil society and a democratic state. Senior officials operate in these conditions taking into account their own interests only, recruiting has only patronizing feature, formality and red-type ceremony dominate.

The peculiarity of today's Ukrainian post-totalitarian statehood, regarding the activities of the state apparatus, lies in the fact that very rigid and formal rules disappear, which were regulating its social activity, though they did not deny the ways of the shadow social behavior of officials, but they were limited meaningfully.

According to researchers, the disappearance of the "party-state" nomenclative organization, retrogression of the former administrative ethics, underdevelopment of civil society, the immaturity of the modern political class led to the transformation of the bureaucracy into "quasi-ruling class", where internal interactions with society are based on client links and relations [2, p. 58].

Conclusion. The formation of another political model of public management in Ukraine is very compounded due to the political, economic and social conditions that prevailed in the country. There is an evident necessity of commitment to modern administrative reform, to future development model of the Ukrainian public service. In strategic terms, it requires the provision of the minimum essential characteristics of rationality:

1) providing formal legal independence from politics, which contributes to the entry into force of the new Law of Ukraine "On civil service" [4], legal and social protection of employees in the context of strict observance of the law;

2) warrant prospects of promotion, high level of discipline and quality of management;

3) control over the activities of managers by the political class and civil society;

4) limitation of protectionism in policy of HR allocation and promotion.

Abidance by all these four components will lead to the formation of the realistic modern model of public service.

Being rationally organized on the basis of the political model, professional public service in Ukraine is the topmost condition and the means of implementation of human rights, including the right to participate in public management.

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ПРАВОВОЕ РЕГУЛИРОВАНИЕ СОЗДАНИЯ И ФУНКЦИОНИРОВАНИЯ ГОСУДАРСТВЕННОГО ЗЕМЕЛЬНОГО БАНКА В УКРАИНЕ

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Summary

The legal bases of creation and activities of the State Land Bank of Ukraine are discussed in the article. Is determined by its function. The article also takes into account theoretical developments and suggestions on alienation of land and other real estate facilities, placed on them, for public purposes or for reasons of social necessity, the results of which complement the system of organizational and the legal means of functioning the State Land Bank of Ukraine. The study substantiates the author's own suggestions for improvement of the current land legislation. It is proved that the land legislation requires fundamental changes, especially the one side of the question, with regard of functioning the State Land Bank of Ukraine. In especially proposed adoption of the Law "About the State Land Bank", which would define the legal basis, the order of creation and activity of the State Land Bank of Ukraine.

Key words: State Land Bank, the indemnification to the owners of land, land users, land tenants, market of agricultural land, function.

Аннотация

В статье рассматриваются правовые основы создания и деятельности Государственного земельного банка Украины. Определяются его функции. Также учитываются теоретические разработки и предложения по отчуждению земельных участков, других объектов недвижимого имущества, размещённых на них, которые находятся в частной собственности, для общественных потребностей или с мотивов общественной необходимости, результаты которых дополняют систему организационно-правовых средств функционирования Государственного земельного банка Украины. В ходе исследования обосновываются собственные предложения автора по усовершенствованию действующего земельного законодательства, которое требует кардинальных изменений, часть которых касается также вопроса создания и функционирования Государственного земельного банка Украины. В частности, предлагается принятие соответствующего Закона Украины «О Государственном земельном банке», который определил бы правовые основы, порядок создания и деятельности Государственного земельного банка Украины.

Ключевые слова: Государственный земельный банк, возмещение убытков, собственники земельных участков, землепользователи, арендаторы, рынок земель сельскохозяйственного назначения, функции.

Постановка проблемы. Государственное регулирование оборота земельных ресурсов является конституционным правом и обязанностью для Украины, что и отмечает Земельный кодекс Украины. Такое регулирование земельных отношений предусматривает создание организованного рынка земли, формирование инфраструктуры, прежде всего Государственного земельного банка. При этом в условиях несформированного рынка основной функцией Государственного земельного банка должно стать государственное регулирование рынка земли. В настоящее время в Украине существует ряд объективных предпосылок

для внедрения такой модели деятельности Государственного земельного банка Украины как государственного регулятора на рынке земель сельскохозяйственного назначения. Все это обусловило потребность дальнейшего исследования вопросов, связанных с созданием и функционированием его инфраструктуры.

Актуальность темы. Проблемами правового регулирования создания и функционирования Государственного земельного банка Украины занимались такие видные ученые, как И.И. Каракаш, П.Ф. Кулинич, В.В. Носик, А.Н. Стативка, В.Ю. Уркевич, В.И. Федорович, М.В. Шульга. Однако, несмо-