

Definition of the Concept of Public Service in the Modern Administrative Law

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To cite this article

Viktoriia Halai. Definition of the Concept of Public Service in the Modern Administrative Law. *International Journal of Service Science, Management and Engineering*. Vol. 6, No. 2, 2019, pp. 8-13.

Received: June 23, 2019; **Accepted:** August 5, 2019; **Published:** August 22, 2019

Abstract

In the article the transitional state of understanding of the category of public service in modern administrative law is analyzed. From the stable understanding of it as the state service and activities of various categories of public servants, the emergence of works that formulate a new approach to public service to lack of sustainable vision, what is meant by this category and whether to identify the parallel existing categories of state service and public service. The purpose of the article is to study the distinction between the categories "state service" and "public service", both of which are considered as generalizing for the whole range of people who realize the tasks and functions of the state, and formulate own vision of the category "public service". The findings of the article indicate that the concept of "public service" is capable of combining various groups of public servants, not only the category of state service and mentally demonstrate the systemic change of interrelated categories (from "state administration (public administration) / state service" to "public administration / public service"). In other words, this pair of concepts looks more contemporary, corresponds to the views of the less traditionalist scientific school of the specialties of Ukrainian "public administration", and also corresponds to the approaches of sources of developed countries of the world, therefore the author's vision of terminology looks as the most optimal in accordance with the modern role, in general - public administration, and at the level of employees who carry it out - the public service. Describing the approach to consolidating the notion of public service at the normative legal level, the author noted the existence of a group of laws on service (state service, service in bodies of local self-government, militarized public service), which is not the best solution for universalizing approaches and introduction of common professional values of public servants. According to the results of the research, the author offers his own vision of the concept of public service, which is based on two levels - in the broad and narrow sense, where the concept in the narrow sense claims to be enshrined in a legislative act, the other remains a scientific term.

Keywords

Public Administration, Public Service, State Service, Local Government, Ukraine

1. Introduction

The issue of updating approaches to public service activities has been and remains a constant element of all public administration reform since the restoration of Ukrainian state independence. After the Revolution of Dignity, the reform of the public service was placed at the top of the reforms and continues to occupy an important place. From our position, only a comprehensive look at the renewal of public administration can provide an effective result of the public service reform.

Scientists-administrators who studied the problems of the public service sphere, namely V. Averyanov, V. Galunko, P. Dikhtievsky, D. Zayats, O. Kuzmenko, O. Popov, Y. Starilov, O. Sushinsky, O. Hudoba and others, first of all, paid attention to issues of state and municipal service.

Researchers Yu. P. Bytyak, N. P. Matyukhina, S. A. Fedchyshyn while studying modern problems of public service in the broad sense, consider this category as it is proposed in the Code of Administrative Judicial Procedure, but they point out the need to understand public service in the narrow sense.

A new approach to the formulation of the notion of public

service was actually formulated in the textbook edited by professor R. S. Melnyk. Similar views are found in the works of well-known scientists V. M. Bevzenko and S. G. Stetsenko.

Foreign researchers G. Peters, M. Robinson, V. Smalkys, B. Stil, I. Urbanovich in a given subject area addressed the issue of determining the general term and different approaches to the public service system, and also paid attention to discussions about the relationship between public and state service, using the terms "public service", "public servants", "civil servants", etc. Among recent studies, the works of E. Knowles are interesting, where different approaches to understanding the essence of public service are analyzed. At the same time, most scholarly works do not pay due attention to the consideration of the issue of public service, since existing publications mainly concern state bodies and other subjects of administrative-legal relations.

2. Public Service Updates in the Light of Public Administration Reform

During the period of structural reforms in Ukraine, in particular, in the field of local self-government, it is very important which personnel will manage the state. The level of trust of community residents to state servants is low, because there is no professional selection system, systemic responsibility, which needs to be changed first of all [1].

The vision of the authoritative public Center for Political and Legal Reforms is set out in the Concept of Public Administration Reform in Ukraine: "The current public administration in Ukraine does not meet the strategic course of the state towards democracy and European standards of good governance, since it remains ineffective, prone to corruption, internally contradictory, overly centralized, closed from society, cumbersome and detached from needs of people, as a result of which, instead of a social economic reform remains one of the obstacles to rapid positive changes in the society and the state" [2].

According to the study of the Foundation for Democratic Initiatives on the assessment of reforms, in the opinion of the population, among the 5 main obstacles of reforms as of the end of 2017, bureaucracy and officials are in the first place [3].

Accordingly, the Concept of Administrative Reform in Ukraine of 1998 [4] received a new impetus and was reflected in the list of major reforms launched since 2014. The specific form for the renewal of the public service was provided in the Strategy of the State Administration Reform till 2021, which was approved by the Government on June 24, 2016 and re-approved at the end of 2018 [5]. The key task of the reform of the state service was to determine the improvement of the normative legal framework of the state service and ensure its effective implementation. The strengthening of financial incentives and efficiency of the work of state servants are among other priorities of the reform.

Independent scientific research allows to make unbiased conclusions. Therefore, the author's view on the above-mentioned Strategy of the State Administration Reform till 2021 makes it possible to clearly distinguish its weakness: the focus on the share of the state apparatus, on employees acting in accordance with the Law of Ukraine "On State Service". This is only a part of the persons performing the tasks and functions of the state and updating their activities without the whole list of public service personnel, in our opinion, looks partial and contradictory. From our point of view, only a comprehensive view of the renewal of public administration is able to provide an effective result of public service reform.

3. The Ratio of the Categories of "State Service" and "Public Service"

The study of the distinction between the categories of "state service" and "public service", both of which are considered as generalizing for the whole range of persons who realize the tasks and functions of the state is an important issue.

As the authors of the academic course of "Administrative Law" edited by academician V. B. Averyanov, all collective subjects of public relations are divided into state and non-state. State bodies and organizations are created, formed by the state (its organs), use material values, money, etc., remain the property of the state through its bodies, and perform the tasks and functions of the state. These include all types of state bodies, state enterprises, institutions and organizations, their associations, military formations. In all kinds of bodies and organizations service activity takes place, for state organizations it is called state service. This is a service in state bodies, bodies of local self-government, state enterprises, institutions and organizations. Through state service, proper organization of activities of all state bodies is ensured, its influence on the vital activity of society as a whole is indisputable. The content of state service is to fulfill the tasks and functions of the state in accordance with the competence of the relevant state authority [6].

According to the "Legal Encyclopedia", state service is a professional activity of persons who hold positions in state authorities and their apparatus [7].

It is important to note that the category of "state service" is disclosed through the constitutional right to participate in the management of state affairs. According to Art. 38 of the Constitution of Ukraine, citizens have equal access to state service, as well as to service in bodies of local self-government [8].

The last thesis shows one of the issues that should be clarified in our study: after all, the Constitution contains in one article, and therefore considers the only right of a person and a citizen to access to both state service and service in bodies of local self-government. Our position lies in the general unity of these activities, which we propose to make

sure on the basis of the views of scientists and positions of normative sources.

Researcher O. Popova considers the state service and the service in bodies of local self-government (in her terminology, "municipal service") to be varieties of a single category "service". She notes a number of unifying structures (municipal employees in their legal status (its main constituent elements, the "ideologies" of the service) who do not differ from state servants, because from the functional point of view their rights, duties, responsibilities, scope of authority, types of service, recruitment and termination of service relations, etc. are the same. The principles for implementing personnel policy in state authorities and bodies of local self-government are the same [9]. To strengthen her own position, she presented a vision of a famous Russian administrative scientist, Professor Yu. M. Starilov, who proposes the common signs of use in the theory of state service along with the concept of "state servant" ("state service") the concept of "municipal servant" ("municipal service - the activities of persons engaged in the exercise of functions in bodies of local self-government"); traditional elements of status of state servant are characteristic also for the municipal servant: the concept of the servant, rights, duties, certification, etc. [10].

In more modern sources, it happens that administrative scholars move into the category "public service" instead of the previously widely used "state service" or avoid these categories altogether when disclosing the subject of administrative law.

Thus, a new approach to the formulation of this concept was actually founded in a textbook edited by professor R. S. Melnyk. In their work, the authors began to induce argumentation (which we have already cited in S. Stetsenko's work) that since it is impossible to directly deal with the subject (body) of the public administration, an objective need arises for exercising authority on his behalf. The public servants are authorized to carry out the authority and perform the tasks on behalf of the subject of public administration. It is they who carry out public administration on behalf of the subjects of public administration, "convey" their will to society. [11]. Finally, based on the characteristics of features of public servants, the authors also give definitions: public service is a legal relationship between an individual and the state represented by authorized public administration bodies arising from the need to directly perform the tasks and functions of the state and is governed exclusively by legislation on public service [11].

In one of the most up-to-date sources of administrative law for textbooks published by a large group of authors in 2018, the approach avoiding detailed consideration of the public service issue continued to apply. A separate topic or its question was not considered by the authors. The vision of the implementation of the tasks and powers of the subjects of public administration in the actual activities of specific public servants was not described as well. But in the chapters of this work, devoted to the subjects of public administration, the authors are talking exclusively about state bodies and other

collective subjects of administrative-legal relations [12].

At the same time, in the terminological dictionary, the authors give the definition of public service, which corresponds to that given in the Code of Administrative Justice [13], and in the program of the unified entrance exam in administrative law of Ukraine added to the textbook, there are two topics that should be considered when studying the block of issues of administrative law: public service and legal status of the public servant [13].

Researchers Yu. P. Bytyak, N. P. Matyukhina, S. A. Fedchyshyn while studying modern problems of public service in the broad sense, consider this category as it is proposed in the Code of Administrative Judicial Procedure, but they point out the need to understand public service in the narrow sense [14].

4. The Understanding of the Category of Public Service in Modern Administrative Law

So, we state the existence of a transitional state to an understanding of the category of public service in modern administrative law. From a stable understanding of it as a state service and activities of various categories of state servants in the works of 2007-2014, the emergence of works that formulate a new approach to public service to lack of sustainable vision, what is meant by this category and whether to identify the parallel existing categories of state service and public service.

In particular, the terminological change in the use of the term "public service" instead of "state service" for reasons of searching for a new, modernized meaning is actively used in the works of the scientific specialty "state administration" [13, 15].

As we noted, the legislator influences the views of scientists working on the subject of public service, which outlined its vision of this category.

First of all, the Law of Ukraine "On State Service" provides its definitions. We present its variants in different versions of this law:

1. Original version, proposed in the first edition of 1993. State service in Ukraine is a professional activity of persons who hold positions in state bodies and their apparatus concerning the practical fulfillment of the tasks and functions of the state and receive wages at the expense of state funds [16].

2. Modern edition, adopted in 2015 as a result of the reform. According to her, state service is a public, professional, politically impartial activity for the practical implementation of tasks and functions of the state [17].

Another notion of public service (incidentally, it was the first time that the term "public service" was used), which was intended to eliminate excessive appraisal and offer legal certainty, was introduced in the Code of Administrative Justice of Ukraine. According to Article 4 of the Code, public service is activity on state political positions, professional

activity of judges, prosecutors, military service, alternative (non-military) service, diplomatic service, other state service, service in the authorities of the Autonomous Republic of Crimea, bodies of local self-government [18].

From our position in the beginning of the 2000s, a logical step was taken in developing the Code of Administrative Justice for unifying the vision of the whole complex of relations in fulfilling the tasks and functions of the state in a single category of "public service". We also associate this vision as the next and connected with the implementation to the law and practice of law enforcement of the vision of the Concept of Administrative Reform of 1998, which provided for the consolidation of state service and other categories of service in state executive bodies in the single public service [4].

We will note that there is no discussion of public or state service in the works of Western authors: the terms "public service", "public servants", "civil servants" and others are used. The term "public administration" or its synonym "public bureaucracy", popular in Ukrainian administrative law, is often considered as a symbol of an outdated approach to public administration that is changing to "public service" [19, 20].

However, in some works of foreign authors, a combination of public administration categories is used as a cumulative concept of state management activities in combination with public service as a list of employees providing public administration [21]. In the work of 2018, a Lithuanian scholar I. Urbanovic indicates a general term for public service as a public administration. It is also interesting that she proposed the general formulation of the public service as the involvement of public servants in the implementation of goals and decisions defined by politicians [22].

The experience of foreign countries provides, in the opinion of V. Smalskys and I. Urbanovich, such approaches to the understanding of public service, where there is a division into national and local types of employees, as well as the option of the existence of only a national public service [23].

Emma Knowles in 2019, analyzing various approaches to understanding the essence of the public service, stresses that the general concept for all state employees is not "public service", but "public sector" [24].

In our opinion, the exceptions mentioned do not change the tendency to leave the category of public administration as somewhat unsuitable for the modern challenges of public administration and public service.

The group of authors of the work "Public Services: Statistics, organization and regulations", which is based on a comparative analysis of public administration in the 27 member states of the European Union, considers the category of "public service" as the most appropriate term for various categories of state employees, which places the recipient of these services in the first place [25]. To the important features of the public service, in addition to those listed in the other works, a trend of delegation of authority and the competitive involvement of private performers (enterprises and public

institutions) is added. Therefore, for us the terminology is the most optimal in accordance with the modern role: 1) in general - public administration, 2) at the level of employees who carry it out - public service.

5. Conclusions

Public (state) service is a traditional component of Ukrainian textbooks. In more modern sources, administrative scholars use the category of "public service" instead of the previously widely used "state service" or avoid these categories when disclosing the subject of administrative law. We state the existence of a transitional state to an understanding of the category of public service in modern administrative law. From a stable understanding of it as a state service and the activities of various categories of state servants in the works of 2007-2014, the emergence of works that formulate a new approach to public service to lack of sustainable vision, what is meant by this category and whether to identify the parallel existing categories of state service and public service.

In legislation, in the process of public service reform in 2015, two concepts appeared (state service and state servant), replacing the preliminary concept of 1993. In our opinion, the second definition of (state servant) is better, while the new definition of "state service" contains many questions instead of answers. However, of these two concepts, a number of issues remain unresolved.

In the world and progressive Ukrainian literature there is a tendency to move away from the category of public administration and state administration as a somewhat inappropriate to modern challenges of public administration and public service.

However, there are no discussions in the works of Western authors concerning the use of concepts of "public service", "public servants", "civil servants", etc.

The term "public administration" or its synonym "public bureaucracy", popular in Ukrainian administrative law, is often viewed as a symbol of an outdated public administration approach that changes into public service. Therefore, for us the terminology is the most optimal in accordance with the modern role: 1) in general - public administration, 2) at the level of employees who carry it out - public service.

Among the concepts of "state service" and "public service" we consider optimal the second one for the following reasons: firstly, because of its use in world literature; secondly, because of the ability to combine various groups of public servants, and not only the category of state service; thirdly, by mentally demonstrating a system change of interrelated categories (from "state administration (public administration) / state service" to "public administration / public service"). In other words, this pair of concepts looks more contemporary, corresponds to the views of the less traditionalist scientific school of the specialties of Ukrainian "state administration", and also corresponds to the approaches of the sources of developed countries of the world.

Describing the approach to consolidation of the concept of public service at the regulatory level, it should be noted that the existence of a group of laws on service (state service, service in bodies of local self-government, militarized public service) is not an optimal solution for universalizing of approaches and introduction of common professional values of public servants. For example, we believe that different values of different groups of state servants, in particular, the perceptions of politicians (temporary public figures with their patronage apparatus) as state servants (permanent professionals in the service of the state) and the emphasis on unconditional obedience to authority and the laws adopted by it in militarized public servants were a certain basis for the newest Ukrainian revolutions (of 2004 and 2014).

Our vision of the concept of public service is based on two levels - in the broad and narrow sense, where the concept in the narrow sense claims to be enshrined in a legislative act, the other remains a scientific term. Public service (in the narrow sense) is the professional activity of employees who hold positions in public administration bodies, constantly and directly exercise the powers of public administration on the basis of interaction with the public, personal responsibility and payment. In a broad sense, it is important to add to this category the signs of engaging other categories of people in fulfilling public administration tasks: in cooperation with the public, appointed politicians, temporarily employed as advisers (representatives of the patronage service), etc.). According to the results of language analysis, we make an assumption that public service can be considered in a broad sense using another category of "work in the public sector".

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