

## **Standards of public service enshrined in the European Union legislation as a benchmark for the development of public service of Ukraine**

**Стандарти публічної служби, закріплені в законодавстві Європейського Союзу, як орієнтир для розвитку публічної служби в Україні**

Oleh Hubanov

### Key words:

*European standards of public service, European Union legislation, public service, public servant, civil service, service in local government.*

### Ключові слова:

*європейські стандарти публічної служби, законодавство Європейського Союзу, публічна служба, публічний службовець, держава служба, служба в органах місцевого самоврядування.*

The issue of Ukrainian integration to the European Union (further – EU) is a quite complicated and multi-faceted. The entry of our country into the domestic market of EU, and at the same time opening up new economic possibilities for Ukraine and strengthening of cultural relations with the countries which have best practices today, provides for creation, in the first turn, of a proper legal field and efficiently functioning institutional mechanisms that would ensure the implementation of legislation.

Consideration of the public service in a defined context links us up, first of all, with the institutional issues of Ukraine's implementation of the Association Agreement which, as we have been outlined, are pivotal in the current conditions that are decisive in terms of the effectiveness of implementation of European integration aspirations of Ukraine as a whole. It also should be recalled that public service can be considered not only in the institutional aspect (as a particular scope of persons whose implementation of public matters is their social function<sup>1</sup>) but also in the functional one as an activity aimed at exercising national-scale tasks for administration (in terms which are consolidated by the Code of Administrative Legal Proceedings of Ukraine: activities in state political positions, professional activities of judges, prosecutors, military service, alternative (non-military) service, diplomatic service, other civil service, service in authorities of Autonomous Republic of Crimea, bodies of local self-government<sup>2</sup>) as well as in legal aspect as statutory regulation of special, public, service relations, which in their turn are divided into bureaucratic and relations of hired servants and workers of state institutions<sup>3</sup>. The aspects as listed don't exist separately but are intersected with each other and together constitute a lion's share of the institutional part of those transformation processes that bring Ukraine into proximity with its European integration aspirations.

Topicality of the matter is also conditioned by a fragmentary coverage in the papers of domestic scholars as follows: B.M. Shevchuk, O.V. Zyhrii, N.M. Chekhoieva, S.O. Kokhan, O.O. Hubanov, M.I. Tsurkan, K.S. Proskuriakova and others. The issues of public service standards, which are consolidated by the EU legislation, as a guide for improvement of quality and productivity of activity of public servants in Ukraine are not investigated in the domestic legal doctrine.

The purpose of our research lies in the analysis of doctrinal sources and provisions of legislative acts of the EU concerning the determination of nature, list and content of European standards of public service as a guide for improving quality and productivity of activities of public servants in Ukraine.

<sup>1</sup> Цуркан М.І. Правове регулювання публічної служби в Україні. Особливості судового розгляду спорів: монографія. Х.: Право, 2010. С. 9.

<sup>2</sup> Кодекс адміністративного судочинства України: Закон України від 6 липня 2005 р. № 2747-IV / Верховна Рада України. Відомості Верховної Ради України. 2005. № 35–37. Ст. 446.

<sup>3</sup> Цуркан М.І. Правове регулювання публічної служби в Україні. Особливості судового розгляду спорів: монографія. Х.: Право, 2010. С. 9.

Shifting to direct consideration of the subject matter, primarily we note that national legislation, which regulates the issues of public service in Ukraine, is quite branched. Among the fundamental legal acts the following should be noted: the Constitution of Ukraine, the Law of Ukraine "On Civil Service", the Law of Ukraine "On Local Self-Government in Ukraine", the Law of Ukraine "On Service in Local Self-Government Bodies", the Law of Ukraine "On Local Public Administrations", the Law of Ukraine "On Lustration", the Law of Ukraine "On Corruption Prevention" and the Law of Ukraine "On Ratification of Association Agreement" which was a pivotal for Ukraine.

In addition, sub-statutory legislative and regulatory framework is not less numerous and branched. In the context of our research, a special interest lies in the Resolution of the Cabinet of Ministers of Ukraine "On the Implementation of Association Agreement" dated September 17, 2004 № 847-p, the Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Action Plan to Implement Ukrainian Cabinet of Ministers' Activities Plan and Sustainable Development Strategy "Ukraine – 2020" in 2015" dated March 4, 2015 № 213-p, the Resolution of the Cabinet of Ministers of Ukraine "On Approval of Reforming Civil Service and Service in Local Self-Government Bodies in Ukraine up to 2017 and Approval of Action Plan for its Implementation" dated March 18, 2015 № 227-p, the Resolution of the Cabinet of Ministers "On Some Issues of Professional Training of Civil Servants and Officials of Local Self-Government" dated January 13, 2016 № 19, the Resolution of the Cabinet of Ministers "On Approval of the Concept of Local Self-Government and Territorial Power Reforming in Ukraine" dated April 1, 2014 № 333-p, Decree of the President of Ukraine "Management of Civil Service in Ukraine" dated July 18, 2011 № 769/2011, the Resolution of Cabinet of Ministers of Ukraine "On Approval of the Regulation on the National Agency of Ukraine on Civil Service" dated October 1, 2014 № 500 as well as the Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Procedure for Organization and Implementation of Trainings for Civil Servants of "A" Category" dated August 23, 2016 № 536 etc.

In relation to European standards of civil service there is no a single document that consolidate them. For example, the Concept of Approximation of Civil Service Institute in Ukraine to EU Standards adopted by Decree of the President of Ukraine dated March 5, 2004 № 278/2004 refers only to the directions of adoption among of which the legislator emphasizes as follows: improvement of the legal fundamentals for the functioning of civil service; reforming the civil service salary system; establishment of the procedure for provision of state services and improvement of statutory regulation of the requirements for professional ethics of civil servants; improvement and enhancement of efficiency of public service management; professionalisation of civil service<sup>4</sup>. The outlined measures are aimed at reforming public service and focused on the implementation of European standards of public servants' activities in practice. However, the issue of development of European standards list for public service and interpretation of their content is still unresolved as the EU does not have a consolidated legislation in regard to administrative law and public service in particular.

Concerning the EU standards in the sphere of public service and sources of their consolidation S.O. Kohan quite rightly says despite the fact that they are not consolidated in clearly stated rules but are defined by the legislation and implemented through programme system and mechanism of control and accountability, audit of administrative activity, social audit. These standards are realized in different regulatory acts, among of which are laws on civil service, administrative procedures and procedural codes, of EU member states<sup>5</sup>. It also should be added that the concept of EU standards in the sphere of public service covers not only the standards of civil service in all its aspects (institutionary, functional, and legal) but also service in self-government bodies as the principles and approaches to them are general<sup>6</sup>.

In order to resolve this task at the current stage, we turn to the doctrinal points of view expressed by national scholars on the list and content of European standards of public service, including as the standards of civil service and the standards of service in the bodies of local self-government to the latter ones.

I.A. Isaienko, speaking about the European dimension of public administration mechanisms, draws attention to the general characteristics inherent the subjects of the latter among which distinguishes: the preservation of independence and sovereignty (insubordination relations) in the process of functioning of public administration; establishing both vertical and horizontal connections between them; the importance of developed

<sup>4</sup> Про Концепцію адаптації інституту державної служби в Україні до стандартів Європейського Союзу: Указ Президента України від 5 березня 2004 р. № 278/2004 / Президент України. URL: <http://zakon0.rada.gov.ua/laws/show/278/2004>.

<sup>5</sup> Кохан С.О. Демократичні стандарти державної служби: нові підходи державного менеджменту з урахуванням зарубіжного досвіду. URL: [http://academy.gov.ua/ej/ej8/doc\\_pdf/kohan.pdf](http://academy.gov.ua/ej/ej8/doc_pdf/kohan.pdf).

<sup>6</sup> Шевчук Б.М. Європейські стандарти публічної служби та правовий статус службовців органів місцевого самоврядування. Демократичне врядування: науковий вісник. 2008. Вип. 2. URL: [http://vivacademy.com/vidavnistvo\\_1/visnik2/fail/Shevchuk.pdf](http://vivacademy.com/vidavnistvo_1/visnik2/fail/Shevchuk.pdf).

coordination and communication for their proper functioning; the growing role of leadership and partnership; development and application of common standards and procedures<sup>7</sup>.

B.M. Shevchuk formulates the list of European standards of public service on the basis of a thorough analysis of the principles of public service of member states in the following way: 1) separation of the public sphere from the private sector; 2) separation of policy from administration; 3) personal accountability and responsibility of public servants; 4) clearly defined rights and obligations of each public servant; 5) stability and adequate payment for labour; 6) selection on civil service and promotion depending on professionalism and competence<sup>8</sup>.

Whereas, L.V. Prudyus, analyzing the problem of corrupt practices, places the emphasis on honesty of public servants which is proposed to be understood as the basic principle of civil service performance and the foundation for ethical conduct of civil servants in order to guarantee a public, professional, politically impartial, effective, citizens oriented civil service which functions in favor of the state and society<sup>9</sup>.

S.O. Kokhan works out in details the issues of European standards in the monitoring over functioning and development of government bodies and systems and the civil service as an integral component. Referring to "Directive on Standards for Internal Control" which is issued by the Committee on Internal Control Standards of the International Organisation of Supreme Audit Institutions, the scholar divides them into as follows: 1) basic – a substantiated confidence in the fulfillment of the main tasks; supportive attitude of seniors and executives to the control; honesty and competence; reasonableness, comprehensiveness, development of control; constant actions' control and rapid response to existing violations; 2) detailed – recoding of all activities and availability of documents for examination; quick and proper fixing of operations and measures; issuance of permits and execution of operations and measures by employees within the limits of their powers; division of responsibilities; supervision; access to documents and resources only for authorized persons; responsibility for resources and documents<sup>10</sup>.

The abovementioned doctrinal points of view on the drafting of list of European standards of public service draw our attention to the urgent problem – numerical strength and branching of the standards functioning in this sphere that in its turn causes the need to classify them.

The domestic legal doctrine has developed some approaches to the qualification of European standards of public service and civil service, in particular. For example, N.M. Chekhoieva proposes to divide the latter one according to competence feature into such types as follows: 1) national – the EU requirements were implemented in the civil service system and which are adjusted according to traditions, mentality and socio-economic formation; 2) supranational – requirements of the EU designed to ensure the adequacy of the implementation of a common policy<sup>11</sup>.

D. Bossard, in his turn, indicates the following EU standards in civil service through the chronologically-competent prism: 1) primary – they are developed at early stages of the EU formation and enshrined in the legal acts of the EU; 2) secondary – standards were formed under the influence of unification in solving issues and fulfilling obligations set before the countries within the EU; those that are not executed in the form of specific regulations and rather seem like trends that have gained legitimacy and general dissemination on the basis of time and efficiency testing<sup>12</sup>.

In accordance with the standpoint of Project Group on Administrative Law established under the Directorate General of Council of Europe the standards are divided into: 1) standards related to ensuring of the rule of law (lawfulness, obligation of the administration to comply with the law *ex officio* in cases which is specified by law; non-discrimination; equality; proportion nature; prohibition to abuse power; impartiality,

<sup>7</sup> Ісаєнко І.А. Європейські підходи до функціонування механізмів публічного управління. Інвестиції: практика та досвід. 2012. № 5. С. 116.

<sup>8</sup> Шевчук Б.М. Європейські стандарти публічної служби та правовий статус службовців органів місцевого самоврядування. Демократичне врядування: науковий вісник. 2008. Вип. 2. URL: [http://lvivacademy.com/vidavnitstvo\\_1/visnik2/fail/Shevchuk.pdf](http://lvivacademy.com/vidavnitstvo_1/visnik2/fail/Shevchuk.pdf).

<sup>9</sup> Прудіус Л.В. Європейські стандарти доброчесної державної служби. Кадрова політика та публічна служба. 2016. № 8(34). С. 67.

<sup>10</sup> Кохан С.О. Демократичні стандарти державної служби: нові підходи державного менеджменту з урахуванням зарубіжного досвіду. URL: [http://academy.gov.ua/ej/ej8/doc\\_pdf/kohan.pdf](http://academy.gov.ua/ej/ej8/doc_pdf/kohan.pdf).

<sup>11</sup> Чехоєва Н.М. Стандарти державної служби України: сучасний рівень та потреба в запозиченні європейського досвіду. Юридичний вісник. 2013. № 2(29). С. 77.

<sup>12</sup> Боссарт Д., Демке К. Державна служба у країнах-кандидатах до вступу до ЄС: нові тенденції та вплив інтеграційного процесу / пер. з англ. О.М. Шаленко. К.: Міленіум, 2004. С. 97.

neutrality of servants and administration; legitimate expectations and harmony; obligation to indicate the grounds for administrative decisions; the right to appeal against administrative decisions; the requirement for making of administrative decisions within a reasonable time); 2) standards that applied to the participation of individuals (the participation of individuals in resolving conflicts in certain alternative ways; the right to be heard and make a statement); 3) standards related to the compliance with a decision (ethical nature, efficiency, consistency of administrative services provision, productive performance of managerial tasks, servants training); 4) transparency and control standards (use of simple, clear and acceptable language; indication of possible remedies and terms for their use; notification of the decision; data protection; privacy; requests for information; confidentiality; keeping records; transparency of administrative activity; active dissemination of information; access to information; standards for personal access to files (data) and other documents; standards for universal access to documents)<sup>13</sup>.

The point of view of V.K. Kolpakov on the classification of European standards of civil service is the most applicable in the framework of abovementioned aspects of public service. Thus, the scholar, considering the public service in the institutional and functional aspects, discusses two relevant groups of standards. At the same time, V.K. Kolpakov stresses on an indispensable unity of European standards of public service and European principles of administrative law structuring the latest in the following groups: 1) reliability and predictability (legal certainty); 2) openness and transparency; 3) accountability; 4) efficiency and effectiveness. Therefore, the scholar divides the European principles of administrative law into the principles of European administrative law and the principles of European administrative space and also emphasizes a group of branch principles consisting of European principles of administrative law on the organization of public administration (principles of decentralization, centralization, deconcentration) and European principles of administrative law concerning the activities of public administration (principles of legal certainty, openness and transparency, responsibility, efficiency and effectiveness)<sup>14</sup>.

If we turn to the regulatory source of EU law that sort of principles were formulated in the most general form in Development Strategy for EU Member States. K.S. Proskuriakova analyzed and revealed their content in details. Among them are as follows: 1) building of civil society through the introduction of new levels of government that should bring citizens more in line with the governance process and stimulate further communities' development; 2) the principle of subsidiarity, which is reflected in deconcentration of the central authority of the EU with a view to its more effective implementation at a lower level by local authorities or territorial communities; 3) the principle of effectiveness in using the individual potential of citizens and the aggregate potential of local and regional communities; 4) the principles of transparency, openness and accountability in the activities of public servants; 5) the principle of flexibility which is manifested in the ability to respond promptly to changes in external and internal factors, increase the level of flexibility and establish an effective feedback with public authorities<sup>15</sup>.

When it comes to the public service, it is impossible to ignore the service in bodies of local self-government. Taking into account the within-named statutory sources, it is also necessary to refer to the provisions of European Charter of Local Self-Government<sup>16</sup> that is ratified by Ukraine. In the most general terms, the standards that it contains are formulated by V.V. Popovich, in particular: 1) provision of the political, administrative and financial independence for municipal governments; 2) support of an effective implementation of the political function of local self-government, which is the realization of democracy at the local level; 3) guarantee of an effective public (municipal) management at the local level on the basis of decentralized authorities; 4) provision of the right to rule-making for bodies of local self-government with the restriction of its own administrative control by the state; 5) provision of autonomy for local self-government bodies in order to determine its structure and the right to hire municipal officials to ensure the activities of elective officers of local self-government; 6) strength-

<sup>13</sup> Принцип верховенства права: проблеми теорії та практики: в 2 кн. / за заг. ред. Ю.С. Шемшученка. К.: Конус-Ю, 2008. Кн. 2: Принцип верховенства права у діяльності держави та в адміністративному праві. 314 с.

Колпаков В.К. Європейські стандарти адміністративного права. Адміністративне право і процес. 2014. № 3(9). URL: <http://applaw.knu.ua/index.php/arkhiv-nomeriv/3-9-2014-jubilee/item/376-yevropeyski-standarty-administratyvnoho-prava-kolpakov-v-k>.

<sup>14</sup> Колпаков В.К. Європейські стандарти адміністративного права. Адміністративне право і процес. 2014. № 3(9). URL: <http://applaw.knu.ua/index.php/arkhiv-nomeriv/3-9-2014-jubilee/item/376-yevropeyski-standarty-administratyvnoho-prava-kolpakov-v-k>.

<sup>15</sup> Проскурякова К.С. Європейські стандарти державної служби: досвід Польської Республіки. Державне управління. 2014. № 1(1). С. 70.

<sup>16</sup> Європейська хартія місцевого самоврядування: міжнародний документ від 16 листопада 2009 р. № 994\_036 (ратифіковано Законом № 452/97-ВР від 15 липня 1997 р.) / Верховна Рада України. URL: [http://zakon3.rada.gov.ua/laws/show/994\\_036](http://zakon3.rada.gov.ua/laws/show/994_036).



ening of state guarantees of local self-government, definition of clear mechanisms and transparent procedures for protection of interests of territorial communities and local self-government bodies<sup>17</sup>.

A significant place is occupied by ethical requirements to public servants among the European standards of public service. Consequently, Recommendation № R(2000)10 of the Committee of Ministers to Member States of Council on Code of Conduct for Public Officials approved Model Code of Conduct for Public Officials whose provisions determine standards of integrity and behaviour which should be complied with by civil servants<sup>18</sup>. However, the most important document in respect to ethical requirements is the European Code of Good Administrative Behaviour. Its provisions consolidate the following principles of good administrative behaviour: lawfulness, absence of discrimination, proportionality, absence of abuse of power, impartiality and independence, objectivity, legitimate expectations, consistency and advice; fairness; courtesy; reply to letters in the language of the citizen as well as acknowledgement of receipt and indication of the competent official; the right to be heard and to make statements for representatives of the wide public on decisions concerning their interests; reasonable time-limit for taking decisions by the subjects of authoritative powers; the duty to state the grounds of decisions; the requirement for notification of the decision and indication of appeal possibilities as well as a number of requirements for data protection, requests for information, request for public access to documents and keeping of adequate records<sup>19</sup>.

Our analysis of the provisions of domestic legal doctrine and the EU legislative regulations, which define the standards of public service, allows us to formulate the following conclusions. First, we agree with O.V. Zyhrii that the European values are implemented through the institutions, and an institutional capacity of the state is a decisive factor for its competitiveness<sup>20</sup>, the maturity of institutions serves as the basis for any national development and extension of international relations, in particular in the European integration area, and the introduction and systematic implementation at the practical level of public service standards enshrined in the EU legislation will contribute to improvement of the quality and productivity of activities of Ukrainian public servants.

Second, European standards of public service in their content are highly generalized, targeted provisions and include the numerous interrelated requirements; therefore, their implementation and observance should have systematic and complex nature.

Third, European standards for public service are not sustainable and are constantly being transformed in the process of improving the national and supranational public service systems within the EU. They cover all aspects of the latter (institutional, functional and legal), which determines their branched and numerical strength. However, the core provisions are the principles of rule of law and democracy, which have found their multi-dimensional specification in the practice of public servants.

## Summary

The article is devoted to research of public service standards which are established by European Union legislation as the origin of enhancing quality and productivity of Ukrainian public servants. The author has analyzed doctrinal sources and provisions of European Union legislation and described the nature and the content of European standards of public service. It has been emphasized that the public service should be considered in institutional, functional and legal aspects. Given the above, European standards of public service according to their nature are numerous, broad-minded and indicative principles. They require a systematic and comprehensive application to be implemented in the practical activity of public servants of Ukraine as the origin of enhancing of their quality and productivity.

<sup>17</sup> Попович В.В. Стандарти публічного управління як елементи методології європейської державної муніципальної політики. Публічне управління: теорія та практика. 2013. Вип. 4. С. 87.

<sup>18</sup> Рекомендація № R(2000)10 Комітету Міністрів державам – членам Ради Європи щодо кодексів поведінки державних службовців: прийнята Комітетом Міністрів на 106 сесії 11 травня 2000 р. URL: [http://www.dridu.dp.ua/cpk/Lib/7\\_Zapobigan-nya%20ta%20protydiya%20proyavam%20korup/Legislation/Legislature/Rekomend\\_poved\\_DS.pdf](http://www.dridu.dp.ua/cpk/Lib/7_Zapobigan-nya%20ta%20protydiya%20proyavam%20korup/Legislation/Legislature/Rekomend_poved_DS.pdf).

<sup>19</sup> Європейський кодекс належної адміністративної поведінки. URL: [http://civic.kmu.gov.ua/civic\\_old/doccatalog/document?id=128635](http://civic.kmu.gov.ua/civic_old/doccatalog/document?id=128635).

<sup>20</sup> Зигрій О.В. Європейський підхід до модернізації державної служби України. URL: <http://dSPACE.tneu.edu.ua/bitstream/316497/2540/1/Європейський%20підхід%20до%20модернізації%20державної%20служби%20України.pdf>.

## Анотація

Статтю присвячено дослідженню стандартів публічної служби, які встановлені законодавством Європейського Союзу як джерело підвищення якості та продуктивності діяльності публічних службовців України. Проаналізовано доктринальні джерела й положення законодавства Європейського Союзу та описано характер і зміст європейських стандартів державної служби. Підкреслюється, що державна служба повинна розглядатися в інституційних, функціональних і юридичних аспектах. З огляду на вищесказане європейські стандарти державної служби за їх природою мають численні широкомасштабні та індикативні принципи. Вони вимагають систематичного та всеосяжного застосування в практичній діяльності публічних службовців України як джерела покращення їх якості й продуктивності.

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**Oleh Hubanov,**  
Candidate of Juridical Sciences,  
Leading Lawyer of the Programme on Adoption  
of Ukrainian Legislation to EU Law  
of Faculty of Law  
of Taras Shevchenko National University of Kyiv