

SERVICE IN LOCAL SELF-GOVERNMENT BODIES AS A KIND OF PUBLIC SERVICE FROM A LEGAL PERSPECTIVE IN UKRAINE

SERVIÇO EM ÓRGÃOS LOCAIS DE GOVERNO AUTÔNOMO COMO UMA ESPÉCIE DE SERVIÇO PÚBLICO A PARTIR DE UMA PERSPECTIVA LEGAL NA UCRÂNIA*

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Abstract: Service in local self-government bodies is characterized as a kind of public service. Scientific approaches to the role and purpose of official activity in local self-government bodies are analyzed. In the context of the democracy development, this aspect of scientific research is important because in Western countries (Germany, Great Britain, Switzerland, Sweden, etc.) there are increased requirements for persons who are in public service and represent the state on the world stage. Ukraine is now undergoing a gradual reform of such important public spheres and institutions related to public service and the processes of providing administrative (public) services. In particular, this is about the ongoing attempt by the political leadership of Ukraine since 2014 to achieve the unification of the standards and principles of public (state and local service) with the high requirements of the standards of the EU countries, the USA and Canada. Even though with services provided in this body, issues of recognition and enforcement continue to be a great and huge place that frustrate the public service. We see still experienced elements of obstacles in the self-local services that hinders the services of the public administration. The question we are bound to ask is to establish how effective is the local self-government bodies able in ensuring the implementation of the activities of the public service. Given the high role that local governments

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traditionally play in democratic societies, characteristics inherent in public service are identified. In particular, proposals are presented on introducing amendments and additions to the national legislation of Ukraine, which regulates the issues of public service.

Keywords: Local self-government. Public service. Decentralization. Transparent reporting.

Resumo: O serviço nos órgãos locais de autogestão é caracterizado como uma espécie de serviço público. São analisadas abordagens científicas sobre o papel e o propósito da atividade oficial nos órgãos locais de autogoverno. No contexto do desenvolvimento da democracia, este aspecto da pesquisa científica é importante porque nos países ocidentais (Alemanha, Grã-Bretanha, Suíça, Suécia, etc.) existem exigências crescentes para pessoas que estão no serviço público e representam o Estado no cenário mundial. A Ucrânia está agora passando por uma reforma gradual de esferas e instituições públicas tão importantes relacionadas ao serviço público e aos processos de prestação de serviços (públicos) administrativos. Em particular, trata-se da tentativa contínua da liderança política da Ucrânia desde 2014 de alcançar a unificação dos padrões e princípios do serviço público (serviço estatal e local) com os altos requisitos dos padrões dos países da UE, dos EUA e do Canadá. Mesmo com os serviços prestados neste órgão, as questões de reconhecimento e execução continuam sendo um grande e enorme lugar que frustra o serviço público. Vemos ainda elementos de obstáculos experimentados nos serviços auto-locais que dificultam os serviços da administração pública. A pergunta que somos obrigados a fazer é estabelecer quão eficazes são os órgãos locais de autogestão capazes de assegurar a implementação das atividades do serviço público. Dado o alto papel que os governos locais tradicionalmente desempenham nas sociedades democráticas, as características inerentes ao serviço público são identificadas. Em particular, são apresentadas propostas para introduzir emendas e adições à legislação nacional da Ucrânia, que regulamenta as questões de serviço público.

Palavras-chave: Auto-governo local. Serviço público. Descentralização. Relatórios transparentes.

1. INTRODUCTION

Local self-government is an integral part of a democratic society, since it actively influences the political and socio-economic conditions for the development of civil society, and becomes an important prerequisite for the creation of a democratic and legal state (Zahumenna, Lazarev, 2020). Local government has an important form of public power in Ukraine. It creates the conditions necessary for the approximation of power to the people, a flexible system of territorial administration, adapted to local conditions and peculiarities. Local self-government promotes initiatives of citizens, but the final result — is the development of local democracy (Ilnytsky, 2018). The ability of citizens to elect local authorities within their own municipality or territorial society is one of the key components of the democratic process. The extreme importance of this aspect is related to the fact that the local government, elected by the citizens in a fair and transparent electoral process, will serve the citizens more faithfully than the appointed person. However, we would like to note that not only a transparent and democratic electoral process, but also the very exercise

of power has a significant effect on the daily life of society. For example, in most developed and democratic countries of Western Europe and North America, public service, both at the national and local levels, is recognized as an honorable and responsible activity. Such attitude to the process of public service dates back to the ancient history of state and legal processes of Western countries. To some extent, this was influenced by the spread of the ideal of ‘serving the people’”, which included a wide range of different interpretations, mostly based on ideas about how and according to what principles public service should be carried out. Both domestic and foreign researchers have repeatedly noted that such high ideals and principles of public service, of course, at the time of their proclamation were addressed mostly to the civil service. But over time, these principles and ideals were transferred into the sphere of local self-government. Scholars in the field of law and public administration agree that the achievement of the above standards is necessary, as it will greatly improve the effective functioning of government mechanisms in the country. After all, the word ‘public’ is interpreted as social, general, publicly accessible open. We have a serious problem here because even though self-local government bodies plays an important role in the contribution and development of the public service, they implications continues to be frustrating and limiting as there is always that problem of efficiency and effectiveness in matters relating to the public activities. These limitations provided on behalf of the self-local government bodies is really a restraint in matters of managing societal affairs.

In her study, based on an analysis of theory and practice, Y. N. Kirichenko (2019, p. 3-7) noted that the organization of local self-government is not yet sufficiently substantiated. In Ukraine, an effective state policy regarding local self-government

2. THE PURPOSE AND OBJECTIVES OF THE STUDY

The main purpose of the article is to consider the service in local self-government bodies as one of the kinds of public service, as well as to formulate possible directions for improving the functioning of local authorities and improving the status of public service in Ukraine.

The objectives of the article are to cover current issues in the field of public service in local self-government bodies in Ukraine with emphasis on both positive and negative aspects. Truly, we all know that self-local government bodies plays an important and

prominent role in matters relating to public service, but what we are interested is by looking at how efficient and solid is the public service with these bodies involved. We see experience some gaps and lacunas in the activities of the public service irrespective of the present of these bodies who claimed that they managed the activities of the public services without hitches. The continuous lapses and constant problems faced by the public service with the present of the self-government bodies makes us to be doubtful whether these bodies can still manage the activities of the public service. The problem is not just having these bodies in place, but rather to see whether the activities of the public service functions normally and effectively with the presence of these bodies in place. This is really a rhetorical question that is continues to questionable.

3. METHODOLOGY

The bibliographic research method was used in the article, due to which up-to-date information on the current state of affairs in the field of public service in institutions and departments of local self-government and the directions of its possible development was obtained from leading foreign and domestic researchers of our time.

The dialectical method was used to reveal the terms important for the subject of this article, and the historical and legal method made it possible to analyze the emergence and development of local governments in Ukraine in a historical retrospective, as well as the specifics of public service in local authorities.

With the help of the comparative method, an analysis of the peculiarities of the functioning and development of the processes of public service, both in Ukraine and in developed, democratic countries of the world, was carried out. Among foreign countries, the most attention was paid to the successful experience of the countries of Western and Central Europe, as well as Canada and the United States of America. The methodology used here is a comparative and confirming one as we want to ascertain that this concept of self-government bodies in public service activities have succeeded in other countries like the United States of America and even most Western and Central European countries, but we should ask whether it is the case in Ukraine. The fact that it has succeeded in other countries does not mean it will be the same in Ukraine. The problem here is not just that it succeed in other countries that it will be the same for Ukraine if the self-local government

bodies in Ukraine cannot meet up the objective of an effective public service mechanism. We can have all these bodies in place in aspect of public service, but if the bodies fails in respecting the basic tenets of the public service, then failure will be ringing at their doors. We all know the self-local government bodies in Ukraine are doing all what it takes to have an efficient a d great public service system, but most of the time the incompetence of these bodies in managing the activities of the administration due to the constant lapses and problematic affecting the public service makes us to doubt the credibility of the concerned bodies in place. The problem here is not just in having a local government bodies put in place, but to ensure its complete involvement in the activities of the public service by respecting the established rules, ensures the smooth functioning of the society and even give accountability of such powers. This issue is really problematic in all its ramifications.

4. RESULTS AND DISCUSSION

The division of law into public and private law in modern jurisprudence is necessary for the classification of legal phenomena, especially in the formation of the legal system. As a subject of public law, local self-government finds new features that can be attributed to the field of private law. Local self-government, acting as a subject of public law has the following characteristics (Perezhniak et al., 2021, p. 221):

- 1) activities regulated by law;
- 2) focus on ensuring the functioning of society;
- 3) the right to establish mandatory rules in the controlled area;
- 4) has delegated powers of state power.

The development of legislative principles of local self-government in the Ukrainian state is influence by the experience of Western standards of local self-government, the practice of state building in Eastern European and other countries. An important factor for the development of self-government institutions is the process of globalization, which significantly changes sociopolitical relations, changes the principles of interaction of territorial communities, political organizations and local self-government agencies. The signing of the Association Agreement between Ukraine and the European Union intensified the process of decentralization of state power in Ukraine and the creation of conditions for the realization of opportunities provided to local self-government. Local

self-government is an integral part of a democratic society, as it actively influences the political and social and economic conditions for the development of civil society, and becomes a significant prerequisite for the creation of a democratic and legal state. A significant factor for the development of institutions of self-government is the process of globalization, which significantly changes the social and political relations and the principles of interaction of territorial communities, political organizations and local governments (Zahumenna, Lazarev, 2020, p. 106).

Ukraine, on the way to full European integration, has been actively reforming various spheres of public life recently to meet the high-quality standards available in the EU, as well as the United Kingdom, Canada, and the United States (Lutsk, 2021). Considering this, it can be argued that decentralization reform is one of the main ones in the context of real democratization and European integration of Ukraine. This is confirmed by the findings of many experts and researchers involved in the study and analysis of domestic reforms. The state policy of Ukraine in local self-government is based primarily on the interests of residents of territorial communities and provides for drastic changes and systemic reforms, decentralization of power. This is to explain that transfer of a significant part of powers, resources, and responsibility from the executive branch of the government to the bodies of local self-government. The provisions of the European Charter of Local Self-Government and the best world practice of public relations in this area is placed at the bottom of the policy. The necessity of drastic change in the structure of power and its territorial basis at all levels, taking actual steps to encourage the country's development, responding properly to current challenges required legislative action. In April 2014, on the initiative of the then Vice Prime Minister – Minister of Regional Development, Construction, and Housing and Communal Services of Ukraine, Volodymyr Groysman, the Government approved a major approach document – the Concept of Reforming Local Self-Government and Territorial Structure of Power. Thereafter, the Action Plan is approved to implement the Concept, thus launching the reform. To implement provisions of the Concept and tasks set out in the Action Plan, it was required to, primarily, amend the Constitution of Ukraine and develop a package of new legislation (About Reform, 2021). There is still this problem of effectiveness when it comes to implementation of the public service activities which makes us to question the responsibility of self-government bodies in matters of the public service in Ukraine.

In the formal legal sense, decentralization is the existence of locally elected power, which is different from the administrative power of the state, the exercise of its powers and duties within the framework of the law, for which it has the status of local self-government (municipal public authority) under certain control of the state. Thus, decentralization is inseparable from the idea of local self-government and democratic principles (Kalinkin, 2016, p. 44). According to the views of scientists, a properly implemented decentralization reform provides for the 'actually implemented' transfer of a significant part of the power-administrative authorities from the central government bodies (the government and its ministries) to elected local self-government bodies (municipalities, territorial communities, etc.) (Benson, Thanh, Thao, 2021). Furthermore, modern researchers note that regardless of the state structure of a country (whether a unitary state or a federation), the quality functioning of local authorities is of critical importance for the well-being of the whole country and its citizens. Finally, the level of quality of the processes carried out by local governments depends on the level of training of personnel, that is, employees who carry out the processes mentioned. In terms of the practical implementation of the tasks assigned to the employees of local authorities, their roles differ (Hughes, 2019).

According to the standards and principles generally accepted in most developed and democratic countries of the world, the distribution of work functions among public servants depends on several factors. For example, this is influenced by such elements as the level of competence of an employee, his work experience, level of education, knowledge of foreign languages, the ability to communicate comprehensively or to have specific skills that are useful to society.

As in any other organizations, in the executive institutions of local self-government bodies, employees are subject to conditional division into two main groups (Fiadjoe, Bastide, 2020). One group of persons performs managerial as well as controlling functions, determining approximate areas of work for certain groups of public servants and checking the results of their activities. The second group consists directly of the performers of the tasks assigned by the persons from the first group (leading subjects). Representatives of this group significantly exceed the number of the first group, and they are entrusted with the functions of direct implementation of local government activity in various areas (Garnett, Dorey, Lynch, 2020).

Thus, the quality of interaction between these two groups of people in the executive bodies of local self-government determines how effectively local authorities will be able to set appropriate goals and how effectively they will be able to implement them. In other words, issues related to the proper selection of public servants for local government are of key importance. After all, even if the local government (for example, the city government) is headed by a competent leader (mayor) with sincere intentions and a specific program of decisive action, his positive activities will be offset lacking adequate number of competent employees who will actually implement their tasks (Bromhead, 2021). And here, it should be noted that ordinary members of the executive bodies of elected local government share views and general vision of their leader, as well as support his intentions, they must also be able to carry out (implement) his main ideas and decisions. In the United States of America, Canada, as well as in most countries of the European Union, there have long been certain standards for the implementation of public and administration. There has been management of the activity by employees of state and local authorities (Sandler, Schwab, 2021). They are since, among other things, public servants, having started their activities for of the state or local community, bear the burden of image and responsibility. It is emphasizing here that the image is mention in this context because in Western democracies, public service for of society is quite prestigious. Therefore, it can be accepted that it cannot be 'stained' by certain types of crimes or offenses. The concept of reputation is critical for a developed and democratic country with real rule of law. In this regard, many researchers and experts note that over the past few years, Western officials can be affected by another additional pressure factor. Namely, this is a phenomenon that was called by the authoritative American researcher of social and political processes Anne Applebaum 'new Puritanism' (Ola, 2021; Yuldasheva, 2021). Its component is the so-called 'cancel culture'. It consists in the fact that 'under the pressure of social resonance, a person finds himself outside social or professional circles for unacceptable behavior from the point of view of a certain group of society'.

The object of such ostracism is consider 'canceled', i.e., he loses his reputation and suffers material damage. The development of such trends and practices initially had an impact on private business, as well as on cultural and entertainment industry figures. But later it spread to public servants of state and local authorities (Bierschenk, De Sardan, 2021). As a result, in the United States and some other Western countries have seen the

opportunity to observe that in the case of a conflict, or other negative episode related to a criminal or dishonest act of a public official. As a result of this incorrect statement, he is immediately pressured by his colleagues, management, and the whole surrounding society. This pressure is carrying out to stop a public official's illegal or incorrect behavior, as well as to apologize for such behavior or for incorrect statements. In the collective, 'Western' society has already formed a certain 'tradition' among public servants. Namely, it is noted that it is that the official, whose incorrect actions or statements caused a 'scandal', voluntarily resigns from office, instead of waiting for the negative consequences and his dismissal (Bierschenk, De Sardan, 2021). Such tendencies have not yet been 'borrowed' by Ukraine, and therefore similar situations in the domestic space are almost non-existent. However, given the high dynamics of modern events, as well as the course adopted by Ukrainian society, full and unconditional integration into the common space with the developed and democratic countries of the Western world. It is in this regard that we emphasize that in the near future, a lot can change (Morgan et al., 2021). However, we consider it necessary to emphasize that a more necessary task for the leadership of the Ukrainian state and its citizens should be the adoption of specific quality standards for public management and administration. Disclosing and detailing this statement, we note that these standards are a set of requirements for the processes of administrative, executive and any other public and administrative activity. Such activities should be carried out by local governments within the limits set by current legislation of Ukraine.

Particular attention should be paid to the moral and ethical criteria of public service, as well as its financial integrity. In this context, we emphasize that to properly ensure the transparency and integrity of the public service in Ukraine, control and audit bodies should be introduced, which would be radically different from the current control and audit institutions (Maley, 2021). In particular, they must function in every institution of state and local government and have real independence. At the same time, the final results of their inspections and audits should have a decisive impact on a wide range of issues. For example, the head of a structural unit of the executive body of local self-government, in whose activity offenses were recorded, should be deprived of his leadership position. In addition, everyone who took an active or passive part in committing such offenses should be subject to disciplinary, administrative or criminal liability, depending on the severity of their crime or offenses (Itrich-Drabarek, 2019). We emphasize that in some cases this

applies not only to representatives of the administrative and executive branch of local government, but also the legislative one. For example, members of city and town councils whose involvement in illegal activities were proven should be prosecuted. This situation may arise in the field of adoption of certain regulations at the local level, in particular, when planning the local budget.

The use of various methods of financial control and monitoring is also singled out as one of the key elements of current trends aimed at maintaining transparency and a positive image (prestige) of public service in both state and local authorities (Cole, 1942).

Carrying out their direct functions, representatives of local self-government bodies should be recognized as equal public servants as representatives of state authorities. Therefore, they are subject to the requirements and obligations contained in European standards. Due to the constant, dynamic changes in the environment, public servants should be able to adapt to them in a timely manner. They should also work harmoniously with representatives of local governments from other municipalities or local communities, and with government agencies and institutions. In addition, researchers are currently noting a significant increase in working contacts between public servants of local governments in different countries. Thus, it is argued that public servants working in local governments of leading Ukrainian cities, such as Kyiv, Kharkiv, Lviv, Vinnytsia, Ternopil, etc., have made much more working visits to their colleagues from foreign developed cities recently, than ever before (Prowle, 2020).

5. CONCLUSIONS

The results of the research suggested:

Firstly, based on our beliefs and research, and the views of the vast majority of both domestic and foreign scholars, we prefer to say that service in local self-government bodies is definitely and should be considered a public service.

Secondly, we focus on the fact that, despite relative improvements, the domestic public service sector in state and local governments needs to be significantly improved. Among other things, the urgent issue is to bring the functioning of local governments of Ukraine to the requirements and standards of developed countries in Western Europe and North America. In particular, this concerns the financial transparency of civil servants, as

well as the requirements for their moral and ethical compliance with the positions they hold.

Achieving European standards in these areas (especially regarding transparent and effective financial monitoring) is one of the key conditions for Ukraine's admission to the European community. At the same time, as defined in the article, a public servant of local self-government bodies should properly perform his / her direct professional duties. They should equally have certain communication skills and have at least basic knowledge in the field of using the latest technologies. We should also not forget about the importance of regular cooperation with Ukraine's foreign partners and allies in this area.

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