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THE PRINCIPLE OF PATRIOTISM AS A PREMISE OF LEGAL REGULATION OF CIVIL SERVICE PERFORMANCE IN UKRAINE

The article considers the principle of patriotism as a premise of legal regulation of civil service in Ukraine. The article analyzes normative provision for the principle of patriotism as the principle of civil service by the national legislation, as well as related changes and trends. The socio-philosophical, axiological dimensions of the patriotism of modern Ukrainian society are investigated. The main approaches to understanding the principle of patriotism in modern administrative and legal doctrine, as well as the direction of improving its normative objectification and implementation, are studied.

Key words: patriotism, principle, civil service, civil service performance, principles of civil service, principle of patriotism.

Society and state modernization is pre-determined essentially by the development of a modern system of public service, as well as its most important component - civil service. The orientation of a state development vector into deep systemic reforms offers a difficult task for public administration to build a stable and open society, to form an effective system of public administration and civil service. In Ukraine, current transformational processes require to increase efficiency of public administration, since the legitimacy of state decisions, and support of public policy by people in many respects depend on the authority of state power. Modernization of public authorities, changing the mentality of a public servant are key elements in improving efficiency of the system of public administration and civil service.

Gradual transition from "legal romanticism" of the 1990s to "legal critical realism" of nowadays has revealed the need to revise defining provisions of civil service of Ukraine. Obviously, modern administrative law and public administration need the change of established approaches to understanding functions and tasks of state apparatus and its bodies. In order to realize undertaken by Ukraine commitments to international institutions, it is necessary to reform institutions of public authority systematically. Such measures include the review of basic principles of legal regulation of civil service.

The new Law of Ukraine "On Civil Service" of December 10, 2015, No. 889-VIII defines the legal framework for regulating relations arising in connection with performance of civil service, that is, it establishes normative, institutional, organizational and resource mechanisms for

reforming the latter [1, p. 11]. In this regard, it becomes of particular relevance to investigate the principle of patriotism as the starting point for legal regulation of civil service in Ukraine, which is the purpose of this article. For its successful achievement, the following tasks are expected to be solved: first, to analyze the existing practice of normative provision for the principle of patriotism as the basis of performing civil service by the national legislation, as well as changes and trends related to it; second, to comprehend socio-philosophical, axiological dimensions of patriotism of modern Ukrainian society; third, to develop approaches to comprehension of the principle of patriotism in the modern administrative and legal doctrine, as well as areas to improve its normative objectification and realization. Moreover, legal literature lacks fundamental complex scientific research on patriotism as the principle of civil service, clarification of its content, purpose, search for an optimal variant of the term, which would fully comply with the content of this principle, definition of its place in the list of legally established principles of civil service [2, p. 63].

The issue of civil service of Ukraine and foreign countries, principles of its performance, including patriotism, has been the subject of study of such domestic scientists as V.B. Averianov, Yu.P. Bitiak, L.R. Bila-Tiunova, I.V. Bolokan, T.E. Vasylevska, M.O. Hermaniuk, V.V. Govorukha, O.Yu. Drozd, A.V. Kirmach, S.V. Kivalov, Yu.V. Kovbasiuk, T.O. Kolomoiets, V.V. Ladychenko, N.R. Nyzhnyk, O.V. Petryshyn, O.O. Slobodian, V.V. Tsvietkov, Yu.S. Shemshuchenko et al.

Traditionally, legal science uses the etymological meaning of the word "principle" (from

Latin *principium* 'an origin, determinant, first part, beginning), which is the foundation, basis, guiding idea, the starting point of any phenomenon (doctrine, organization, activity, process, etc.). In general, the category of "*principle*" should be used in relation to starting values and ideas of jurisprudence [3, p. 120]. Regarding the comprehension of transformation in the legislative regulation of issues related to the principles of civil service, it is important to enshrine both the principle of patriotism, and transformation that has taken place with regard to its objectification, because these aspects reflect changes in the consciousness of Ukrainian society [4, p. 46]. According to Article 4 of the current Law of Ukraine "On Civil Service" of December 10, 2015, No. 889-VIII, civil service is subject to the principle of patriotism, that is, devoted and faithful service to Ukrainian people. On the basis of this Law examination, it should be noted that among ten principles of civil service, the principle of patriotism is assigned to the fourth place after the rule of law (1), legality (2), professionalism (3) and before integrity (5), efficiency (6), ensuring equal access to civil service (7), political impartiality (8), transparency (9), stability (10) [5].

Moreover, the analysis of Article 3 of the Law of Ukraine "On Civil Service" of November 17, 2011 No. 4050-VI (the date of entry into force of which has been changed, and then been abolished altogether) enables to assert that the principle of patriotism and service to Ukrainian people have been enshrined the second among nine principles of civil service after the rule of law (1) and before legality (3), equal access to civil service (4), professionalism (5), integrity (6), political impartiality (7), transparency of activity (8), personal responsibility of a civil servant (9). However, in the Law, the content of the principle of patriotism and service to Ukrainian people have not been revealed, but included two interrelated components [6].

Considering Article 3 of the Law of Ukraine "On Civil Service" of December 16, 1993 No. 3723-XII, which has expired, the principle of patriotism was formally and linguistically absent. Instead, the principle of serving the people of Ukraine was the first among the eight basic principles of civil service, that is, before the principles of democracy and the rule of law (2), humanism and social justice (3) the priority of human and civil rights (4), professionalism, competence, initiative, honesty, devotion (5), personal responsibility for performance of official duties and discipline (6), observance of rights and legitimate interests of local and regional authorities (7), observance of rights of enterprises, institutions and organizations and associations of citizens (8) [7].

In view of regulatory changes in the term, as well as interpretation and location of the principle of patriotism in relation to other principles of civil service of Ukraine, it is evident that the legislator has been searching an optimal identification of the corresponding principle with the shift of emphasis in the content and appointment of the latter [2, p. 64].

Patriotism is an integral attribute of the existence of a nation, people, a society, a state and a personality; it represents the most important determinant of unity, cultural integrity, dynamic and successful development of a society and the state. Patriotism arises as a complex socio-cultural entity, which reflects the multidimensionality of links and relations of social individuals with the Fatherland [8, p. 4, 9; 9, p. 223]. Patriotism is an attitude towards the Homeland, which reflects values in the consciousness and practical actions of social individuals of inter-subjective connection with a certain space-time, sociocultural, national-state continuum. In this context, patriotism acts as a factor and means of organizing and self-organizing of the human community. Patriotism is determined, on the one hand, in individual perception of his/her belonging to a certain civilization and national-state integrity, on the other, in his/her private life and civil society. Patriotism cannot be imposed on the person from outside or enforced. The main condition of patriotic expression of will and activity is the freedom of their manifestation [8, p. 7, 10; 9, p. 224].

According to Voloshyna, patriotism is an element of the system of spiritual values of a man. It is not attributed to a person at birth on a genetic level, but is formed under the influence of society. In each historical epoch there was a corresponding form of patriotism, determined by existing social relations. In addition, patriotism is characterized by a national specificity [10, p. 14]. Patriotism is a special spiritual value, because it guarantees the unity, harmonization of modern Ukrainian society, preservation of its uniqueness and cultural identity in the variety of human community. Concluding that the core of patriotism and its main component is the love for small and great Homeland, formed under the influence of social factors, N. M. Voloshyna suggests such an understanding of the patriotism of the society: social and psychological feature, formed due to social interaction, inherent in the society, inherent in the individual, family, social group, ethnic group, which manifests itself in faith and unselfish love for the Homeland, readiness for selfless work for its prosperity, the ability to self-sacrifice in protecting its interests from threats, and can consolidate society. The patriotism of Ukrainian society is characterized by the following features: high humane orien-

tation of Ukrainian patriotic idea; tolerance; solidarity; collectivism in solving social problems, special love for native nature. Patriotism includes emotional, intellectual and activity aspects [10, p. 15].

In other scientific sources of social philosophy, patriotism is defined as a personal position, which is characterized by love for the Fatherland, readiness for practical activity to realize state interests and ideals, respect for state laws and identification of their own interests with the interests of the state, in which a person lives. The main elements of patriotism are the love of the subject of patriotism to the object, historical memory, interests of the subject of patriotism, which are organically consistent with the goals of the object of patriotism [11, p. 4, 12].

Therefore, in this article, it would be appropriate to use generally accepted understanding of the notion of "patriotism" and to define the principle of patriotism as a love for the Homeland, its people, national traditions, devotion to the rights, freedoms and interests of a human being and a citizen.

Govorukha argues patriotism, which is love for the Homeland, respect for state symbols and state language, a sense of belonging to own people gives public service a sense of nobility. Undoubtedly, every decent and intelligent official must subconsciously dream to see his/her country flourishing and rich, strong and protected. Moreover, patriotism has always been and remains a significant and powerful stimulus for creative achievements of every citizen with a sense of statesmanship, especially of a civil servant, if he/she cares about the fate of Ukraine, if he/she dreams of realizing real national ideals [12].

The principle of patriotism emphasizes the predominance of social interests over personal interests at the time of globalization and a single information space, when the role of the state decreases, while the importance of the role of public and civil society increases. Consequently, it actualizes a new understanding of patriotism. To be exact, the activities of a civil servant must be based on devotion to the Ukrainian people, priority of Ukraine's interests to the interests of other states and to their own interests [13, p. 68]. According to Kivalov, the entire activity of civil service should be directed at serving the interests of every citizen and all people. Serving the interests of the people is possible only if a legal regime of relations between state bodies and citizens is ensured, and a person will be guaranteed real observance of his/her rights and freedoms, as well as reliable legal protection in case of their violation. Civil service should ensure implementation of such a legal regime. One of the elements of such a legal relation regime is the provision of

citizens with "administrative services" by executive bodies. The term indicates that the state, represented by state bodies, through civil servants serves a person in exercising his/her right or legitimate interest [14, p. 8-9]. Служіння народові – смислове ядро, навколо якого має вибудовуватися як аксіологічна система державної служби демократичної країни, так і сукупність ціннісних орієнтацій державних службовців, які її представляють [15, p. 23; 16, с. 1513]. Serving people is a semantic core, around which should be built up as an axiological system of civil service of a democratic country, as well as a set of value orientations of civil servants who represent it [15, p. 23; 16, p. 1513].

Kolomoiets and Hermaniuk argue that the principle of patriotism and service to the people of Ukraine is intertwined with the rule of law principle, since their realization is related to the single purpose of subordinating activities of civil servants to needs for the realization and protection of human rights, ensuring their priority over other values in Ukraine. Thus, the scientists conclude that the principle of patriotism and the service to the Ukrainian people as a principle of civil service mean love to the Motherland, its people, national traditions, commitment to the interests of the citizen, subordination of the activities of civil servants to the needs of realization and protection of human rights, ensuring their priority before other values in Ukraine. Despite relatively recent acquiring of normative provision, the principle of patriotism and service to the Ukrainian people cannot be underestimated, since this principle is one of the fundamental principles of construction and existence of civil service [17, p. 103; 18, p. 9].

In his research, Kolomoiets states that "patriotism" is a complicated term that allows to unite "love to the Homeland, the people," "devotion to the people," "service to the people," "subordination of the real needs of civil servants to the needs of implementation and protection of human rights, their priorities before other values in Ukraine." Therefore, the definition developed by the legislator in Article 4 of the Law of Ukraine "On Civil Service" of December 10, 2015, No. 889-VIII can be assessed positively, because the term "principle of patriotism" covers all the necessary components of it, the denomination of the principle is concise and consistent with the content of the whole principle (as opposed to, for example, the definition of the corresponding principle proposed by the legislator in Article 3 of the Law of Ukraine "On Civil Service" of November 17, 2011 No. 4050-VI, as "patriotism and service to Ukrainian people," which is tautological and cumbersome).

The legislator's attempts not only to enshrine the corresponding principle among the

principles of civil service, which is characteristic of the Law of Ukraine of December 16, 1993, No. 3723-XII and the Law of Ukraine of November 17, 2011, No. 4050-VI, but also officially to disclose its content (inherent only in the Law of Ukraine of December 10, 2015, No. 889-VIII), should be assessed positively. Саме такий підхід усуває довільне тлумачення цього принципу будь-яким суб'єктом правовідносин, підстави для прояву суб'єктивного розсуду під час правозастосування [2, с. 64]. Moreover, the Law of Ukraine "On Civil Service" of December 10, 2015, No. 889-VIII, the principle of patriotism is affixed to the number 4 following such principles as "rule of law", "legitimacy", "professionalism" (Article 4 of the Law). Proposed by the legislator sequence is arguable and unreasonable, since in this case, the basis for the professionalism of civil service is recognized as a priority in comparison with the patriotism of civil servants. Therefore, according to Kolomoiets, it is appropriate to place all the principles in a separate article of a special legislative act on civil service in alphabetical order, or (and this is the most appropriate) to place the principle of patriotism immediately after the principle of legality, thereby recognizing the motivation of the service, devotion to the Ukrainian people as one of the basic principles of civil service (with an emphasis on the second component of the definition of the latter), its particular priority in comparison with them, directly oriented to other features of civil service [2, p. 65].

According to Slobodian, in the current Law of Ukraine "On Civil Service" an obvious novelty, which is determined by political and legal realities of the present, is the principle of patriotism. The legislator has stated the content of this principle as "devotion and faithful service to the Ukrainian people." According to the researcher, such a definition of the principle of patriotism requires clarification, since in this case, patriotism will have a universal, general social significance, and can be applied to all citizens, not only to civil servants. Obviously, the latter should not only "serve with devotion and faithfulness to the Ukrainian people," but also consistently and purposefully defend interests of the Ukrainian state both inside the country and beyond the borders. After all, the institution of civil service itself, that is, service to the state, in essence, is the quintessence of patriotism.

The implementation of this principle should provide for legislative preferences when participating in a competition for a position of a civil servant for those citizens of Ukraine, who have taken part in the ATO and received a disability. Indeed, their patriotism is proved by deeds convincingly [19, p. 68].

Therefore, the abovementioned enables to conclude.

1. Key normative changes (1993, 2011, 2015) in the term, disclosure of the content, location of the principle of patriotism in relation to other principles of civil service of Ukraine enable to state that native legislators are constantly in search of an optimal name for the corresponding principle of civil service with a shift in emphasis on the content and purpose of the latter. Patriotism is as an indisputable attribute of the existence of a nation, people, society, state, personality. Moreover, both world and national history prove: the higher, the stronger the feeling of patriotism, love for the Homeland, people are inherent in the authority, intellectuals, workers, peasants and other sectors of society, the faster and better the urgent tasks of the economy are solved, the state strengthens, the harmony is improved, the welfare of society increases [20, p. 298].

2. The principle of patriotism as the starting point of legal regulation of civil service in Ukraine should be characterized as an expression of love for the Homeland, its people, national traditions, devotion to the rights, freedoms and interests of a human being and citizen. In this case, the positive aspect of the current Law of Ukraine "On Civil Service" of December 10, 2015, No. 889-VIII is provision for and disclosure of the content of the principles of civil service, in particular the principle of patriotism. Moreover, the normative objectification of the principle of patriotism requires introduction of legislative changes in the part of its location following the principles of the rule of law and legality, but before the principle of professionalism, which in general will conform to European standards [16, p. 1514]. In addition, implementation of the principle of patriotism in the course of legal regulation of civil service needs correlation through engagement to the latter true patriots of Ukraine, especially the soldiers who with arms in their hands protect human values (freedom, independence and territorial integrity of the state, human dignity, human rights) in the east of the Homeland.

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У статті автор розглядає принцип патріотизму як вихідну засаду правового регулювання проходження державної служби в Україні. Проаналізовано практику нормативного закріплення принципу патріотизму в якості засади проходження державної служби у вітчизняному законодавстві, а також зміни і тенденції, що з цим пов'язані. Досліджено соціально-філософський, аксіологічний виміри патріотизму сучасного українського суспільства. Опрацьовано основні підходи до розуміння принципу патріотизму в сучасній адміністративно-правовій доктрині, а також напрями вдосконалення його нормативної об'єктивності та реалізації.

Ключові слова: патріотизм, принцип, державна служба, проходження державної служби, принципи державної служби, принцип патріотизму.

В статье автор рассматривает принцип патриотизма как исходный принцип правового регулирования прохождения государственной службы в Украине. Проанализирована практика нормативного закрепления принципа патриотизма в качестве принципа прохождения государственной службы в отечественном законодательстве, а также изменения и тенденции, связанные с этим. Исследованы социально-философское, аксиологическое измерения патриотизма современного украинского общества. Изучены основные подходы к пониманию принципа патриотизма в современной административно-правовой доктрине, а также направления совершенствования его нормативной объективности и реализации.

Ключевые слова: патриотизм, принцип, государственная служба, прохождение государственной службы, принципы государственной службы, принцип патриотизма.

