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LEGAL MECHANISM FOR THE DISMISSAL OF PUBLIC OFFICIALS ON GROUNDS BEYOND A PUBLIC OFFICIAL'S CONTROL

Abstract. *The purpose of the article* is to establish the specificities of the legal mechanism for the dismissal of public officials on grounds beyond a public official's control.

Results. The article analyses the specificities of the dismissal of public officials. The legal mechanism for the dismissal of public officials on grounds beyond a public official's control is described. The classification of sub-mechanisms included in such a legal mechanism is detailed. The content and meaning of each of them are revealed. Their essence and specificities are defined. It is revealed that if the ground for the dismissal of a public official is to reduce the number or staff of public officials, or to abolish a public authority, the first procedural step is to warn a public official of the subsequent dismissal in writing by the head of the civil service no later than thirty calendar days before the day of dismissal, as well as, if possible, to propose another public office. If a public official refuses such an offer, or it is not possible to employ a public official in another public office, the head of civil service shall initiate a dismissal procedure, making the appropriate order. The next procedural step, as in the previous sub-mechanisms, is to enter a record of the dismissal of a public official in the electronic employment record of the public official, as well as to enter such information into a paper employment record at the request of the public official.

Conclusions. It is concluded that the sub-mechanisms that form the mechanism for the dismissal of public officials on grounds beyond a public official's control are more complex than those that we have considered in the mechanism for a public official's dismissal on grounds under a public official's control. For example, the sub-mechanism for dismissing a public official on the ground of acquiring the citizenship of another State or establishing the citizenship of another State constitute the provisions of a number of legal regulations, including Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII, Constitution of Ukraine, Law of Ukraine "On Citizenship of Ukraine" of January 18, 2001 № 2235-III. The tendency to increase the capacity of civil service managers to dismiss public officials, and in turn, to reduce the guarantees of public officials to protect their labour rights is underlined. Essentially, individual sub-mechanisms do not enable public officials to appeal against dismissal, and in this respect the mechanism for the dismissal of public officials on grounds beyond public officials' control, is more problematic than the mechanism for the dismissal of public officials on grounds under public officials' control.

Key words: legal mechanism, dismissal, public official, civil service, control, labour.

1. Introduction

The relevance of the study of the mechanism for the dismissal of public officials on grounds beyond their control is due to the fact that a new procedure for the dismissal of public officials was introduced recently (in February 2020) in Ukraine, according to which their rights and guarantees to ensure these rights have been somewhat reduced, the procedure for the dismissal has become faster, and dismissals have become more frequent. For example, if the head of the civil service has previously been obliged to notify a public official of his or her

dismissal two months in advance, the current period is only thirty days. As a result, only in IV quarter of 2020 in Ukraine, 6 888 public officials were dismissed, including 11 of job category "A", 311 of job category "B" and 5 290 of job category "C" (National Agency of Ukraine on Civil Service, 2020). If clear algorithms of the dismissal of a public official are met by the head of the civil service, violations thereof enable a public official to be reinstated, therefore the study of the mechanism for the dismissal of public officials on grounds beyond their control is required. In addition, legal regulations on

the dismissal of public officials (primarily, Law of Ukraine “On Civil Service” of December 10, 2015 № 889-VIII (Verkhovna Rada of Ukraine, 2015) and the Labour Code of Ukraine (Verkhovna Rada of Ukraine, 1971)) require the introduction of effective remedies against the abuse by managers of the civil service.

Contributions of the scientists who have studied the legal regulatory mechanism for the dismissal of public officials should be noted, these are: V.O. Babenko, V.A. Bahrii, B.O. Bezkorovainyi, L.R. Bila-Tiunova, A.B. Hryshchuk, Yu.S. Danylenko, M.I. Inshyn, A.V. Kirmach, O.L. Kravchuk, O.Ye. Lutsenko, A.O. Monaienko, O.M. Stets, etc. However, while not all the problems of the legal regulatory framework for the dismissal of public officials have been resolved, it is of importance to focus on the issue of the legal mechanism for the dismissal of public officials on grounds beyond a public official’s control.

2. Specificity of the dismissal of public officials

According to M.I. Karpa, completion of civil service is guaranteed by a legal provision establishing that the change of the head or composition of the state bodies cannot be grounds for the dismissal of a public official by the newly appointed head of the civil service (part 2 of article 83 of Law of Ukraine “On Civil Service” of December 10, 2015 № 889-VIII) (Karpa, 2014, p. 4). However, we have established that the current legislation provides for a number of sub-mechanisms that grant the head of the civil service such a right. Therefore, we will consider the contents of the mechanism for the dismissal of public officials on the grounds, beyond their control, because of the following sub-mechanisms:

- the sub-mechanism for the dismissal of a public official on grounds of loss of Ukrainian citizenship, acquisition of citizenship of another state or establishment of citizenship of another state;

- the sub-mechanism for the dismissal of a public official on the ground of the legal force obtained by the decision or the court indictment concerning his or her administrative or criminal liability for the offenses connected with corruption or the recognition of his or her assets ungrounded, including those which provide for the prohibition of employment in the civil service;

- the sub-mechanism for the dismissal of a public official on the ground of subordination to related persons in the civil service;

- the sub-mechanism for the dismissal of a public official on the grounds of establishing that the entry into the civil service and employment in the civil service does not

meet the requirements of Law of Ukraine “On Prevention of Corruption” of October 14, 2014 № 1700-VII;

- the sub-mechanism for the dismissal of a public official on grounds of loss of the right to the civil service due to application of the prohibition established by Law of Ukraine “On Purification of Power” of September 16, 2014 № 1682-VII;

- the sub-mechanism for the dismissal of a public official on the grounds of reorganisation or liquidation of the state body;

- the sub-mechanism for the dismissal of a public official on the grounds of his or her inconformity to the occupied position in the course of the test or on the results of the performance assessment;

- the sub-mechanism for the dismissal of a public official on the grounds of disciplinary misconduct, for which Law of Ukraine “On Civil Service” of December 10, 2015 № 889-VIII provides for the dismissal;

- the sub-mechanism for the dismissal of a public official on grounds of his or her absence from work due to temporary disability during the term stipulated by the legislation.

The first sub-mechanism we have allocated is the sub-mechanism for the dismissal of a public official on grounds of his or her loss of Ukrainian citizenship, his or her acquisition of citizenship of another state or establishment of his or her citizenship of another state. Thus, as we have established, the citizenship of Ukraine is one of the key requirements for the candidate for the vacant position of civil service. In accordance with part 1 of article 19 of Law of Ukraine “On Civil Service” of December 10, 2015 № 889-VIII, the citizens of Ukraine exclusively have the right to the civil service. Moreover, article 4 of the Constitution of Ukraine (Verkhovna Rada of Ukraine, 1996) provides for a single citizenship in Ukraine. Therefore, a public official in Ukraine shall be a citizen of Ukraine, cannot be a citizen of a foreign state and cannot have double citizenship.

A sub-mechanism for the dismissal of a public official on the grounds of his or her acquisition of citizenship of another state or establishment of his or her citizenship of another state is governed by the provisions of articles 19 and 84 of Law of Ukraine “On Civil Service” of December 10, 2015 № 889-VIII, articles 4 of the Constitution of Ukraine, articles 17, 19, 20 and 21 of Law of Ukraine “On Citizenship of Ukraine” of January 18, 2001 № 2235-III, regulating the procedure for the dismissal of a public official on the grounds of his or her acquisition of the citizenship of another state or establishment of his or her citizenship of another state. First of all, the head of the civil service should

establish a legal fact that testifies to his or her loss of Ukrainian citizenship, his or her acquisition of citizenship of another state or establishment of his or her citizenship of another state. That is, the first procedural action is to receive information by the head of the civil service about the loss of the right to the civil service by the public official. In the three-day period from the date of receipt of such information, the head of the civil service should issue an order or instruction to dismiss the public official with the indication of grounds for the dismissal. The following procedural steps are to issue a copy of such order or command on dismissal, to carry out calculations with him/her, as well as to enter a record of the dismissal of a public official in the electronic employment record, and to enter such information into a paper employment record at the request of the public official.

The sub-mechanism for the dismissal of a public official on the ground of the entering into force of a decision or the court indictment concerning administrative or criminal liability for offenses connected with corruption or the recognition of his or her assets ungrounded, including those providing for the prohibition of employment in the civil service, consists of the provisions of article 84 of Law of Ukraine “On Civil Service” of December 10, 2015 № 889-VIII, article 36 of the Labour Code of Ukraine, article 290 of the Civil Procedural Code of Ukraine, as well as procedures, prescribed by Law of Ukraine “On Civil Service” of December 10, 2015 № 889-VIII and the Labour Code of Ukraine. As in case of the previous sub-mechanism, first of all, the head of the civil service should receive one of the above-mentioned court decisions, which shows that the public official has lost the right to the civil service. Within three days after the head of the civil service has acquainted with the decision of the court, he or she shall issue an order or instruction on dismissal of a public official with the indication of grounds for the dismissal. A copy of such order or instruction is issued to the public official. The employer makes a record of the dismissal of a public official to the electronic employment record, as well as to the paper employment record on the demand of a public official. In addition, as in all the sub-mechanisms we have analysed, the head of the civil service should provide a calculation with the public official.

Another sub-mechanism, allocated on the ground of the provisions of article 84 of Law of Ukraine “On Civil Service” of December 10, 2015 № 889-VIII (Verkhovna Rada of Ukraine, 2015), is the sub-mechanism for the dismissal of a public official on the ground of establishment of subordination to related persons in

the civil service. According to part 1 of article 1 of Law of Ukraine “On Prevention of Corruption” of October 14, 2014 № 1700-VII (Verkhovna Rada of Ukraine, 2014b), a spouse, parents, a mother, children, a stepmother, a son, a daughter, a stepson, a stepdaughter, a brother, a sister, a cousin, a brother- and sister-in-law, a nephew, a niece, an uncle, an aunt, a grandfather, a grandmother, a great grandfather, a great grandmother, a grandson, a granddaughter, a great-grandson, a great-granddaughter, a son-in-law, a daughter-in-law, a mother-in-law, a father-in-law, an adopter or adoptee, a guardian or custodian, a person who is under the care or custody of a public official are persons close to the public official. Since such persons are defined by the current legislation as “related”, it may create obstacles for them to realise their right to civil service, even if they meet the requirements of candidates for the civil service defined in articles 19 and 20 of Law of Ukraine “On Civil Service” of December 10, 2015 № 889-VIII.

3. The regulatory and legal framework for the dismissal of public officials

Thus, in accordance with part 1 of article 27 of Law of Ukraine “On Prevention of Corruption” of October 14, 2014 № 1700-VII (Verkhovna Rada of Ukraine, 2014b) and part 1 of article 32 of Law of Ukraine “On Civil Service” of December 10, 2015 № 889-VIII (Verkhovna Rada of Ukraine, 2015), a person who will be subordinate to a related person or whose subordinate will be a related person, i. e. any of the persons listed above, cannot be appointed to the position of civil service. This information shall be communicated by such persons at the stage of competitive selection for employment of the vacant position. In this case, a person may be accepted for the civil service, but for another position, so she will not be subordinate to a related person.

In practice, situations are possible when subordination of related persons appeared already after entering the civil service. In this case, part 2 of article 31 of Law of Ukraine “On Civil Service” of December 10, 2015 № 889-VIII (Verkhovna Rada of Ukraine, 2015) requires the public official to inform the head of the civil service of circumstances that have arisen and to take measures for the elimination of subordination within the fifteen-day period. If this problem is not resolved within the specified period, the head of the civil service can transfer the public official to another equal position. However, in case that such transfer is not possible, the person who is in subordination is dismissed from the civil service.

Thus, the sub-mechanism for the dismissal of a public official on the ground of establishing subordination of related persons in the civil

service is provided for by the provisions of articles 32, 84 of Law of Ukraine “On Civil Service” of December 10, 2015 № 889-VIII, article 27 of Law of Ukraine “On Prevention of Corruption” of October 14, 2014 № 1700-VII and the Labour Code of Ukraine, regulating the dismissal of a public official on the grounds of subordination to related persons in the civil service.

After related persons who were subordinate to each other in the fifteenth day have not taken measures to eliminate subordination, and the head of the civil service cannot transfer public officials to other equal positions, he or she shall dismiss the public official who is subordinate. For this purpose, the head of the civil service shall issue the order on dismissal of a public official on the ground of paragraph 5 of part 1 of article 84 of Law of Ukraine “On Civil Service” of December 10, 2015 № 889-VIII (Verkhovna Rada of Ukraine, 2015) and issue a copy of such order to the public official who has been dismissed. As in all other sub-mechanisms, the person dismissed by the head of the civil service shall be provided with a record of dismissal to the electronic employment record, the public official shall be issued an employment record with the corresponding record, and a calculation shall be made.

The next sub-mechanism, which is a component of the mechanism for the dismissal of public officials on grounds that beyond their control, is the sub-mechanism for the dismissal of a public official on the ground of the establishment that entering the civil service and employment in the civil service is contrary to the requirements of Law of Ukraine “On Prevention of Corruption” of October 14, 2014 № 1700-VII (Verkhovna Rada of Ukraine, 2014b).

For example, in accordance with paragraph 7 of part 1 of article 84 of Law of Ukraine “On Civil Service” of December 10, 2015 № 889-VIII (Verkhovna Rada of Ukraine, 2015), a public official may be dismissed on the grounds of a real or potential conflict of interests, which cannot be regulated in any other way. The real conflict of interests, in accordance with the provisions of article 1 of Law of Ukraine “On Prevention of Corruption” of October 14, 2014 № 1700-VII, is defined as a conflict between the private interests of a public official and his or her official powers, and a potential conflict of interests, as the presence of a public official's private interest, which in the future may affect his or her decision-making. Part 4 of article 28 of Law of Ukraine “On Prevention of Corruption” of October 14, 2014 № 1700-VII (Verkhovna Rada of Ukraine, 2014b) provides for that the head of the civil service is responsible for measures aimed at solving real or potential

conflict of interests of a public official. For example, the head of the civil service has the right to suspend the public official from the performance of certain tasks; to establish external control over the performance of such tasks by the public official; to restrict the access of a public official to certain information; to amend the official powers of the person (which we have previously established as grounds for the dismissal of a public official on his or her initiative) or propose the public official to be transferred to another position. The most important thing in the context of our study is that, as follows from the provisions of paragraph 7 of part 1 of article 84 of Law of Ukraine “On Civil Service” of December 10, 2015 № 889-VIII, one of the ways in which a conflict can be resolved is the dismissal of a public official. However, according to part 2 of article 34 of Law of Ukraine “On Prevention of Corruption” of October 14, 2014 № 1700-VII, the dismissal, as a way of resolving the conflict of interests, is applied only in case the conflict of interests is permanent and cannot be resolved in another way, including because of the absence of consent of a public official himself, herself to the application of other remedies. In other words, dismissal is an extreme remedy for the conflict of interests of a public official, which is applied by the head of the civil service only in case when the application of other remedies is impossible, or the public official has refused them.

A special sub-mechanism for the dismissal of a public official is the dismissal due to the loss of the right to the civil service due to the application of the prohibition established by Law of Ukraine “On Purification of Power” of September 16, 2014 № 1682-VII (Verkhovna Rada of Ukraine, 2014a). The above-mentioned legal regulation, adopted in 2014, provides for in article 1 that the purification of power is the prohibition of individuals to be in the civil service, which is implemented with the purpose of preventing persons, whose decisions, actions or omissions contributed to the measures, aimed at the usurpation of power by President of Ukraine Viktor Yanukovich, undermining of the foundations of national security and defence of Ukraine and illegal violation of human rights and freedoms, from administration of public affairs. As a result, at present, the civil service cannot be held by persons who have occupied positions, provided for by Law of Ukraine “On Purification of Power” of September 16, 2014 № 1682-VII (Verkhovna Rada of Ukraine, 2014a), in period (which is different for different positions) defined by this legal regulation. The list of such positions is extensive. It includes such persons as the Prime Minister of Ukraine or the Prosecutor General of Ukraine and persons such as “other officials of state authorities, local self-government bodies”. Paragraph 8

of part 2 of article 19 of Law of Ukraine “On Civil Service” of December 10, 2015 № 889-VIII provides that persons who are subject to the prohibition defined by Law of Ukraine “On Purification of Power” of September 16, 2014 № 1682-VII, cannot enter the civil service, therefore, this rule applies to all persons, without exception, defined by this legal regulation. In case such person has entered the civil service, and it became known to the head of the civil service, he or she shall dismiss the public official, in accordance with paragraph 8 of part 1 of article 83 of Law of Ukraine “On Civil Service” of December 10, 2015 № 889-VIII (Verkhovna Rada of Ukraine, 2015). The establishment of the fact that the public official shall be dismissed on the grounds of the purification of power is carried out by means of a special procedure.

Furthermore, the distinctiveness of this sub-mechanism, in comparison with the sub-mechanisms we have discussed earlier, is that it includes the provisions of Law of Ukraine “On Civil Service” of December 10, 2015 № 889-VIII (articles 18 and 83) and a special legal regulation – Law of Ukraine “On Purification of Power” of September 16, 2014 № 1682-VII (Verkhovna Rada of Ukraine, 2014a) (in fact, all articles of this legal regulation) and the Labour Code of Ukraine, which regulate the procedure for the dismissal of a public official because of his or her loss of the right to the civil service.

The sub-mechanism for the dismissal of a public official on the ground of reorganisation or liquidation of the state body is composed of the provisions of article 87 of Law of Ukraine “On Civil Service” of December 10, 2015 № 889-VIII, as well as the procedures defined by Law of Ukraine “On Civil Service” of December 10, 2015 № 889-VIII and the Labour Code of Ukraine. For example, if the ground for the dismissal of a public official is to reduce the number or staff of public officials, or to abolish a public authority, the first procedural step is to warn a public official of the subsequent dismissal in writing by the head of the civil service no later than thirty calendar days before the day of dismissal, as well as, if possible, to propose another public office. If a public official refuses such an offer, or there is no opportunity to employ a public official in another public office, the head of civil service shall initiate a dismissal procedure, making the appropriate order. The next procedural step, as in the primary sub-mechanisms, is to enter a record of the dismissal of a public official in the electronic employment record of the public official, as well as the entry of such an entry into a paper employment record at the request of the public official. In contrast to all other sub-mechanisms, a record to an electronic employment record or to a paper employment record on the demand of a public

official is carried out not on the day of dismissal, but within seven days from the date of dismissal (part 5 of article 87 of Law of Ukraine “On Civil Service” of December 10, 2015 № 889-VIII (Verkhovna Rada of Ukraine, 2015)). The last procedural action, according to part 4 of article 87 of Law of Ukraine “On Civil Service” of December 10, 2015 № 889-VIII (Verkhovna Rada of Ukraine, 2015), is the severance payment to the public official in the amount of two monthly average wages. As well as the issue of the employment record, the calculation is carried out not immediately on the day of dismissal, but within seven days.

The mechanism for the dismissal of a public official on the grounds of his or her inconformity to the position occupied in the course of the test or on the results of the performance assessment is that the public official may be dismissed due to his or her lack of conformity with the position occupied at the stage of the test, or on the results of the performance assessment, if the public official passed the test, and a labour contract was concluded with him.

The basis of the sub-mechanism for the dismissal of a public official on the grounds of his or her inconformity to the position occupied in the course of the test or on the results of the performance assessment is in the provisions of articles 35, 44, 87 of Law of Ukraine “On Civil Service” of December 10, 2015 № 889-VIII and the Procedure for of public officials’ performance assessment and the Labour Code of Ukraine, regulating the procedure for the dismissal of a public official on the grounds of his or her inconformity to the position occupied in the course of the test or on the results of the performance assessment.

Thus, when the public official is dismissed before the end of the term of the test, the head of the civil service shall notify him or her of his or her dismissal in writing not later than seven calendar days in advance. The dismissal is executed by the order, a copy of which is given to the public official together with the employment record. Moreover, the calculation is carried out with the public official who has not passed the test.

If the public official is dismissed on the ground of the performance assessment, he or she is given a conclusion with negative assessment and substantiation. Since according to article 11 of Law of Ukraine “On Civil Service” of December 10, 2015 № 889-VIII (Verkhovna Rada of Ukraine, 2015), the public official is granted the right to appeal the conclusion with substantiation, he or she can within a month from the date when he or she learned about the negative assessment or should have learned about it, submit a complaint to

the head of the civil service with appeal of conclusions. No later than 20 calendar days from the date of receipt of the complaint, the head of the civil service shall provide the public official with a written response to the complaint. If the demands of a public official are not met by it, the head of the civil service initiates the dismissal of a public official, which provides for the order on dismissal and issuing it to the public official together with the employment record, as well as calculation. However, a public official who does not agree with the answer of the head of the civil service to his or her complaint may appeal to the court, and, accordingly, in the future, resume his or her office.

The sub-mechanism for the dismissal of a public official on the ground of disciplinary misconduct, for which Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII (Verkhovna Rada of Ukraine, 2015) provides for the dismissal, is functioning on the basis of the relevant provision, which determines the list of such disciplinary misconduct. For example, part 1 of Article 66 provides for that a public official may be dismissed for disciplinary misconduct. In addition, part 5 of article 66 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII establishes a reference to the exhaustive list of such grounds, established by Article 65 of the same legal regulation.

For example, one of the grounds is violation of the Oath of a public official. S.M. Kozin argues that this disciplinary misdemeanour means that the public official has committed acts incompatible with the powers of the position occupied. However, the act should be such that it undermines the trust in the public official as the carrier of power, as well as has led to the undermining of the trust in the state authority (Kozin, 2014, p. 172). For example, according to article 8 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII, one of the duties of a public official is to observe the principles of the civil service and the rules of ethics. In addition, it should be noted that the text of the Oath, which provides for taking the duty by the public official "with dignity to carry high rank of a public official and to fulfil his or her duties in a conscientious way". Therefore, in fact, any violation of legal, ethical, moral or duty rules leads to violation by the public official of the Oath, and, accordingly, can be considered as grounds for the dismissal of a public official.

Therefore, the sub-mechanism for the dismissal of a public official on the grounds of disciplinary misconduct is formed by the provisions of articles 65, 66, 87 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII,

the Labour Code of Ukraine and the Procedure for disciplinary proceedings, which regulate the procedure for the dismissal of a public official on the grounds of disciplinary misconduct.

The first procedural action envisaged by this mechanism is the establishment by the head of the civil service of the fact that the public official has committed disciplinary misconduct incompatible with the further performance of his or her official duties. The head of the civil service shall initiate the creation of a disciplinary commission, in accordance with article 69 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII (Verkhovna Rada of Ukraine, 2015), which should establish the degree of fault, character and severity of the disciplinary misconduct. The result of the disciplinary proceedings is the decision to impose disciplinary penalties. Accordingly, when a decision is made to dismiss a public official, the decision of the disciplinary commission (which can be appealed by the public official in court) is the ground for the dismissal of a public official. This is stated in the order of the head of the civil service, a copy of which is given to the public official together with the employment record and calculation.

The last component of the mechanism for the dismissal of public officials on grounds beyond their control is the sub-mechanism for the dismissal of a public official on the grounds of absence from work due to temporary disability during the term stipulated by the legislation. In accordance with part 2 of article 87 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII (Verkhovna Rada of Ukraine, 2015), the grounds for the dismissal of a public official are his or her absence for more than one hundred and twenty calendar days, or more than one hundred and fifty calendar days during the year, except for cases of absence of a public official in connection with receiving leave for pregnancy and childbirth. If the public official has lost his or her ability to work, performing his or her duties, he keeps a position until recovery or his or her dismissal on his or her own initiative. In all other cases, the head of the civil service may initiate the dismissal of a public official immediately after the above-mentioned terms.

Such sub-mechanism is based on the provisions of article 87 of Law of Ukraine "On Civil Service" of December 10, 2015 № 889-VIII (Verkhovna Rada of Ukraine, 2015) and the Labour Code of Ukraine, governing the dismissal of a public official on the ground of absence from work as a result of temporary incapacity to work within the period prescribed by law. The procedural steps themselves are not complicated by certain specificities. The head of the civil service

states in the order on dismissal of a public official in accordance with part 2 of article 87 of Law of Ukraine “On Civil Service” of December 10, 2015 № 889-VIII, gives the public official a copy of the order, enters a record in the electronic employment record of the public official and a paper employment record at the request of the public official, and makes the calculation.

4. Conclusions

To sum up, the study of the mechanism for the dismissal of public officials on grounds beyond a public official's control enables to make the following conclusions:

1) the sub-mechanisms that form the mechanism for the dismissal of public officials on grounds beyond a public official's control are more complex than those that we have considered in the mechanism for a public official's dismissal on grounds under a public official's control. For example, the sub-mechanism for dis-

missing a public official on the ground of acquiring the citizenship of another State or establishing the citizenship of another State constitute the provisions of a number of legal regulations, including Law of Ukraine “On Civil Service” of December 10, 2015 № 889-VIII, Constitution of Ukraine, Law of Ukraine “On Citizenship of Ukraine” of January 18, 2001 № 2235-III;

2) our study has revealed a tendency to increase the capacity of civil service managers to dismiss public officials, and in turn to reduce the guarantees of public officials to protect their labour rights. Essentially, individual sub-mechanisms do not enable public officials to appeal against dismissal, and in this respect the mechanism for the dismissal of public officials on grounds beyond public officials' control, is more problematic than the mechanism for the dismissal of public officials on grounds under public officials' control.

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ПРАВОВИЙ МЕХАНІЗМ ЗВІЛЬНЕННЯ ДЕРЖАВНИХ СЛУЖБОВЦІВ ІЗ ПІДСТАВ, ЯКІ НЕ ЗАЛЕЖАТЬ ВІД ВОЛІ ДЕРЖАВНОГО СЛУЖБОВЦЯ

Анотація. *Метою статті* є з'ясування особливостей правового механізму звільнення державних службовців із підстав, які не залежать від волі державного службовця.

Результати. У статті проаналізовано особливості звільнення державних службовців. Охарактеризовано правовий механізм звільнення державних службовців із підстав, які не залежать від волі державного службовця. Деталізовано класифікацію субмеханізмів, які входять у такий правовий механізм, розкрито зміст і значення кожного з них. Визначено їх сутність та особливості. З'ясовано, що у випадку, коли підставою для звільнення державного службовця є скорочення чисельності чи штату державних службовців або ліквідація державного органу, перша процедурна дія полягає в попередженні державного службовця про подальше звільнення в письмовій формі керівником державної служби не пізніше ніж за тридцять календарних днів до дня звільнення, а також у пропозиції іншої посади державної служби (за можливості). У тому випадку, коли державний службовець відмовляється від такої пропозиції або коли можливість працевлаштувати державного службовця на іншій посаді державної служби відсутня, керівник державної служби ініціює процедуру звільнення, оформлюючи відповідний наказ. Наступна процедурна дія, як і в попередніх проаналізованих субмеханізмах, – внесення запису про звільнення державного службовця до електронної трудової книжки державного службовця, а також внесення такого запису до паперової трудової книжки за вимогою державного службовця.

Висновки. Зроблено висновок, що субмеханізми, які формують механізм звільнення державних службовців із підстав, що не залежать від волі державного службовця, є дещо складнішими, ніж ті, які розглядалися нами в межах механізму звільнення державних службовців із підстав, що залежать від волі державного службовця. Наприклад, субмеханізм звільнення державного службовця з підстави набуття ним громадянства іншої держави або встановлення наявності в нього громадянства іншої держави утворюють норми низки нормативно-правових актів, зокрема Закону України «Про державну службу» від 10 грудня 2015 р. № 889-VIII, Конституції України, Закону України «Про громадянство України» від 18 січня 2001 р. № 2235-III. Наголошено на тенденції до розширення можливостей керівників державної служби звільняти державних службовців та, відповідно, звання гарантій державних службовців щодо захисту їхніх трудових прав. Зокрема, окремі субмеханізми є такими, які фактично не залишають державним службовцям можливості оскаржити звільнення, і в цьому аспекті механізм звільнення державних службовців із підстав, які не залежать від волі державного службовця, є більш проблемним, ніж механізм звільнення державних службовців із підстав, що залежать від волі державного службовця.

Ключові слова: правовий механізм, звільнення, державний службовець, державна служба, воля, праця.

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