

## РОЗДІЛ IV. АДМІНІСТРАТИВНЕ ТА ФІНАНСОВЕ ПРАВО

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### **PATRIOTISM AND SERVICE TO THE UKRAINIAN PEOPLE – THE PRINCIPLE OF PUBLIC SERVICE: SOME THEORETICAL, LEGAL AND NORMATIVE ASPECTS**

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The article is based on an analysis of various sources covered genesis of patriotism and service to the Ukrainian people as principles of public service, the specifics of the study in administrative and legal doctrine fixing in the legislation. Substantiates the feasibility of using expanded title for its designation fundamental position in relation to the rest of the principles of public service and the need for regulatory consolidation of its determination to eliminate any reason for any interpretation, including and using positive foreign experience rule-making under conditions of radical reform of regulatory principles of public service.

*Key words: patriotism and service to the Ukrainian people, principle, public service, law, doctrine, fundamental, content, title.*

Коломоець Т.А. ПАТРИОТИЗМ И СЛУЖЕНИЕ УКРАИНСКОМУ НАРОДУ – ПРИНЦИП ГОСУДАРСТВЕННОЙ СЛУЖБЫ: НЕКОТОРЫЕ ТЕОРЕТИКО-ПРАВОВЫЕ И НОРМАТИВНЫЕ АСПЕКТЫ / Запорожский национальный университет, Украина

В статье на основании анализа различных источников освещается генезис патриотизма и служения украинскому народу как принципу государственной службы, специфика его исследования в административно-правовой доктрине и закрепления в законодательстве. Обосновывается целесообразность использования расширенного названия для его обозначения, основоположное значение по отношению ко всем другим принципам государственной службы, а также потребность нормативного закрепления его определения ради устранения любых оснований для произвольного толкования, в т.ч. и с использованием позитивного зарубежного опыта нормотворчества в условиях кардинального реформирования нормативных принципов государственной службы.

*Ключевые слова: патриотизм и служение украинскому народу, принцип, государственная служба, законодательство, доктрина, основоположный, содержание, название.*

Коломоець Т.О. ПАІРІОТИЗМ ТА СЛУЖІННЯ УКРАЇНСЬКОМУ НАРОДУ – ПРИНЦИП ДЕРЖАВНОЇ СЛУЖБИ: ДЕЯКІ ТЕОРЕТИКО-ПРАВОВІ ТА НОРМАТИВНІ АСПЕКТИ / Запорізький національний університет, Україна

У статті на підставі аналізу різноманітних джерел висвітлюється генеза патріотизму та служіння українському народу як принципу державної служби, специфіка цього дослідження в адміністративно-правовій доктрині та закріплення у законодавстві.

Зазначається, що спеціалізованих монографічних досліджень, безпосередньо присвячених цьому питанню, у вітчизняній правовій науці немає. В наявності роботи, присвячені взагалі принципам державної служби, де відповідний принцип висвітлюється поряд із рештою дуже фрагментарно, або ж має місце лише дублювання нормативно-правових положень, покликаних врегулювати це питання, без детального аналізу та змісту. Все це зумовлює наявність відповідної прогалини у вітчизняній правовій доктрині з питань окремих принципів державної служби. Автором наводяться положення основних вітчизняних навчальних, наукових, публіцистичних джерел, присвячених відповідній проблематиці, із зазначенням особливостей підходу науковців до висвітлення відповідного питання, пропонується власний варіант можливих корегувань визначення принципу «патріотизму та служіння українському народу», його належності до класифікаційних груп принципів державної служби, виокремлених завдяки використанню різних критеріїв. У статті зосереджується увага на порівняльно-правовому дослідженні положень Законів України «Про державну службу» 2003 та 2011 років в аспекті закріплення вищезазначеного принципу, та співвідношенні із зарубіжними нормативними аналогами. Зокрема аналізуються відповідні положення спеціальних законодавчих актів Республіки Білорусь, Республіки Грузія, Японії, Чеської Республіки, Італійської Республіки, Республіки Казахстан та інших зарубіжних країн, виділяються положення, запозичення яких цілком можливе і для України (щодо нормативного закріплення дефініції, прийнятної назви принципу, яка б узгоджувалася із його змістом тощо), а також положення, акцент уваги вітчизняного законодавства на які є зайвим, задля усунення наявних проблем у правозастосуванні. Аналіз доктринальних та нормативних положень з питань принципу державної служби – патріотизму та служіння українському народу – у роботі подається в аспекті обгрутування доцільності удосконалення засад використання його ресурсу в умовах докорінного реформування вітчизняного законодавства про державну службу, виокремлення службового права як підгалузі адміністративного права, наближення вітчизняної державної служби до

європейських аналогів. Обґрунтовується доцільність використання розширеної назви для його позначення, засадниче положення по відношенню до решти принципів державної служби, а також потреба нормативного закріплення його визначення задля усунення будь-яких підстав для довільного тлумачення, в т.ч. й із використанням позитивного зарубіжного досвіду нормотворення в умовах докорінного реформування нормативних засад державної служби.

*Ключові слова: патріотизм та служіння українському народу, принцип, державна служба, законодавство, доктрина, засадничий, зміст, назва.*

In terms of a radical renewal of administrative law, which consists of the civil service legislation, the adoption of the new Law of Ukraine "On Civil Service" (Pro derzhavnu sluzhbu), which recognized, among other things, many new previously failed domestic legal doctrine and legislation provisions relevance takes an in-depth analysis of its provisions, formulation differs somewhat generalized sense, which creates conditions for arbitrary interpretation, which in turn could adversely affect its applicability.

Given the novelty of some of these provisions, it is reasonable lack of sound doctrinal developments of specialized and generalized practice of application (given the postponement of the entry into force of the Act). This requires focus and deep consideration on the analysis of the Law of Ukraine "On Civil Service", clarifying their meaning for the formulation of proportions on their interpretation within existing doctrinal industry developments, comparative legal studies and actually makes the statement of purpose of this article focus attention on the provisions enshrining the principle of patriotism and service to the Ukrainian people as the principle of the civil service.

It should state that the Law of Ukraine of 16.12.2003 "On civil service" among the basic principles of public service has fixed "service to the people of Ukraine" (Article 3), while the Law of Ukraine of 17.11.2011 "On State Service" in Article 3, entitled "Principles of the Civil Service" captures this principle, however, gives him a "second position" (moves to the list of principles) and uses a different name – "patriotism and service to the Ukrainian people", which, in turn, gives a few questions regarding the position of the legislator with respect to fixing this principle – is a specification, modification principle of association with others, borrowing European counterpart and more.

Given the fact that the text of the Law of Ukraine from 17.11.2011, the definition of "patriotism and service to the Ukrainian people," is no, but enough is meaningful for them (Article 1), the principles of Article 3 only transferred without specifying their content in other provisions Law ascertain the real content of this principle is considered to be possible using doctrinal terms and comparative legal studies. Immediately it should be noted that specialized studies dealing directly relevant principles in national legal doctrine there. Most scientists of administrative law have attention focuses on the analysis of the principle in terms of the study of the principles of public service (eg, work Kivalova S., L. White-Tiunova, J. Bytyaka, Stetsenka S. et al.), coverage of the organizational and legal issues of public service and so on. At the same time, cannot keep on a conversation and complete disregard for scientists this issue. Generalized analysis of available sources suggests that there is doctrinal developments, is devoted to the principle of public service, but they are mostly generic in nature, and that cannot figure out the real meaning of this principle, as became appropriate scientific basis for the legislative process to secure, confirming specificity recording in Article 3 of the Law. However, the research summarized unable to form an idea of the content of the principle of "patriotism and service to the Ukrainian people," which makes possible its arbitrary interpretation, generalized form of regulatory consolidation and underestimation in the process of enforcement. In fact, the above principle, despite its normative fixing of a novelty with this formulation, known national legal science and the law a long time. For example, I. Gryschenko, exploring the formation and development of scientific views on the major institutions of national administrative law, notes that among the general quality of public servants who were recorded in the Charter of public service in force until canceled in November 1917 (his first edition is dated 1832 year), a location given "fidelity service", "zeal for the common good" [1, 86], which, in his opinion, may be considered certain "prototype" of existing guidelines.

About the same basic provisions remembered in the works of A. Yelistratov, M. Korkunov, although no information on what are the principles of service in terms of total fragmented attention to the study of public service as a whole. For example, A. Yelistratov immediately noted that "the officer can recognize only the employee, whose work, as opposed to official activities shall be governed exclusively by legal system, with its purpose social service to the citizens, not the state in the face of

an absolute monarch" [1, 117-118]. More detailed study in terms of the principles of public service in general, and the above principle (the prototype) can be considered a work of scientists that were published in the 60s – 70s of the twentieth century and later. For example, M. Erohin, A. Klyushnychenko noted that the principles of public service are, inter alia, that "public officials – are servants of Soviet society, the servants of the people" [2, 56]. They supported Yu. Kozlov, noting that the main purpose of public servants is that they are "servants of society" [3, 164-165] and A. Lunev, S. Studenikin - "public officials – servants society, artists government orders" [4, 294-295; 5, 106]. Despite the fact that the name of this principle sources of historical periods does not match the name of the modern principle, while analysis of the provisions of these sources suggests that we are talking about serving the people and patriotism. Most of the scientists mentioned this basic service provision and very seldom tried to analyze them. We can remember individual work V. Manohina, where he not only refers to "full and continuous compliance with all state of the will and interests of the people" (he suggests using just the name), but trying though somewhat generalized, disclose its contents, that is, in his view, manifested in many forms, including in the "service of the people and of practical work by civil servants of the people" [6, 17].

Almost absolute position can be found in the works of J. Starylova [7, 199] A. Yakubu [8, 116]. A. Yakuba, analyzing the main regulations of the Soviet Union period about the civil service, said that since the 20's of the twentieth century in the country there are public officials "of the people" [8, 116].

More or less close to the modern version can be found by name position relative to the corresponding principle in the work of scholars who were published in the 90 years of the twentieth century and later.

For example, Yu. Bytyak thoroughly researching organizational and legal framework of public service, including its principles selects "serving the people of Ukraine" [9, 44], effectively duplicating regulations. Similar provisions can be found in the works of S. Kivalova, S. Stetsenka [10], while this principle is singled out in terms of classification and allocation principles of public service as a kind of constitutional. M. Hermaniuk, E. Safronovaby exploring classification principles of public service, said that in the legal, including administrative and legal science, there is no unity of views of scientists on the classification principles of public service, and therefore the assignment of a principle to a particular group. Proof of this may well be the work of E. Chernonoha position to refer the principle of "patriotism and service to the people of Ukraine" to the group ethic [11, 96-97; 12, 200] at the same time as, for example, S. Kivalov, L. White, Tiunova, M. Hermaniuk, A. Kuz'menko find it "fundamental", "basic", "constitutional", "common". Disputed the classification of the principles of public service distinguish S. Kivalova, L. White, Tiunova, A. Bochernikov K. Bondarenko [13, 16]. Trying to summarize the existing situation with regard to the doctrine of classification allocation principles of public service groups demonstrate M. Hermaniuk, E. Safronova [11, 99-100] although analysis of their work can identify certain aspects of the discussion and offered their versions. For example, depending on the type of public service principles offered to share the principles of diplomatic, militarized, civil service and include "service to the Ukrainian people," only the first group [11, 99-100], which, in turn, raises the question, why cannot it be considered a principle and other types of services? While agreeing with the allocation of this principle as enshrined in legislation (for fixing the source), the general law (for sub-sectorial affiliation), as implemented public officials in the exercise of their tasks and functions assigned to them by the state (for sub 'object of sale) [11, 99-100], while some questions require leaving aside that principle in the classification principles in content [11, 100].

Thus, despite the existence of doctrinal developments concerning the classification of distribution principles of public service generally recognized position on the title, contents, accessories' patriotism and service to the Ukrainian people "to the principles of public service groups do not have to this time. Some modification of the names, content, form, recording the above principle, membership of a particular group of principles of public service is evident. Previously in the names of the principle of accent focused on "fidelity to the service", "meet the needs of the people", and later – "serving the people" in today sources, including and regulations - "serving the people" in conjunction with patriotism. "Since its regulatory consolidation (Article 3 of the Law of Ukraine from 17.11.2011 year), expanded name is found in the scientific and academic sources. For example, T. Kolomoets the textbook "Administrative Law of Ukraine. Academic Course", among others, selects principle of "patriotism "as a principle of public service, as the European civil service principle [14, 125]

A. Kuz'menko, considering the priorities of the reform of public services, including the principles selects "patriotism" [15, 248]. "Patriotism" as a principle of public service distinguished M. Hermaniuk, E. Safronova [11, 100], and they suggest using extended its name, such as "patriotism and service to the Ukrainian people," duplicating the regulatory definition [11, 100] D. Nelipa supports them also [16, 28]. This is quite justified because etymological analysis of the name of this principle suggests that conventionally marked its two constituent names, although quite similar in content, but not identical. It is a combination of fully covering the entire meaning of this principle allows reconciling its name and content. It is necessary to support M. Hermaniuk that same etymological analysis of the name of this principle allows to distinguish two conditionally allocated its components, covering "love of country, for his people", "devotion of the people" and "serving the people", which suggests that the meaning of this principle is the "love of country, its people, and national traditions of devotion to the interests of the people, the reality of submission of civil servants needs implementation and protection of human rights, their priority over other values in Ukraine" [17, 102]. It is therefore quite justified to use this, though slightly enlarged, but one that completely covers the content name of this principle legislator, unlike, say from their foreign counterparts, such as "serving the people of Belarus" (Law of 14.06.2003 "On civil Service in the Republic of Belarus"), "Kazakh patriotism" (Law of 23.07.1999 "On state Service"), "state of Georgia fidelity (Law of 31.10.1997 "On civil service", "serving the whole society," "ministry for the sake of public interest" in the Law on civil Servants in Japan in 1947. In addition, there are many examples of a law in the expanded title of this principle. For example, the Law of the Republic of Italy on 03.29.1983 "On civil service" among the principles of public service captures the "loyalty of the nation, serving the public interest" [18], § 61 of the Czech Republic from 26.04.2002 "On civil servants in administrative agencies and the award of civil servants and other employees of the departments (service Act)" – "the principle of" patriotism and service to the people" [19, 300]. In order to avoid arbitrary interpretations of the Law of Ukraine of 17.11.2011 "On civil service" in terms of fixing the relevant principle is quite justified, except for the transfer of all the principles, including and "patriotism and service to the Ukrainian people" in Article 3 of the Civil Service Law, securing their official definitions. This aspect is quite justified positive foreign borrowing the legislative experience, when a special law on public service principles are not only translated but also served normative fixation of their contents. As an example is the experience of the Czech Republic, which is in the law (§ 61) is not only an indication of the existence of the principle of "patriotism and service to the people", but also served a legal determination of the contents of it. This has a positive effect on the process of law in general. It is therefore quite justified to introduce respective amendments to Article 3 of the Law of Ukraine of 17.11.2011 "On State Service" on fixing the content of the civil service. Thus it is appropriate to be the proposal of P. Baranchika regarding feasibility of consolidating the law and official definition of "principles of public service" [20, 98]. It should also determine the location of recording the principle of "patriotism and service to the Ukrainian people" in the list (including the regulations set forth) principles of public service. If the Law of Ukraine of 16.12.2003 "On State Service" "serving the people of Ukraine" (slightly narrowed model principle that actually determines only one of the components of the present one) was confirmed as the first" fundamental principle of public service, "the Law of Ukraine 17.11.2011 "On state Service" "patriotism and service to the Ukrainian people" fixed in Article 3 of the "Principles of the Civil Service" at number two, following the principle of "rule of law". This in no way should be considered "impaired" the role and importance of this principle, it should be noted that the Act of 2003 did not fixed the rule of law, modern state – Reformation and law-making processes in Ukraine (in some way affected the sphere and civil service change the law on their priorities, taking into account the principles of the rule of law as "one of the most important values of modern democracy" [21, 39], "the defining principles of a new doctrine of administrative law" [21, 155 ] "principles of administrative Law", which has be fastened normative content and textually reproduced in acts of domestic legislation" [22, 79-80]. Whereas it is quite justified to consolidate the principle of "patriotism and service to the Ukrainian people, "as soon as the rule of law in the list of principles in Article 3 of the Civil Service Act of 2011, which actually indicates "maximum closeness" of these guidelines, their close relationship their fundamental importance in relation to the rest of principles (although a priority of the rule of law in their correlation). With this agree L. Bila-Tiunova, S. Kivalov, noting organizational communication relevant principles of patriotism and service to the Ukrainian people with Article 8 of the Basic Law, is arguing that its implementation requires the subordination of the public organization needs

implementation and protection of human rights, their priority over other values in Ukraine" [24, 49-50]. They are supported by M. Hermaniuk [17, 103]. In addition, analysis of international legislation relevant question shows that there is a variety of options to resolve it. For example, in the law of the Italian Republic from 03.29.1983 "On State Service", this principle is enshrined first among the rest, the law of the Czech Republic from 26.04.2002 "On civil servants and other employees in administrative offices and the remuneration of civil servants and other employees of the departments (service Act)" – after a competitive selection principles in § 61, the Law of the Republic of Belarus of 14.06.2003 "On civil Service in the Republic of Belarus" – after the supremacy of the Constitution, in the second number, as in the Law Republic of Kazakhstan dated 23.07.1999 "On state Service" [25] and so on.

Therefore, it is reasonable to consolidate Ukraine's legislation (Law of Ukraine of 17.11.2011 "On State Service") principle of patriotism and service to the Ukrainian people as one of the fundamental principles of public service principles of the European civil service, using the expanded title, which conventionally consists of two interrelated components required. In order to eliminate any arbitrary interpretations of this principle, given its lack of formal definitions needed is seen making appropriate additions to Article 3 of the Act, which would, among the rest of the formal definition of the principles of public service, would have strengthened the definition of the principle of patriotism and service to the Ukrainian people, the thus bringing the national legislation on public service in relevant part to European counterparts.

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