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OFFICIAL CAREER IN THE STATE ADMINISTRATION SYSTEM IN THE CONDITIONS OF THE STATE SERVICE REFORM IN ACCORDANCE WITH THE EUROPEAN UNION REQUIREMENTS

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SUMMARY

The article is devoted to the complex study of the civil servant career in the system of public administration in the context of reforming the civil service and national legislation to the requirements of the European Union. The actual definition of the «civil servant career» concept is proposed on the basis of the following documents interpretation: the new edition of the Law of Ukraine «On Civil Service», the Strategy of Reforming the Civil Service System in Ukraine, and the Concept of Adaptation of the Civil Service In Ukraine to the Standards of the European Union. The rights and restrictions as for the right to enter and conduct civil service in Ukraine by the positions and ranks specified in the current legislation of Ukraine are considered.

Key words: civil service, civil servant, service career, civil servant career, civil servant's right, civil service position, civil servants rank, civil service reform in accordance with the requirements of the European Union.

СЛУЖЕБНАЯ КАРЬЕРА В СИСТЕМЕ ГОСУДАРСТВЕННОГО УПРАВЛЕНИЯ В УСЛОВИЯХ РЕФОРМИРОВАНИЯ ГОСУДАРСТВЕННОЙ СЛУЖБЫ В СООТВЕТСТВИИ С ТРЕБОВАНИЯМИ ЕВРОПЕЙСКОГО СОЮЗА

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АННОТАЦИЯ

Статья посвящена комплексному исследованию служебной карьеры государственного служащего в системе государственного управления в условиях реформирования государственной службы и национального законодательства с требованиями Европейского Союза. Предложено собственное определение понятия «служебная карьера государственного служащего» на основании интерпретации правовых норм новой редакции Закона Украины «О государственной службе», Стратегии реформирования системы государственной службы в Украине и Концепции адаптации института государственной службы в Украине к стандартам Европейского Союза. Рассмотрены права и ограничения по реализации права поступления и прохождения государственной службы в Украине по должностям и рангам, которые указаны в действующем законодательстве Украины.

Ключевые слова: государственная служба, государственный служащий, служебная карьера, служебная карьера государственного служащего, право на государственную службу, должность государственной службы, ранги государственных служащих, реформирование государственной службы в соответствии с требованиями Европейского Союза.

Introduction. In Ukraine, during the long time, measures to integrate the state into the European legal space are implemented as well as to fulfill the obligations assumed by the Ukrainian

state within the framework of the Partnership and Cooperation Agreement between Ukraine and the European Union. The course for modernization and European integration set by the President

of Ukraine is strategic and multilateral, which in turn puts many functional tasks for Ukraine and requires comprehensive analytical approach to studying the foundations of state administration in the EU.



It is necessary to create appropriate conditions for large-scale internal transformations for Ukraine to develop freely in a democratic, economically developed, socially oriented state. This, in turn, will contribute to European integration processes [1, p. 3].

If we analyze the internal large-scale transformations in Ukraine, it should be noted that significant progress has been made in the development of the civil service system and in the near future the civil service system will be able to meet the European standards defined for the countries of the European Union according to the indicators developed by OECD / SIGMA.

Annual assessment of the civil service resource held by the European Union in the candidate countries is carried out in six main areas. The six areas mentioned are as follows: the legal status of civil servants; legal status, responsibility and accountability of civil servants; impartiality and honesty of civil servants; efficiency of the civil servants management and personnel control; professionalism and stability of civil servants; development of civil service resources in the field of European integration [2, p. 21].

Realization of state-official relations (official career) is an integral part of the legal status of a civil servant. It is the study of the civil servant's career in the system of public administration that will allow us to find answers to the main issues that arise during the reform of the civil service and to carry out the reforms in accordance with the requirements of the European Union, which determines the relevance of the topic of our research.

Processing. The concept of «official career» is versatile and multifaceted. The research of the issues of the civil servant's career in various aspects and legal field was carried out by such outstanding scientists as V. B. Averyanov, O.F. Andriiko, D.V. Balukh, Yu.Yu. Baltsiy, L.R. Bila-Tiunova, Yu.P. Bytiak, S.V. Vasyliiev, I.P. Golochnichenko, I.S. Grytsenko, E.V. Dodin, S.D. Dubenko, M. O. Illichov, M.I. Inchin, I.O. Karguzova, C.B. Kivalov, I.B. Koliushko, V.K. Kolpakov, A.T. Komziuk, I.F. Korzh, V.R. Kravets, A.M. Kulish, V.Ya. Malynovsky, N.R. Nyzhnik, O.Yu. Obolensky, V.M. Soroko, M.P. Orzikh, O.M. Rudenko, A.O. Selivanov, V.F. Sirenko, O.F. Skakun, A.B. Surylov, Yu.M. Starylov, T.I. Pakhomova, O.V. Petryshyn, O.S. Prodaevich,

O.P. Ryabchenko, G.V. Fomich, O.F. Frytsky, M.I. Tzurcan, V.M. Shapoval, Yu.S. Shemshuchenko, N.V. Yanyuk, M.K. Yakymchuk and others.

The purpose of the article lies in the complex study of the civil servant career as an integral element of the implementation of state-service relations, which regulates the legal status of civil servants in the system of public administration in the conditions of reforming the civil service and national legislation to the requirements of the European Union.

The main part. European integration of Ukraine has both historical and economic preconditions. In the process of Ukraine's independence establishment, the need for close interaction with Europe becomes even more obvious. Since integration at any level is impossible without an effective mechanism for its implementation, public administration is the first area that needs attention in determining the priority areas of state development [2, p. 60].

Of course, the system of public administration in Ukraine should be the indicative instrument that ensures the life of society in the conditions of European integration. Nowadays, the civil service is reduced to the executing of the public administration functions which is considered in a broad sense, that is, as the management of all bodies in the system of legislative, executive and judicial power. Public administration in this sense characterizes all activities of the state, associated with the organizing influence of the special subjects of the right to social relations. The implementation of state-service relations relies on civil servants.

The term «civil servant» has become legally conferred in Article 1 of the Law of Ukraine «On Civil Service» this notion means: «A citizen of Ukraine, who holds a civil service in a government body or another state body, receives wages for account of funds of the state budget and carries out the powers established for this post directly related to the implementation of the tasks and functions of such a public body, and adheres to the principles of civil service» [3].

Consequently, the post of a civil servant can only be obtained by a citizen of Ukraine, who holds a position in the relevant state body, executes the powers established for this position, directly related to the execution of the tasks and functions of such a public body, and adheres to the principles

of civil service. The principles of the civil service include: the rule of law, the principle of legality, the principle of professionalism, the principle of patriotism, the principle of integrity, the principle of effectiveness, the principle of equal access to public service, the principle of political impartiality, the principle of transparency, the principle of stability. All civil servants occupy certain positions in an appropriate state body or its apparatus and perform a specific official function.

The emergence of each particular legal relationship according to the post related to the execute and regulatory power is determined by the procedure for the formation of a state body and the way of staffing it. The peculiarity of the legal status of public authorities and public administration, which has its powers of execution of state functions, also determines the special nature of labor relations among citizens who enter the civil service in relation to the organization and management of relevant spheres of public life [6, p. 30].

In our opinion, career is the main component of any hierarchical system. Each civil servant has in mind certain career goal, prospect of obtaining higher wages, and accordingly the leadership of the state and government institutions seek to achieve the timely provision of the required number of personnel with the relevant professional experience and seek to direct the activities of the state body to maximize the use of professional skills of civil servants in behalf of the achievement of the goals and the decision of the state body. That is, the relevant issue for both government and government authorities and civil servants is a career in various aspects. Official career is a key element of the civil service, since it directly accompanies all the leading sub-institutes of the civil service institute (admission to civil service, advancement in civil service, legal status of a civil servant, termination of civil service, legal liability of civil servants, etc.).

L. R. Bila-Tiunova states that the career as a public-law phenomenon is characterized by the fact that it is: a) strategic; b) dynamic; c) carried out in space and in time; d) inextricably linked with government activities; e) combination of individual and public interests; g) has the final result of reaching a certain official (social) position; h) is possible in case if civil servant and the state interact [7, p. 6].



That is, we come to the conclusion that official career is a strategically planned, motivational-legal link between a public authority and a public servant who can really influence the institute of civil service.

Career of a civil servant is «consciously chosen way of official promotion, the desire to achieve a certain status – social, official, qualificational, professional, which promotes self-affirmation of a civil servant as a person and self-realization, as a citizen in public relations» [8, p. 194]

Yu.M. Starylov points out that «in the Western countries, service is often referred to as» the implementation of an official career «. Official service is a «long process, beginning with the emergence of state-service relations, that is, since the replacement of the position of a civil servant, with the subsequent displacement of the employee, evaluation and attestation of employees, and ends with the termination of state-service relations [9].

Taking as a basis the interpretation of the legal norms of the new edition of the Law of Ukraine «On Civil Service», the Strategy of Reforming the Civil Service System in Ukraine and the Concept of Adaptation of the Civil Service in Ukraine to the standards of the European Union, we propose the definition of «civil servant career» term is a long-term organized process of promotion of a civil servant taking into account the personal qualities of a civil servant, his experience, professionalism, competence, qualification, which starts from the moment of admission to the civil service, with the subsequent movement of the employee, by occupying him a higher position on a competitive basis or by assigning him a higher rank, taking into account the categories of civil service positions and the rank of civil servants, as the type of special ranks that they are assigned and ending with the termination of the civil service.

The analysis of the law on admission to the civil service in different countries shows that practically each of them provides the right to equal access of citizens to the civil service on the basis of professional abilities, regardless of their political views, race, religion, national origin, gender, age, and family status even the disability (if it does not interfere with the performance of official duties) with full respect for their constitutional rights and personal life.

In accordance with Article 19 of the Law of Ukraine «On Civil Service», the right to enter public service in Ukraine have adult citizens of Ukraine who are fluent in the state language and who have a higher education degree not lower than: the master's degree – for categories «A» and «B»; bachelor, junior bachelor – for positions of category «C» [3].

It should be underlined that, in accordance with Article 6 of the Law of Ukraine «On Civil Service», all civil service positions in state bodies are divided into categories depending on the order of appointment, the nature and extent of powers and the qualifications and professional competence of civil servants necessary for their fulfillment. The current legislation establishes 3 categories of civil service positions:

– category «A» (the highest civil service corps) – which includes positions: the state secretary of the Cabinet of Ministers of Ukraine and his deputies, state secretaries of ministries; heads of central executive bodies, which are not members of the Cabinet of Ministers of Ukraine, and their deputies; the heads of the constitutional court of Ukraine, the Supreme Court, the high specialized judges and their deputies, heads of the secretariats of the High Council of Justice, the High Qualifications Commission of Judges of Ukraine and their deputies, the Head of the State Judicial Administration of Ukraine and his deputies; heads of civil service in other state bodies whose jurisdiction extends over the entire territory of Ukraine;

– category «B» – which includes positions: heads of structural units of the Secretariat of the Cabinet of Ministers of Ukraine and their deputies; heads of structural subdivisions of ministries, other central bodies of executive power and other state bodies, their deputies, heads of territorial bodies of these state bodies and their structural subdivisions, their deputies; heads and deputy heads of structural subdivisions of local state administrations, apparatuses of local state administrations, their structural subdivisions; heads of the courts of appellate and local courts, heads of structural units of the court apparatus, their deputies; deputy heads of civil service in other state bodies whose jurisdiction extends over the entire territory of Ukraine;

– category «C» – other positions of the civil service, not included in categories «A» and «B». The number of civil service positions in the categories «A» and «B» in a public body should be no more than a third of its staff [3].

According to the first paragraph of the second and third part of Article 39 of the Law of Ukraine «On Civil Service», nine ranks are established for the civil servants: – for civil servants who hold positions of civil service of category «A» – 1, 2, 3 rank; civil servants who hold positions of civil service category «B» – 3, 4, 5, 6 rank; – for civil servants who hold positions of civil service category «C», – 6, 7, 8, 9 rank [3, 12, p. 72].

In accordance with Chapter five and six, Article 39 of the Law of Ukraine «On Civil Service», the ranks of civil servants are assigned simultaneously with the appointment to the position of civil service. The next rank within the appropriate category of posts is assigned to a civil servant every three years, taking into account the results of the evaluation of his or her official activity [3, 12, p. 72].

It is worth pointing out that the date of the rank assignment should coincide with the date of appointment to the civil service position, and in the case of a test, after the expiration of his term. A public servant who is first appointed to a civil service position is assigned the lowest rank within the respective category of posts.

In accordance with part eight of Article 39 of the Law of Ukraine «On Civil Service», a regular rank outside the relevant category of posts is assigned to a civil servant for a conscientious service in case of retirement [3, 12, p. 72].

According to part nine and ten, article 39 of the Law of Ukraine «On Civil Service», a civil servant may be deprived of rank only by a court decision [3, 12, p. 72].

It should be stated that in the case of a transition to a post of a lower category or dismissal from the civil service, civil servant retains his previously awarded rank.

According to Article 19 of the Law of Ukraine «On Civil Service», a person who: has attained the age of sixty can not enter the civil service in Ukraine; in the manner prescribed by law is considered incapacitated or the capacity is limited; has a criminal record for committing an intentional crime, if such conviction is not extinguished or not withdrawn in ac-



cordance with the procedure established by law; in accordance with the court's decision, is denied the right to engage in activities related to the performance of the functions of the state or to hold corresponding positions; was subjected to administrative punishment for corrupt or corruption-related offenses – within three years from the date of entry into force of the relevant court decision; has the nationality of another state; did not pass a special check or did not give consent to its conduct; falls under the prohibition established by the Law of Ukraine «On the Purge of Power» [3; 14].

It should be noted that during the exercise by citizens the right to state service no form of discrimination is allowed.

In accordance with part one of Article 40 of the Law of Ukraine «On Civil Service», promotion of a civil servant in service is carried out taking into account professional competence by taking a higher position according to the results of the competition in accordance with Articles 22-30 of the Law of Ukraine «On Civil Service» and the Procedure for holding a competition for the replacement of vacant positions of civil servants, approved by the Resolution of the Cabinet of Ministers of Ukraine of February 15, 2002 # 169. However, part two of Article 40 of the Law of Ukraine «On Civil Service» stipulates that the promotion of a civil servant is not carried out within the period of the disciplinary penalty [3; 13].

The execution of economic and social transformation, the achievement of economic growth and the provision of high-level government services to citizens by the state, moving towards European integration is possible only with the establishment of an effective public administration system that meets the standards of a democratic, rule-based state with a socially oriented market economy. To this end, a large-scale administrative reform is being carried out in Ukraine, an integral part of which is the reform of the civil service system, namely: the improvement of staff, the creation of an updated, powerful and capable state apparatus, the formation of a professional, politically neutral and authoritative civil service [10].

Conclusion. Civil service reform is an integral part of public administration reform and should be implemented in Ukraine on the basis of law, profession-

alism, depoliticization and equal opportunities. For Ukraine, the components of this reform include: development and introduction of new legislation on civil service; development and modernization of vocational training system of civil servants, local self-government officials and local council deputies; Implementation of the Strategy of the State Personnel Policy for 2012-2020 years; formation of the Presidential personnel reserve «New Elite of the Nation» and adaptation of the civil service of Ukraine to the standard of the state service of Ukraine to the standards of the European Union and the implementation of European institutional development instruments (Twinning, TAIEX, SIGMA, CIS, etc.)

Professionalization of civil service personnel should be in a state of continuous updating, which introduces new tasks, new roles as a result of social processes, increasing influence of information technologies, changes in the management system, in the field of labor relations, new forms of organization and communication, new knowledge and methods of their application. etc. In the bodies of state power and local self-government, within the framework of the current legislation and in order to reform the civil service, the requirements of the European Union should carry out a set of organizational measures related to: assessment of the professional capabilities of available personnel; ensuring competitive selection of personnel; creation of a full-fledged personnel reserve; preparation and qualification improvement, an objective assessment of the work of civil servants; carrying out other procedures in order to provide more opportunities for implementation of the abilities of employees in the civil service.

References:

1. Державне управління та державна служба в країнах ЄС в контексті європейської інтеграції України: навч.-метод. матеріали / О.М. Руденко; упоряд. І.В. Поліщук. К.: НАДУ, 2013. 68 с.
2. Державна служба: підручник: у 2 т. / Нац. акад. держ. упр. при Президентові України; редкол.: Ю.В. Ковбасюк (голова), О.Ю. Оболенський (заст. голови), С.М. Серьогін (заст. голови) [та ін.]. К.; Одеса: НАДУ, 2012. Т. 1. 372 с.

3. Про державну службу: Закон України від 10.12.2015р. URL: <http://zakon5.rada.gov.ua/laws/show/889-19>.

4. Державне управління: теорія і практика / За заг. ред. В.Б. Авер'янова. К.: Юрінком Інтер, 1998. 432 с.

5. Венедиктов В.С., Іншин М.І., Ключев О.М., Куліш А.М., Музичук О.М., Попов С.В. Організаційно-правові засади управління державною службою в Україні. Науково-практичний посібник. Харків: Вид-во Харківського нац. ун-ту внутр. справ, 2006. 309 с.

6. Венедиктов В.С. Статус працівників органів внутрішніх справ України як державних службовців: наук.-практ. посіб.; Національний університет внутрішніх справ. Х.: НУВС, 2003. 188 с.

7. Біла-Тіунова Л.Р. Службова кар'єра державного службовця: теорія і правове регулювання: автореф. дис. ... д-ра. юрид. наук: 12.00.07; Нац. ун.-т «Одеська юридична академія». Одеса, 2012. 39 с.

8. Серьогін С.М. Кар'єра державного службовця. Енциклопедія державного управління: у 8 т. / Нац. акад. держ. упр. при Президентові України; наук.-ред. колегія: Ю. В. Ковбасюк (голова) та ін. К.: НАДУ, 2011. Т. 6: Державна служба / наук.-ред. колегія: С.М. Серьогін (співголова), В.М. Сороко (співголова) та ін. Дніпропетровськ, 2011. С. 194–196/

9. Старилів Ю.М. Службное право. М.: Изд-во БЕК, 1996. 698 с.

10. Про Стратегію реформування системи державної служби в Україні: Указ Президента України від 14.04.2000 р. URL: <http://zakon3.rada.gov.ua/laws/show/599/2000>.

11. Про Концепцію адаптації інституту державної служби в Україні до стандартів Європейського Союзу: Указ Президента України від 05.03.2004 р. URL: <http://zakon2.rada.gov.ua/laws/show/278/2004>.

12. Реформа державної служби у питаннях та відповідях: практ. посібн. для керівн. служб управл. персоналом / М. Канавець [та ін.]. К.: Центр адаптації державної служби до стандартів Європейського Союзу, 2016. 176 с.

13. Про затвердження Порядку проведення конкурсу на заміщення вакантних посад державних службовців: Постанова Кабінету Міністрів України; Порядок від 15.02.2002р. № 169. URL: <http://zakon5.rada.gov.ua/laws/show/169-2002-%D0%BF>.



14. Про очищення влади: Закон України від 16.09.2014 р. URL: <http://zakon2.rada.gov.ua/laws/show/1682-18>.

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СРАВНИТЕЛЬНО-ПРАВОВОЙ АНАЛИЗ ИНСТИТУТА УСТАНОВЛЕНИЯ НАЛОГОВ ПО ЗАКОНОДАТЕЛЬСТВУ УКРАИНЫ И ЗАРУБЕЖНЫХ СТРАН

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АННОТАЦИЯ

В статье проводится сравнительно-правовой анализ института установления налогов по законодательству отдельных зарубежных стран, в частности Азербайджанской Республики, Республики Беларусь, Республики Казахстан, Кыргызской Республики, Республики Молдова, Республики Таджикистан и Украины. Автором акцентируется внимание на том, что после вступления в силу Налогового кодекса Украины научный интерес к данной тематике исследования в среде украинских ученых ослабел, о чем свидетельствует отсутствие современного комплексного исследования проблематики правового регулирования института установления налогов в Украине. Важность и целесообразность данного научного исследования обусловлена, прежде всего, современным периодом развития Украины, который убедительно доказывает, что сегодня возникла потребность в научном осмыслении сущности института установления налогов.

Ключевые слова: налог, налогоплательщик, элемент налога, институт установления налогов.

COMPARATIVE LEGAL ANALYSIS OF THE INSTITUTION OF TAXATION ACCORDING TO THE LEGISLATION OF UKRAINE AND FOREIGN COUNTRIES

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SUMMARY

The article compares legal analysis of the institution of taxation in accordance with the legislation of certain foreign countries, in particular the Republic of Azerbaijan, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Moldova, the Republic of Tajikistan and Ukraine. The author focuses attention on the fact that after the entry into force of the Tax Code of Ukraine, the scientific interest in this research topic among Ukrainian scientists is weakened, as evidenced by the absence of a modern comprehensive study of the problem of legal regulation of the institution of taxation in Ukraine. The importance and expediency of this scientific research is due, first of all, to the current period of Ukraine's development, which convincingly proves that today there arose a need for scientific understanding of the essence of the institution of establishing taxes.

Key words: tax, taxpayer, element of tax, institution of taxation.

Постановка проблемы. Несмотря на накопленные научные разработки по вопросам правового регулирования общественных отношений в сфере установления налогов, актуальной на сегодня остается потребность в систематизации знаний, всестороннем анализе и обобщении наработок относительно правового регулирования установления налогов в Украине,

которые должны быть более приспособленными к современным налоговым правоотношениям и полезными в их практическом применении налогоплательщиками. Этим и определена актуальность темы и направленность данного исследования.

Актуальность темы исследования. Сравнительно-правовой анализ института установления налогов по за-