CONSTITUTIONAL REGULATION OF STATE SERVICE IN UKRAINE

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Ukraine is in the process of seeking an optimal political and legal model for developing statehood which would meet the generally-recognized system of values and have a social orientation towards building a civil society. A change in socio-political priorities is leading to new forms of the interaction of law, State power, and the citizen and requires an improvement in the mechanisms for realizing the system of public needs and interests. This predetermines the objective need to consider the constitutional foundations of the origin and development of State service and service in agencies of local self-government since the standard of the realization of the functions of the State and its agencies and the needs of regions and local formations (village, rural settlements, city) depends directly upon the apparatus — State employees and employees of agencies of local self-government on whom the realization and implementation in daily activity of a certain legal policy is placed, together with the strengthening of the democratic foundations of State construction

State service in Ukraine (just as service in agencies of local self-government) is acknowledged to be one of the important institutions in the cause of forming and developing statehood on which the functioning of the entire socio-political system and the resolution of diverse tasks and functions of the modern State depend. This is the foundation of modern State construction and affects all major constitutional-law formations.

The major tasks and purposes of State service in Ukraine are promoting the immutability of the constitutional system, creating conditions for the development of an open civil society, protection of the rights and freedoms of man and citizen, ensuring results and the stable activity of agencies of State power in accordance with the tasks, power, and competence thereof on the basis of constitutional principles[1].

State power exercised by different branches is realized with the assistance of a respective mechanism representing the aggregate of agencies and their structural subdivisions, together with means ensuring the targeted impact of administrators on the administered, and orga-

[1] «Про Стратегію реформування державної служби в Україні», Указ Президента України від 14.04.2000 р. [Edict of the President of Ukraine «On the Strategy of Reforming the System of State Service in Ukraine», 14 April 2000], Офіційний вісник України [Official Herald of Ukraine] (2000), no. 16, item 665.

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nized activity of respective links of the State apparatus with a view to coordinating and combining efforts to achieve planned purposes. An integral part of the entire State apparatus is the people working in it — State employees. The apparatus of State agencies ensures the implementation of legislation and judicial functions, the performance of functions in the sphere of economic, sociocultural construction, and administrative-political activity. The effectiveness of State activity is dependent upon the composition, skills, professionalism, general and legal culture, training, and rational use of the State apparatus. The consideration and deciding of any question comes down to how cadres have been trained, how correctly they have been placed in particular sectors, how they relate to the matter assigned to them, and whether they fully ensure the fulfillment of the tasks put to them.

In Ukraine a system of national legislation on State service has been created as an integral prerequisite for the democratic transformations and introduction of legal, social, and economic standards in the life of man, society, and the State, a real improvement in the well-being of people. However, the system of legislation on the State service does not fully satisfy the growing needs of society for democratic transformations nor ensure the effective fulfillment of the tasks and functions of the State. It therefore needs further improvement and the seeking of optimal paths, both organizational and of legal regulation.

The constitutional provision (Article 92[12]) that the fundamental principles of State service are determined solely by laws of Ukraine opens significant opportunities for the creation, development and forming of the institute of legislation on State service. The first law in the history of Ukraine «On State Service»[1], enacted in 1993, was a vital and timely step in the regulation of State-employee relations and developing statehood. It should be noted, however, that the 1993 Law did not encompass all the problems arising in the sphere of State service which require regulation. We believe that the 1993 Law was directly relevant to service in agencies of executive power and the apparatus thereof. The Constitution of Ukraine (Article 38) and the Law on State Service (Article 4) consolidated the equal right of citizens of Ukraine to be in State service irrespective of the type thereof, which actually emphasizes the importance and uniform significance of State service wherever it is performed. Moreover, the Constitution contains a significant number of legal prescriptions that to some degree relate to the State apparatus, and this means also to State service, and establish the fundamental principles of modern State service while granting the possibility for further improvement of constitutional-legal norms in this sphere of activity.

Among the basic problems which exist in this domain and negatively influence the exercise of State functions by its agencies and ensuring the realization of the constitutional rights and freedoms of citizens and the provision of administrative services to them, there should be singled out: imperfection of the system of legislation in force, the closed nature and in some instances corruption of the State service; abuse of employment powers; inadequate prestige of being in the State service, which contributes to its instability; insufficient quality of the administrative services provided affected by the professional standard of those who perform the services to not meet the needs of administering; the lack of precisely

[1] *Відомости* Верховної Ради України (1993), no. 52, item 490.

regulated administrative procedures and standards for the provision of services; the low general and legal culture; subjectivism in the choice of cadres and when undergoing service; the lack in many State agencies and organizations of a strictly determined reserve for the posts of State employees; inadequate control in the sphere of State service; failure to regulate certain aspects of the responsibility of State employees; and the inadequate level of their legal and social protection.

Without a proper mechanism for citizens to realize their right to State service as an important constitutional principle, they will not have the actual opportunity to realize that right. Therefore, the guarantees of the rights of citizens of Ukraine to State service have actual resonance and must find appropriate reflection in the legislation of the State.

The Law of Ukraine «On State Service» consolidated the right of citizens to State service irrespective of origin, social and property status, racial and nationality affiliation, sex, political views, religious convictions, and place of residence who have received the respective education and professional training and undergone in the established procedure a competitive selection for a post or another procedure provided by the Cabinet of Ministers of Ukraine for the post occupied. It follows from the foregoing that no economic, political, or social prohibitions exist against State service. From the legal standpoint, only when a person is deemed to lack dispositive capacity, has a record of conviction if that record is incompatible with occupying a post, and in certain other instances provided by laws of Ukraine may limitations ensue on being hired for State service.

The 1993 Law makes provision for three groups of requirements, compliance with which is essential for entering and undergoing State service. The first and second groups concern respectively the legal status of a citizen – citizenship and age, and the absence of any limitations or prohibitions against being hired for and serving in State service. The third group is linked with special requirements with regard to education and skills (professional training), state of health, competitive selection or entering State service according to another established procedure. An obligatory requirement, according to a decision of the Constitutional Court of Ukraine, for occupying a post as a State employee is a knowledge of the State language – Ukrainian[1].

The 1993 Law of Ukraine «On State Service» does not expressly mention guarantees of the right for citizens of Ukraine to enter State service. Indirectly this is referred to in the Constitution of Ukraine, since one may consider to be such guarantees: the free and comprehensive development of the individual (Article 23); equality of constitutional rights and freedoms and equality before the law, equality of rights of women and men (Article 24); right to freedom of thought and speech, free expression of one's views and convictions (Article 34); right to a free world outlook and profession of faith (Article 35); right to freedom of association in political parties and social organizations (Article 36); right of recourse (Article 40); right to work and free choice thereof (Article 43); and right to education (Article 53); among others.

As regards the requirement to have a knowledge of the State language in order to engage in State service, the State has

[1] Рішення Конституційного Суду України від 14.12.1999 р., No. 10-рп/99 [Decision of the Constitutional Court of Ukraine, 14 December 1999, No. 10], Офіційний вісник України [Official Herald of Ukraine] (2000), no. 4, item 125.

created all the necessary conditions to study it — expansion of Ukrainian-language schools, creation of various courses and electives, expansion of the publication of all types of literature in the State language, introduction of the discipline in higher educational institutions entitled «Professional Ukrainian Language», and others. The language problem has virtually disappeared in State agencies and agencies of local self-government.

The purpose of reforming State service is to create an effective system of State administration in accordance with the standards of a democratic, rule-of-law State and conditions for the protection of the rights and freedoms of man and citizen, improve cadre potential, create a renewed, powerful, and active apparatus, and create a professional, politically-neutral, and authoritative State service. Among the principal orientations of improving the structure and development of the system of a modern State service one may name the optimization of the administration of State service, ensuring competitiveness, objectivity, transparency, and openness when hiring and promoting in State service, raising the general culture of State employees, public trust in them, the elimination of any manifestations of corruption when hiring and serving, professional training of State employees and the cadre reserve, scientific provision for reforming the State service, and others.

The National Agency of Ukraine for State Service (hereinafter: National Agency) is doing significant work with regard to ensuring the realization of the rights of citizens in State service. The preparation by a draft Integral Program for Training State Employees and measures directed towards the fulfillment of the said program, confirmed by Edict of the President of Ukraine on 9 November 2000[1] and the Concept of the Development of Legislation on State Service, confirmed by Edict of the President of Ukraine on 20 February 2006[2], are the result of this work, as is the Program for the Development of State Service from 2005 to 2010, confirmed by Decree of the Cabinet of Ministers of Ukraine on 8 June 2004[3]. Pursuant to these programs, the State ensures the uninterrupted training on matters of State construction, State administration, and State service and implements measures to search for talented youth in order to subsequently involve them in administration and introduce effective mechanisms for ensuring the realization by citizens of Ukraine of the constitutional right to equal access to State service without allowing privileges or limitations on the basis of various indicia.

The Conception for the Development of Legislation on State Service provides for a number of measures of a law-creative character, including the preparation of a new version of the 1993 Law of Ukraine «On State Service» and other draft laws concerning State service with a view to improving them, regulation of the status and procedure for undergoing individual types of service, summarizing and analyzing respective provisions of the legal regulation of State service and service in agencies of local self-government. The preparation and adoption of normative legal acts on problems of State service at the level of acts of the Cabinet of Ministers of Ukraine and National Agency also is being suggested. On 4 August 2010, in particular, the National Agency confirmed the «General

[1] Офіційний вісник України [Official Herald of Ukraine] (2000), no. 46, item 1982.
[2] Офіційний вісник України [Official Herald of Ukraine] (2006), no. 8, item 421.
[3] Офіційний вісник України [Official Herald of Ukraine] (2004), no. 23, item 1554.

Rules for Behaviour of a State Employee»[1]. Moreover, it should be emphasized that a draft Code of Basic Rules for the Behaviour of a State employee, which regrettably was not considered by the respective State institutions and was not adopted, had been prepared significantly earlier in execution of the plan of measures of organization provision for the realization of the National Program for Combating Corruption.

It should be noted that the preparation of a new (or new version) of the Law of Ukraine «On State Service», other draft laws, and normative legal acts with varying legal force to regulate legal relations in this domain of activity are within the purview of scholars and practitioners, especially the National Academy of Legal Sciences of Ukraine, the National Agency, and social formations. On the basis of such a law individual legislative acts might be adopted relating to various types of State service (service in the apparatus of agencies of executive power, service in law enforcement agencies, State institutions of education, public health, and so on) or a Code of General Rules for the Behaviour of a State Employee (or Code of Honor of a State Employee). The development of legislation in the sphere of State service relating to problems of training cadres of State employees, their education, cadre reserve, competitive selection, re-qualification and raising of qualifications, advancement in service, and attestation of State employees logically might be developed on this basis. It seems that such an approach would create a qualitatively-new legal foundation for State service, on one hand, and conditions for not allowing a disturbance of the system of State service and providing guarantees of the development and confirmation thereof in accordance with constitutional requirements, on the other. Constant reworking and the making of changes and additions to the 1993 Law of Ukraine «On State Service» cannot resolve all the problems, since it was adopted at the daybreak of the origin of Ukraine as an independent, autonomous State when there was no experience with regulating State-employee relations. One should also take into account the legislative regulation of employee relations in other countries which have been studied sufficiently.

Familiarization with the legislation on State service of the Federal Republic of Germany makes it possible to speak about a certain system of legislative regulation of State-employee relations that takes into account the federal structure of the State, traditions, the need for a centralized resolution of various matters, and a certain decentralization in this sphere. The traditional principles of German State service were restored with the adoption on 23 May 1949 of the Constitution of the Federal Republic of Germany[2]. One may boldly affirm that the Basic Law of the FRG laid the groundwork for a modern State service in Germany since the provisions concerning this institution exist in virtually all sections of the Constitution. On the base of the Basic Law, a federal law on bureaucrats was adopted (General Law on the Legal Status of State Employees) of 14 July 1953, as amended 27 February 1985[3]; Law on Federal Bureaucrats (or Employees) of 18 September 1957, in a

[1] Офіційний вісник України [Official Herald of Ukraine] (2010), no. 90, item 3208.

[2] For a Russian translation, see Конституции государств Европейского Союза [Constitutions of the States of the European Union] (Moscow, 1999), pp. 181–234.

[3] *Bundesgesetzblatt*. 1985. No. 1, p. 462; BGBL. 3. 2030-1; in Государственная служба основных капиталистических стран [State Service of the Principal Capitalist Countries] (Moscow, 1977), pp. 241, 250; Административное право зарубежных стран [Administrative Law of Foreign Countries] (Moscow, 1996), pp. 116–120.

new version of 27 February 1985, with subsequent amendments where the unification of law regulating the status of lände bureaucrats is achieved[1]; and the Law on Ensuring State Employees of 24 October 1990[2]. In addition to these normative legal acts, State-employee relations in the FRG are regulated by laws «On Salaries of Federal Employees» of 1986; «On Paid Annual Leaves» of 1987; Federal Disciplinary Charter of 1967; Statute on Undergoing State Service in the FRG in the version of 8 March 1990. A number of laws and decrees of the Government concern the regulation of the rights and duties of individual categories of employees. Legislative acts are adopted at the level of the lände with regard to regulating State-employee relations.

It should be noted that under Article 73 of the Constitution of the FRG, the Federation is endowed with exclusive legislative competence with regard to the legal status of persons in the service of the Federation and public-law corporations subordinate thereto[3]. In the common interests of the Federation and the lände the FRG may adopt prescriptions regarding the legal status of persons in State service of the lände and other public-law corporations. The regulation of wages and maintenance of employees of State institutions is relegated to the legislation of the Federation and the lände. However, these laws require confirmation of the Bundesrat. The prescriptions of Chapter 1 of the General Law are binding for legislation of the lände, and the unification of legislation on State service is achieved by this.

The French administrative system (State service) is structured on the conception of the State as a unified centralized system ensuring the effective administration of the State from the center. The bureaucracy is entirely under the control of the President and the Government; precise hierarchies and subordination of bureaucrats inferior by post or rank to the higher and to the political authorities have been established.

The concept and status of bureaucrats in legislation I force is not identical with personnel of the State apparatus. A State employee is a broader concept since each bureaucrat is a State employee; however, not every State employee is a bureaucrat, a person professionally linked with State service included in the personnel establishment of the State apparatus and having a rank.

The principles of modern State service of France underlie the «Law on the General Status of Bureaucrats» adopted in 1946, taking into account French traditions of structuring the bureaucratic system[4]. After the adoption in 1958 of a new Constitution of France, the President issued an ordonnance on the status of bureaucrats which made certain changes in the 1946 Law, but the fundamental principles of State service in principle remained without changes — the precise subordination within the State agencies.

In considering the structure and functioning of State service in the Republic of France, one should take into account the right of citizens proclaimed by the Constitution to participate in the administration of the State and, accord-

[1] *Bundesgesetzblatt*. 1985. No. 1, p. 462; BGBL. 3. 2030-1; Административное право зарубежных стран [Administrative Law of Foreign Countries] (Moscow, 1996), p. 116.

[2] *Bundesgesetzblatt*. 1990. No. 1, p. 449; BGBL. 3. 2030-7.

[3] See Конституции государств Европейского Союза [Constitutions of the States of the European Union] (Moscow, 1999), pp. 181–234.

[4] Конституция и законодательные акты Французской Республики [Constitution and Legislative Acts of the French Republic] (Moscow, 1958), pp. 187–220.

ingly, to work in administrative institutions, and protection against the unlawful actions of officials of the administration. Despite the fact that in the domain of administrative law France has refused to apply the Code Civil and private law[1], private and public persons are deemed to be subject of administrative law in France. Natural (citizens) and juridical persons (private firms, companies, corporations, and others) are relegated to the category of private persons. Only juridical persons are deemed to be public persons: the State (or agencies thereof), local (or territorial) communities[2], and public institutions[3].

The State, both at the center and in the localities, is represented by officials. The President and Prime Minister direct the administrative apparatus, appoint senior officials (ministers, prefects, ambassadors, directors of ministries, State companies, rectors, judges, and others)[4]. Ministers are endowed with the highest administrative power in the spheres within their jurisdiction, testimony to which is the fact that only administrative courts have the possibility of their vacating decisions (including appointments to office)[5]. Representatives of the State in departments and regions are the prefects who supervise the activity of local entities. Public institutions also are supervised by the State.

All employees of the State as a public juridical person are State employees in France. These include workers of legislative, executive, and judicial agencies. There are certain peculiarities in the legal status of employees depending upon the status of the public juridical person[6]. Service in local entities is relegated to the category of public service[7].

All State employees in France are divided into two groups — civilian employees of the State administration, local entities, and public institutions comprise the first group, and the second consists of military servicemen, workers of courts and parliament. The legal status of the first group is regulated by the General Statute of State Employees and Employees of Local Self-Government, which incorporates the Law of 13 July 1983 «On the Rights and duties of State Employees» and the Law of 26 January 1984 «On the Functions of Agencies of Local Administration»[8]. The legal status of employees of the second group, in addition to the General Statute, is regulated also by special statutes (police, air controllers, and others).

«Special» statutes are confirmed by decrets of the Council of State after consultations with the high council of the central State service. Legal prescriptions relating to State-employee relations may contain a decision of administrative courts and the Constitutional Council of France[9].

The systems of State service of the Federal Republic of Germany and

[1] See *Georges Vedel,* Административное право Франции [Administrative Law of France] (Moscow, 1973), pp. 181–234.

[2] Структура и функции местных коллективов во Франции [The Structure and Functions of Local Collectives in France] (Moscow, 1993).

[3] Общие сведения об административном праве Франции [General Information of Administrative Law of France] (Moscow, 1993), p. 6.

[4] *Grimo Zhenev'ev,* Организация административной власти во Франции [Organization of Administrative Power in France] (Moscow, 1994), pp. 47–49.

[5] *Guy Braibant,* Французское административное право [French Administrative Law] (Moscow, 1994).

[6] Государственная служба и государственные служащие во Франции [State Service and State Employees in France] (Moscow, 1994).

[7] Местная государственная служба [Local State Service] (Moscow, 1993).

[8] «Правове регулювання державної служби у Франції» [Legal Regulation of State Service in France], Державне адміністрування за рубежем [State Administration Abroad] (Kiev, 1993). Issue 4.

[9] *Georges Vedel,* Административное право Франции [Administrative Law of France] (Moscow, 1973), p. 58.

France differ from the Anglo-Saxon, as the last is linked with a precedential legal system in contrast to the «traditional» one based on legislation.

The Constitution of Ukraine, laws, and other normative-legal acts make it possible to classify the State service of Ukraine as a traditional bureaucratic system since it is based on legislation and has much in common with the continental State service. Usually State service in Ukraine develops on the basis of the Constitution, having regard to national traditions, the practice of creating the State, modern reforms of the economic and political systems, material and financial possibilities, and the like.

The development of the constitutional foundations of State service in Ukraine, just as in other States, is linked with the adoption of laws and other normative-legal acts which supposedly regulate the entire spectrum of social relations and the activity of the State with regard to the creation of organizational, social, economic, and legal conditions for the realization of the constitutional right of citizens to be in State service.

In order to resolve problems of the legal regulation of State-employee relations in Ukraine, certain priority orientations in this activity, and the working out of a systemic approach to the creation of legislation which should comprise the institution of State service, have great significance. An analysis of constitutional norms which establish the foundations of structuring the State apparatus and the system and structure thereof, and the formation of the cadre policy thereof, should be undertaken. The need for a precise determination of what types of service fall under the concept of State service and what normative-legal acts regulate relations arising when performing a particular type of service gives rise to no doubt; nor does the question of who is a State employee — a person in the «service of the State» and the status thereof is determined by legislation on State service. The problems connected with determining the group of persons who serve the interests of the people and the State but are not State employees would be resolved by this, as would that of persons who hold so-called «political offices». Their status is not regulated and cannot be regulated by legislation on State service (for example, ministers). The status of persons must be regulated depending on the type of State activity, since it is impossible in one and the same law to regulate the legal status of employees of agencies of executive power and judges, procurators, and medical doctors, the apparatus of courts, State Prosecution, diplomatic missions, other State agencies, executives of State enterprises and teachers at State institutions, and so on.

Resolving problems of cadre policy of the State is linked with determining the group of State agencies and officials who have the right to regulate basic legal relations arising in the sphere of State service. In addition to the Verkhovna Rada of Ukraine, there should be relegated to this group the President of Ukraine and the Cabinet of Ministers of Ukraine. The Verkhovna Rada establishes the foundations of State policy, the purposes, tasks, and principles of the functioning of State service in all spheres of State activity. The President of Ukraine and Cabinet of Ministers of Ukraine direct their efforts towards transforming the policy determined by the legislator into action and also resolve problems of the training, attestation, raising the qualifications, forming the cadre reserve, and others with a view to ensuring the work efficiency of all State agencies in accordance with their competence. These and other powers of the

President of Ukraine and the Cabinet of Ministers of Ukraine are not regulated in the Constitution of Ukraine and other laws, whereas it is well-known that the President and the Cabinet of Ministers may not in their practical activity touch upon the problems of cadre provision and actually resolve them[1].

Specific issues of the functioning of the apparatus in agencies of legislative power, the judicial system, and agencies of local self-government must be resolved on the basis of laws by the respective agencies.

The administration of the State service is placed on the National Agency, whose powers have been consolidated in Article 7 of the Law on State Service. It would be advisable to define more precisely in the law the powers of each agency, perhaps by enhancing the status thereof in resolving problems of State service. Moreover, the problem arises of the degree of influence on the activity of ministries, the entire system of central agencies of executive power, and local State administrations in the sphere of cadre work. In an overwhelming number in instances, these agencies should autonomously resolve their cadre issues.

Improvement of State service is linked with the resolution of other matters of importance. This is elucidating the influence of constitutional provisions and legislation in force on the development of the legal status of State employees, determining the system and spheres of legislation on State service, studying the experience of other countries in the cause of regulating State service and the possible application hereof in the activity of State agencies of Ukraine, the development of branch norm-creation on State service for the purpose of making more concrete the provision of legislation in force (constitutional, financial, international, labour, criminal). Accordingly, legislation on State service comprises the norms of these branches of law. However, one must concur that personnel legal relations in the future will be regulated in greater measure by administrative law norms since they are of a public-law nature[2].

In specialized doctrinal writings service is regarded as a socially-useful activity to implement administration, the provision thereof, servicing people, and is divided into State, performed in State agencies, and non-state (often called social) carried on in non-state organizations, associations of citizens, and so on. Service in agencies of local self-government is an autonomous type, although it has many common features with State service but is distinct from that since agencies of local self-government are not State agencies. In Ukraine this service is sometimes called municipal[3].

In support of the position that service in agencies of local self-government is

[1] See, for example, the Edict of the President of Ukraine of 30 May 1995, Уряд. кур'єр, 1 June 1995; Decree of the Cabinet of Ministers of Ukraine, 16 December 2004. Офіційний вісник України [Official Herald of Ukraine] (2004), no. 51, item 3332; and others.

[2] See *Yu. N. Starilov,* Служебное право [State Employee Law] (Moscow, 1996), p. 301.

[3] Various views are encountered in doctrinal writings with regard to service, service activity, State service, and service in agencies of local self-government (or municipal agencies), and so on. However, the approach to the division of service into State and non-State, and also municipal, which by its elements is close to State, is traced precisely. Starilov wrote, ibid., that a significant number of constructions and features characteristic of State service inhere in municipal service: «... with certain distinctions, both types of public service combine general questions: the concept, tasks, functions, types, administration, and legal sources». See *Starilov,* note 24 above, p. 127 et al.; *V. M. Maniukhin,* Служба и сулужащий в Российской Федерации: правовое регулирование [State Service and Employee in the Russian Federation: Legal Regulation] (Moscow, 1997), pp. 14–19; Государственная служба (комплексный подход) [State Service: An Integrated Approach] (Moscow, 1999), pp. 10–11. Other views are encountered in modern Ukrainian doctrinal writings. Pogorilko and Fritskii conclude (which should be emphasized) that municipal service is not part of the system of State service. See *V. F. Pogorilko and O. F. Fritskii* (eds.), Муніципальне право України [Municipal Law of Ukraine] (Kiev, 2001), p. 257. The present author in his day wrote about a certain unity and single-type legal regulation of employee relations in State and non-State (social) organizations. This was the Soviet

autonomous, one may observe that on 7 June 2001 the Law of Ukraine «On Service in Agencies of Local Self-Government» was adopted which did not relegate this type of employment activity to State[1]. It should be stressed simultaneously that service in agencies of local self-government as a professional activity of citizens of Ukraine in posts in these agencies is directed towards the realization by a territorial entity of its rights in local self-government and individual powers of agencies of executive power provided by a law. This type of employment activity has a certain unity with State service with differences, and therefore hereinafter they are regarded as «public service», or «service in agencies of public power» when the functions and powers of the employees of these agencies fully or to some extent coincide.

State service as a special type of employee activity which is performed on a professional basis by workers of State agencies is linked with the effectuation of functions of leadership, management, control, supervision, statistics, and others. The link of State service with other forms of State activity is emphasized. There is no doubt that State service is a professional activity directed towards the realization of the competence of respective State agencies and organizations established in laws and other normative acts.

The reform of State service is conditioned by and directly connected with the need to carry out law reform in Ukraine as a whole and an administrative reform in particular which will ensure, on one hand, the development of a civil society and, on the other, the origin, development, and strengthening of statehood. Legislation on State service should more precisely establish the basic principles of State service, the rights and duties of State employees, their functions, measures of social defense and responsibility, and decide problems of a career. In the present writer's view, the origin and development of State service in Ukraine must rest only a precise and specific program, the foundation of which should be a strategy for renewal of the apparatus while retaining cadre potential and achieving the balanced development and functioning of the State in the interests of a civil society. In accentuating attention on the priority of the rights and freedoms of man and citizen in the domain of State service, one should not overlook the fact that cadre policy must ensure the combining of the interests of citizens and the State and create conditions for eliciting the creative potential of the individual in all spheres of social life, including resolving the tasks of developing the State.

The urgency and importance of reforming State service is affirmed by the attention to this matter. On 8 June 2004 the Program for the Development of State Service in 2005 to 2010 was confirmed[2]. A Work Program for Executives of State Enterprises, Institutions, Organizations, and Others was worked out. The said programs and other important documents and normative acts made provision for the creation of the organizational and legal foundations of cadre provision for State service, forming the composition of State employees,

period, when service in social organizations differed little from service in State agencies. Legislation on State service did not actually exist in the Soviet Union, at least laws which regulated solely State-employee relations. Under present conditions of the development of Ukraine it is essential to precisely demarcate State service, service in agencies of local self-government (or local soviets), and non-state formations (associations of citizens, private institutions and organizations).

[1] Офіційний вісник України [Official Herald of Ukraine] (2001), no. 26, item 1151.

[2] Decree of the Cabinet of Ministers of Ukraine, 8 June 2004. Офіційний вісник України [Official Herald of Ukraine] (2004), no. 23, item 1554.

a unified targeted system for training and raising the qualifications of State employees and the cadre reserve. The Conception for the Development of Legislation on State Service was built on this basis and is an integral part of administrative reform in Ukraine and of the Conception for the Reformation and Development of Administrative Law and Administrative Legislation. It is not excluded that, having regard to the importance of the institution of State service for strengthening the State and the parts thereof, the question may be raised of elabourating on the base of the Conception for the Development of Legislation on State Service a plan for law-making activity in this sphere. It would be advisable in so doing to precisely determine the priority of laws and other normative legal acts and the periods for preparing, considering, and adopting them in order to ensure their systemic nature without permitting conflicts, duplication, and other shortcomings in legislation.

The quality of State service is ensured by people who have respective knowledge and professional training — State employees. On their attitudes towards the assigned task depends the effectiveness of the functioning of State agencies, enterprises, institutions, and organizations. People constantly are in contact with this category of workers and on their morality, culture (general and legal) depends the image of the respective agency and the level of compliance with the rights and freedoms of citizens. State employees should comply with generally-accepted rules of behaviour both when performing employment and in non-employment relations, manifest restraint, courtesy, principledness, and the ability to listen and understand the position of a subordinate or of a citizen on the matter with regard to which he has had recourse and adopt a decision in accordance with the requirements of legal prescriptions in force Therefore, respective ethical requirements are expected from a State employee when entering and undergoing State service. We have in view new approaches to problems of legal provision for the activity of State employees, especially in relations with citizens, and changing the nature of these relations, elabourating principles for administrative (or organizational) culture when personnel perform their duties. Such a change would consist of establishing quality work standards for State employees which might be ensured by their expected behaviour with regard to any citizen. Undoubtedly, the respective ethical requirements should be set out then enrolling in State service.

One would wish that the legislator would proceed further and establish not only ethnical requirements for State employees, but also regulate questions concerning the defense of their honor, dignity, life, and health against unlawful infringements by juridical and natural persons. Therefore, in drawing attention to the priority of rights and freedoms of the citizen in legislation on State service, when reforming it one should proceed from the earlier named criteria, at the base of which one should place a general cadre policy of the State, the constitutional foundation of the supremacy of law, the division of State power into branches, legality, glasnost, responsibility for the task assigned and others.

The origin and development of State service and the legal regulation thereof are conditions of the needs of the State connected with its tasks and functions since the activity of legislative, executive, and judicial power and the State Prosecution are provided with the apparatus of these agencies or structural sub-

divisions thereof. Employees comprise also the personnel of other State formations, enterprises, institutions, and organizations. They all perform functions of the internal administration of the respective system and external — interacting with other State and non-State systems, citizens, or associations thereof.

Legislative regulation of State-employment legal relations must be directed towards ensuring the work of the apparatus of all State agencies in accordance with their tasks. In the legal aspect, State service is the establishment of State-employee relations during the realization of which the practical performance is achieved of post duties, powers of employees, and competence of State agencies.

State service has great organizational importance since it is linked with structural-functional elements of the State apparatus — compliance with organizational and procedural foundations of its activity, establishment of the hierarch of posts, evaluation of their work, responsibility, and simulation of activity.

State service also may be regarded in social, political, sociological, and ethical aspects.

Proceeding from the fact that State service is uniform in its foundation, always being linked with public administration, the most general prescriptions of legislation should be combined in a law which contains provisions inherent to all types of service, categories of posts, and employees, and the organization of the direction and administration of State service, principles of State service consolidated, and foundations laid for further regulation of State-employee relations. On the base of such a normative act other (at the level of a law) enactments regulating State-employee relations in accordance with the branches of State power in specific State agencies and the apparatus thereof should be adopted.

This approach provides the possibility for separately regulating State-employee relations in agencies of executive power with a special legal status — law enforcement, militarized, customs, diplomatic missions, and so on.

The procedure for undergoing service in State Prosecution agencies is relegated by an autonomous normative act since these agencies are not relegated by the Constitution of Ukraine to one of the branches of power.

The determination at the legislative level of the group of posts and types of activity having the most important significance for strengthening and developing the State is essential for the effective and proper regulation of State-employee relations but which may not be regarded as purely State service because they have a political coloration linked with deciding political tasks or with the determination of policy in the State or individual spheres of State activity. Among these are the President of Ukraine, people's deputies of Ukraine, members of the Cabinet of Ministers of Ukraine. This question also arises with respect to Head of the Verkhovna Rada of the Autonomous Republic Crimea and Head of the Council of Ministers of the autonomous republic, heads of regional State administrations, cities of Kiev and Sevastopol, and others.

A solution is being sought. On 29 May 2001 the President of Ukraine adopted the Edict «On Next Measures to Further Improve the System of State Administration, Ensure the Effective Activity of the Cabinet of Ministers of Ukraine, Ministries, and Other Agencies of Executive Power», which introduced the office of Secretary of State of the Cabinet of Ministers of Ukraine and the

posts of secretaries of State of ministries[1], which continued the impetus towards the realization of the Conception of Administrative Reform in Ukraine.

Organizational, expert-analytical, and other provision for the activity of the Cabinet of Ministers of Ukraine and ministries were placed on the Secretary of State of the Cabinet of Ministers of Ukraine. The Secretary of State of the Cabinet of Ministers of Ukraine, secretaries of State of the ministries, first deputies and deputies thereof were deemed to be State employees. Their employment position is not linked with changes of the leadership of the Cabinet of Ministers of Ukraine, and a change of its membership may not be grounds for relieving the Secretary of State of the Cabinet of Ministers of Ukraine, secretaries of State of ministries, or their first deputies or deputies.

Other provisions in this normative legal act also are important. Among those relating to State service and ensuring effective administration that should be named are those regulating mutual relations between the Administration of the President of Ukraine, the Secretariat of the Cabinet of Ministers of Ukraine, and the secretaries of State of the ministries when they perform the tasks placed on them. Attempts to regulate relations between presidential structures, the Cabinet of Ministers, and ministries have been undertaken subsequently[2].

Regrettably, the said normative-legal act did not withstand verification by practice or time, and therefore a number of its provisions were repealed by Edict of the President of Ukraine of 26 May 2003, «On Certain Measures to Optimize Leadership in the System of Central Agencies of Executive Power»[3]. This concerned especially the elimination of the posts of secretaries of State of ministries, with simultaneous restoration of the posts of first deputy and deputy ministers.

In the present writer's view, the ineffectiveness of the organization and management by the apparatus of ministries and the entire system of central agencies of executive power and the lack of regulation of the status of their executives, including the heads of the service, the secretaries of State, may be explained by the fact that the proposals of scholars and practitioners were not taken into account when these posts were introduced. Under any circumstances it was necessary to preserve the post of first deputy and deputy ministers in order to exercise the powers with regard to leading individual orientations of activity. These posts should have been relegated to posts not of State employees, but to the category of political posts. The duties to lead the apparatus of the respective ministries (or service) and organize and control the apparatus work should have been placed on the secretary of State (possibly as deputy minister). This post should have been relegated to the category of posts of State employees and the political posts separated from administrative, and the stability of State service and succession in the work of ministries should have been ensured.

A completed legal regulation of employment relations will be obtained when issues of undergoing service by workers of all State organizations, enterprises, and institutions have been regulated that perform not only organizational-management functions, but also professional — in institutions of educa-

[1] Офіційний вісник України [Official Herald of Ukraine] (2001), 22, item 985.

[2] Edict of the President of Ukraine, 25 February 2010, No. 265. Офіційний вісник України [Official Herald of Ukraine] (2010), no. 16, item 729.

[3] Офіційний вісник України [Official Herald of Ukraine] (2003), no. 22, item 989.

tion, higher school, science, public health, and culture, and at industrial, transport, construction, communications enterprises, and the like. Laws on the peculiarities of undergoing service in respective organization s or associations thereof which concern the socio-cultural sphere, industry, and the infrastructure might be examples of such. These laws should be agreed both with legislation on State service, service in agencies of local self-government, and laws regulating relations in the respective domains and spheres of activity.

Forming an effectively operating State service is one of the major tasks of the Ukrainian State. The Constitution of Ukraine and the Law of Ukraine «On State Service» laid the foundation for activity in this sphere. However, the life and practice of State construction show the inadequacy of this regulation, the lack of a system of legislation and integrated regulation of the aggregate of State-employee relations and the entire mechanism of State service — an integral part of the apparatus of the State. State service ensures the stability of administration and the normative functions of the various branches of power. This may be achieved by elabourating, adopting, and ensuring the realization of a significant block of legislative and other normative acts which would regulate the entire spectrum of State-employee relations, provide a precise concept of State service and the State employee, official, categories of employees, classification of posts, criteria for occupying them, questions of undergoing service, and the legal and social protection of State employees and others.

The successful development of a democratic, social, and rule-of-law State is impossible without the creation of real conditions for this process, overcoming negative phenomena in State-employee relations in accordance with the principles of the supremacy of law, and the priority of fundamental rights and freedoms of man and citizen. Among such conditions are resolving the problems of renewing the organizational and legal foundations of the activity of State agencies and their apparatus; the real implementation of administrative reform; compliance with the principle of political neutrality of State employees; introduction into the practice of a functioning State service of a precise delineation of the posts of State employees into political, administrative, and patronage; improvement of the legal status of State employees, foundations of cadre provision for State administration, mechanisms for the training and raising the qualifications, and attestation of State employees; introduction of anti-corruption orientation of legislation relating to the functioning of the State service; strengthening control (including judicial) in the sphere of State-employee relations, ethical requirements for State employees, responsibility for the improper exercise of powers; and reformation with a view to improving legislation on State service and service in agencies of local self-government.