

PUBLIC SERVICE VS STATE SERVICE IN THE FIELD OF HEALTHCARE: LEGAL AND TERMINOLOGICAL ISSUES IN UKRAINE AND INTERNATIONALLY

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I. RELEVANCE OF THE RESEARCH TOPIC.

The problem of optimal organization and effective exercise of public authority is directly related to the preservation of the state in general, with

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its efficient adaptation in the context of interstate integration. After all, public authority accompanies all social processes in society, manages the affairs of the state, realizes its tasks and goals - serving the people as the only source of power, and contributes to the formation of a legal, democratic, social state.

For Ukraine, this problem is very relevant, because, it is the suboptimal organization of public power that contributes to the crisis tendencies of its economic and social development. As a part numerous concepts, programs, and other legal acts were adopted, but a large number of them did not pass into a new quality of legislative regulation of public authority: there is no legal definition of the concepts of “public authority” and “public service,” and the issues of their content, types, and legal status of subjects have not been settled, which leads to heterogeneous interpretation and implementation. The concept of “state service” is enshrined in national legislation, but these issues also need to be improved in their legal regulation.

As for the healthcare sector, in Ukraine for a long time (since 2009) the issue of transferring doctors to the status of state servants has been discussed. Arguments in favor of this transfer are the extremely low level of financial security and social guarantees for healthcare workers. At one time, in 2010, the Verkhovna Rada of Ukraine⁵ did not support the draft laws on granting the status of a state servant to medical, pedagogical, and scientific and pedagogical workers, as well as proposals to extend the provisions of the Law of Ukraine ‘On State Service’⁶ to the chief state sanitary doctors and their deputies.

In 2015, an electronic petition No. 22/005135-en on the recognition of doctors as state servants was registered on the official website of the President of Ukraine.⁷ The petition asked for the following: doctors who have been working in their specialty for more than ten years should be equated to the category of state servants, after which the length of service as a state servant should be accrued. Of the required

⁵ Verkhovna Rada of Ukraine (2010).

⁶ Law of Ukraine, ‘On State Service.’

⁷ President of Ukraine, electronic petition No. 22/005135-en (2015).

25,000 votes, the petition received 41 votes and was not supported.⁸ As time passes, as it turns out, the issue remains open and sometimes comes up to the level of discussions and proposals.

The purpose of the Article is to substantiate the expediency of recognizing healthcare workers as state servants based on a terminological analysis of the concepts of “public service” and “state service,” as well as taking into account world experience, formulating proposals for improving legislation on public service and healthcare.

II. PRESENTATION OF THE MAIN MATERIAL.

⁸ Recognize Doctors as State Servants,
<https://petition.president.gov.ua/petition/5135>.

A. General Provisions for Fixing the Concepts of ‘Public Service’ and ‘State Service’ in the Legislation of Ukraine

There is no legal definition of the concept of "public service" in the legislation of Ukraine, but after reviewing Article 4, namely paragraph 17 of the Code of Ukraine on Administrative Proceedings of the edition of November 4, 2023,⁹ the Authors see a certain definition of this concept, namely "public service"—activity on state political positions, in state collegial bodies, professional activity of judges, prosecutors, military service, alternative (non-military) service, and other state service, patronage service in state bodies, and service in the authorities of the Autonomous Republic of Crimea, local self-government bodies.¹⁰ At the same time, such a phrase is used by the subjects of law-making and law enforcement activities in their documents, which requires the development and legislative

⁹ Code of Ukraine on Administrative Proceedings, art. 4, para. 17 (Nov. 4, 2023).

¹⁰ Code of Administrative Procedure of Ukraine, № 35-36, 37, Information of the Verkhovna Rada of Ukraine (2005), <https://zakon.rada.gov.ua/laws/show/2747-15> at 446.

consolidation of the definition of the concept of “public service” for a correct and unanimous legal understanding.

In scientific and educational literature, the main types of public service include state service and service in local self-governments. It should be noted that special laws formulate the concepts of state service (Article 1 of the Law of Ukraine “On State Service” dated December 10, 2015):¹¹ “State service is a public, professional, politically impartial activity for the practical implementation of the tasks and functions of the state”¹² and service in local self-government bodies (Article 1 of the Law of Ukraine “On service in local self-government bodies” dated June 7, 2001) and “Service in local self-government bodies is a professional, permanent activity of Ukrainian citizens holding positions in local self-government bodies, aimed at the implementation by the territorial community of its right to local self-

¹¹ Law of Ukraine, “On State Service,” art. 1 (Dec. 10, 2015).

¹² Law of Ukraine, “On State Service,” No. 889-VIII, Information of the Verkhovna Rada of Ukraine (Dec. 10, 2015), <https://zakon.rada.gov.ua/laws/show/889-19>.

government and certain powers of executive authorities granted by law.”¹³

The thesis is recognized in science that a thorough definition of a concept is one that allows for the formulation of specific characteristics that distinguish the given concept from another, and reflects its connection with other concepts. From this standpoint, the provided formulations are imperfect.

The Authors can summarize the scientists' work on the characteristics of public service. N. Runova identifies the following features of public service: 1) the emergence of legal relations on the basis of the actual composition, an obligatory element of which, according to the norms of the current legislation on public service and service in local self-governments, is the act of appointment to a position or the result of elections; 2) constancy and professional basis for the performance by the servant of his powers; 3) holding a public position in a public authority; and 4) the orientation of the activities of servants to satisfy

¹³ Law of Ukraine, “On service in local self-government bodies,” No. 2493-III, Information of the Verkhovna Rada of Ukraine (June 7, 2001), <https://zakon.rada.gov.ua/laws/show/2493-14#Text>.

public interests determined by the state and secured by the law of interests.¹⁴ As for the types of public service, according to R. Botvinov, the public service system includes the following types of service: state service, service in local self-governments, political service, military service, law enforcement service, specialized service, and professional activities of judges and prosecutors depending on species differentiation—civil, military and law enforcement service.¹⁵ He defines areas of special competence of the public service—the performance of law enforcement functions of the state, which consists in the protection of the territorial integrity and security of the state, law and order, protection of the rights, and lives and health of citizens, and justifies the need to introduce the concept of “public service for special purposes.”¹⁶ L. Bila-Tiunova, referring to the Constitution of Ukraine as a source of legal

¹⁴ N. Runova, *Public Service in Ukraine: Problems of Definition*, № 3 (7), Public Law (2012) at 269–274.

¹⁵ R.G. Botvinov, *Development of Public Service of Special Purpose in Ukraine: Author's Ref. Dis. ... Dr. of Science*, State Administration: 25.00.03 / NADU DRIDU. Dnipro (2018) at 37.

¹⁶ *Id.* at 8-9.

regulation of public service, defined the following types of it: public political service, public service (administrative, specialized, and military), service as a judge, and service in local self-governments.¹⁷ T. Zhelyuk refers to the public service municipal and state, which, in turn, is divided into general and specialized public services.¹⁸ That is to say, in the scientific community there is a consensus on the recognition of state service and service in local self-governments as types of public service. Yet there is a difference in the allocation of other species, which accordingly requires clarification at the legislative level.

As part of the Authors' research, the Authors support the position of O. V. Petryshyn, a supporter of a broad interpretation of the public service, who understands it as a state, municipal service and service in non-governmental organizations (public organizations, political parties and even private

¹⁷ L.R. Bila-Tiunova, *Public Service as an Administrative and Legal Category*, SCIENTIFIC WORKS OF ODESSA NATIONAL LAW ACADEMY (2009) at 143.

¹⁸ T.L. ZHELYUK, STATE SERVICE: SCIENTIFIC GUIDE FOR UNIVERSITIES (2005) AT 41.

enterprises), formulates the features: 1) holding a position in relevant bodies and organizations, regardless of the form of ownership and specific organizational structures; 2) the service orientation of activity, which consists in activities not for oneself, but for serving 'foreign' interests; 3) the professionalism of service activities, that is to say, the implementation of such activities on a permanent basis, requiring certain knowledge and continuity, and is the main source of employee's material support.¹⁹

The given definitions formulate public and state service as a certain activity carried out in a certain way, by certain subjects with certain goals. These definitions lack information about the content of this activity. The Authors find the answer in the Concept of development of the system of providing administrative services by executive authorities, approved by the Order of the Cabinet of Ministers of

¹⁹ V. YA MALINOVSKY, PUBLIC SERVICE IN UKRAINE (2018) AT 44.

Ukraine dated February 15, 2006 No. 90-p.²⁰

Services constitute the main content of public and state service. According to this document,

Services provided by state authorities, local self-governments, enterprises, institutions, organizations under their control constitute the sphere of public services. Depending on the subject providing public services, state and municipal services are distinguished. State services are provided by state authorities (mainly executive power) and state enterprises, institutions, organizations, as well as local self-governments in the exercise of delegated state powers at the expense of the state budget. Municipal services are provided by local self-governments, as well as executive authorities and enterprises, institutions, organizations in the manner of exercising the powers delegated by local self-governments at the expense of the local budget.²¹

²⁰ Concept of development of the system of providing administrative services by executive authorities, Order of the Cabinet of Ministers of Ukraine, No. 90-p (Feb. 15, 2006).

²¹ On the approval of the Concept of development of the system of providing administrative services by executive authorities, Order of the Cabinet of Ministers of Ukraine, No. 90-p. (Feb. 15, 2006), <https://zakon.rada.gov.ua/laws/show/90-2006-%D1%80#Text>.

So, taking into account all aspects, we propose the following definition: “Public service is a professional, politically impartial activity of subjects of public and private law of all forms of ownership and organizational forms, carried out by providing public services for the practical implementation of the tasks and functions of the state.” This should be enshrined in the Law of Ukraine “On Public Service,” which should regulate the issues of types of public service, subjects, their legal status, etc. for unambiguous interpretation and application.²² The definitions of “state service” and “service in local self-government bodies” should have similar content, starting with the words “this is a type of public service.”

B. Specificity of Public and State Service in the Field of Healthcare in the Countries of the World

Analyzing world experience, the Authors conclude that doctors abroad are often state servants.

²² Law of Ukraine “On Public Service.”

However, it should be noted that if the Authors take developed European countries as an example, they have a public service, which includes state authorities and local self-governments (their analogues). At the same time, “public service” refers to public services provided, in particular, to the population by state authorities, local self-governments, certain institutions, and organizations. Medical services are one of them.

In countries of the American legal system, the term “public service” applies to all public sector organizations, and the status of public servant applies to most public sector workers, including teachers, doctors, etc. To define the activities of professional officials—employees of the state (government) apparatus in these countries, as a rule, the term “civil service” is used.²³

In the countries of the Romano-Germanic legal system, the concepts of “public service” and the

²³ V.L. Knyazevich, N.O. Vasyuk, and T.V. Savina, *Public Service in the Healthcare Sector in Ukraine and the World: Regulatory and Legal Aspect*, No. 14. 74-78, *Investments: Practice and Evidence* (2017).

scope of such service are defined differently. According to the words of Jean-Sébastien Pilczer, the concept of state service is characterized by the stagnant legal regime before it.²⁴ Any activity of the government service must be subject to the principles of zeal, assertiveness and flexibility. It is possible that these principles are based on their high place in the hierarchy of standards and the multiplicity of their variations. The concept of civil service is as lively as it is flexible. Whatever its forms and names, they form the basis of social action and the cement of social cohesion. In the words of Leon Duga, public service covers any activity, the performance of which must be ensured, regulated and controlled by those in power, because the performance of this activity is necessary for the achievement and development of social interdependence and that it is of such importance. a character which can only be fully realized by the intervention of the ruling power.²⁵

²⁴ Jean-Sébastien Pilczer, *La Notion de Service Public*, 2010/2 (n° 158), *Informations Sociales*, at 6-9.

²⁵ *Id.*

As is known, in France the concept of “public service” (*fonction publique*) covers service in the administrations of the state, regions, departments, communes, and their public institutions. It includes three components: central public service or state public service - 2.47 million employees (43.87%), local public service or territorial public service - 1.98 million (35.17%), and hospital public service - 1.18 million employees (20.96%).²⁶

Servants also include teachers, university professors, and doctors of public health institutions. In the general statute of the public service, the public service of the state, the territorial public service, and the medical public service are distinguished. At the same time, among all “agents,” the emphasis in legal regulation is on “officials,” that is, persons appointed in accordance with public law.²⁷ There are certain inaccuracies in this opinion. Thus, the term “public service” can be translated into French as “*services*

²⁶ L. Prokopenko, “Management System of the State Service of France,” Theory and Practice of Public Service: Materials of a Scientific and Practical Conference, December 21, 2018, at 122-124.

²⁷ Public Service. Foreign Experience and Proposals for Ukraine / For the general. ed. V.P. Timoshchuk, A.M. Shkolik (2007) at 12-13.

publique,” and “*fonction publique*” can be translated as state service.²⁸ Also in the French-Ukrainian and Ukrainian-French legal dictionary by N.R. Malysheva and I.S. Mikitin actually the term “public” is translated as state, social, public.²⁹ That is to say, there is a certain terminological inconsistency in the literal translation of the terms we are studying.

In our opinion, based on what is denoted by the terms “state” and “public,” public service is often understood as public services. In France, the state service includes all agents who hold positions in the state, local authorities (municipality, department or region) and certain public hospitals.³⁰

Also, for example, in France there is the Ministry of Transformation and State Service (in French - *Ministre de la Transformation et la Fonction Publiques*), which has an online state service portal.

²⁸ FRENCH-UKRAINIAN AND UKRAINIAN-FRENCH LEGAL DICTIONARY (EDS. N.R. MALYSHEVA & I.S. MYKYTYN, 2017) AT 433

²⁹ *Id.* AT 253, 433.

³⁰ *La Fonction Publique, Qu'est-Ce Que C'est ?*, <https://www.lafinancepourtous.com/pratique/vie-pro/fonctionnaires/la-fonction-publique-quest-ce-que-cest/>

If the Authors talk about the correctness of the translation, then we give the literal correct translation of the name of the Ministry. However, if we proceed from what it does and what it is about on the “online portal of the state service,” then it is still appropriate to operate with the concept of “public service.” So, the state (more precisely, public) service in France has three levels: state, territorial, and hospital or medical (health and social institutions, in French—*Fonction publique hospitalière*). In this context, mention should be made of the translation and use of the term “public” in the work “Public Service. Foreign experience and proposals for Ukraine.” The Authors of this work write that “The general statute of the public service distinguishes the public service of the state, the territorial public service and the medical public service.”³¹ That is to say, it focuses on the public service, which covers both the state and the medical service, which, in the Authors’ opinion, is inherently correct.

³¹ Public Service. Foreign Experience and Proposals for Ukraine / For the general. ed. V.P. Timoshchuk, A.M. Shkolik (2007) at 13.

In France, there are three principles of state service: recruitment by competition; the right to a career; and the right to mobility.³² It is provided that the state (and in fact public) service in the hospital, as defined by the law on the state medical service of 9 January 1986 (Loi n 86-33 du 9 janvier 1986 portant dispositions statutaires relatives à la fonction publique hospitalière³³), combines, with the exception of medical personnel (doctors, biologists, pharmacists and orthodontists), all workplaces in the following institutions: state hospitals; state nursing homes; public or state institutions under which subordinate child support services fall; state institutions for minors or adults with disabilities; and public accommodation and social rehabilitation centers (shelters).³⁴

³² La Fonction Publique en France Des Métiers au Service des Citoyens, https://www.fonction-publique.gouv.fr/files/files/publications/coll_les_essentiels/la-fonction-publique-en-France-2013.pdf.

³³ Law No. 86-33, Portant Dispositions Statutaires Relatives à la Fonction Publique Hospitalière (Jan. 9, 1986), <https://www.legifrance.gouv.fr/loda/id/JORFTEXT0000000512459/>.

³⁴ Le Portail de la Fonction Publique, <https://www.fonction-publique.gouv.fr/la-fonction-publique-hospitaliere>.

The basis of the legal regulation of the state service and the determination of the status of state servants in France are the following laws (*Statut général des fonctionnaires*):

- • General Provisions: Section I: Law No. 83-634 of 13 July 1983 on the Rights and Duties of State Servants (Le Pors Law).³⁵
- • State Service: Section II: Law No. 84-16 of 11 January 1984 on the statutory provisions relating to the state service.³⁶
- • Territorial State Service: Section III: Law No. 84-53 of 26 January 1984 on statutory provisions relating to territorial state service.³⁷
- • State Hospital Service: Section IV: Law No. 86-33 of 9 January 1986 establishing provisions relating to the state hospital service.³⁸

In Art. 1 of Law No. 86-33 of 9 January 1986 stipulates that Art. 2-10 of this Law constitute

³⁵ General Provisions § I, Rights and Duties of State Servants (*Le Pors Law*), No. 83-634 (July 13, 1983).

³⁶ State Service § II, No. 84-16 (Jan. 11, 1984).

³⁷ Territorial State Service § III, No. 84-53 (Jan. 26, 1984).

³⁸ State Hospital Service § IV, No. 86-33 (Jan. 9, 1986).

Section IV of the general statute of state servants of the state and local authorities.³⁹

Professions that are present in French state health institutions (hospitals, nursing homes, rehabilitation centers, care centers, etc.) are combined into the state hospital service, which mainly includes nurses, paramedical and medical personnel, and technical and administrative workers.⁴⁰

In the Spanish doctrine, Garrido Falla, collecting the traditional concept of Jordana de Posas, indicates that the public service is "the activity of providing (material or immaterial benefits) with or without a monopoly and in the regime of public or private law." Villar Palaci, García de Enterría and García Treviñhano note that a public service is "the activity of providing intangible goods (or services) with a monopoly (regalistic exclusivity) and with a regime of public law," which distinguishes it from economic management (or industrial activity) or the provision

³⁹ Law No. 86-33, art. 1 (Jan. 9, 1986). *See id.* at art. 2-10 and *Le Pors* Law § IV.

⁴⁰ *Employeur: Fonction publique hospitalière*, <https://vocationservicepublic.fr/employeur/fonction-publique-hospitaliere>.

of market goods, which characterize it as "the activity of providing material goods under conditions of competition and in accordance with private law." López Candela defines it as "that activity of economic and social content, which, under the responsibility of the administration, is carried out constantly and everywhere to meet the basic needs of the social community."⁴¹

The Spanish model for determining the status of medical workers is interesting. Thus, all doctors working in hospitals and up to 75% of other medical workers are considered "half-state employees" and receive salaries, not fees, depending on the services provided. Its size depends on the number of years of medical practice and certain professional degrees; it increases every year for everyone at once, regardless of the level of professionalism or patient feedback.⁴²

⁴¹ Servicio Público. Guías Jurídicas, https://guiasjuridicas.laley.es/Content/Documento.aspx?params=H4sIAAAAAAAEAMtMSbF1jTAAAUMTQ3MTtLUouLM_DxbIwMDCwNzAwuQQGZapUt-ckhlQaptWmJOcSoAXqUo0DUAAAA=WKE

⁴² Michael Tenner, "A Look at the World's Healthcare Systems – 5," 23 CITIZEN OF UKRAINE WEEKLY 230, <http://gukr.com/article2678.html>.

That is to say, doctors and most medical professionals in Spain are not absolutely equal to state servants. They are only subject to certain provisions of the legislation on state service.

In Portugal, therapists and doctors, who work in hospitals, have the status of state servants and are provided by the national health system. However, this does not prohibit such doctors from private practice, which is very common. If the Authors talk about specialized specialists, then they are usually doctors who conduct private practice and work for the state under a contract.⁴³ That is to say, such a model assumes the extension of the status of state servants to doctors with their inherent rights, duties and guarantees.

In Norway and Japan, doctors working in state hospitals are state servants and receive salaries from the state budget. All other doctors working in the

⁴³ Michael Tenner, "A Look at the World's Healthcare Systems – 7," 26 CITIZEN OF UKRAINE WEEKLY 233, <http://gukr.com/article2709.html>.

private sector receive remuneration for their services in an amount determined by the state.⁴⁴

Also, in some foreign countries (for example, in the UK and Canada) there is a state civil service (Civil Service), which is considered as a kind of auxiliary to the state service. If the Authors consider a specially created body of the civil service, then it can be an analogue of the Ukrainian National State Service Agency of Ukraine, for example, in Poland (in Polish—*sz służbę cywilną*, in Ukrainian it is translated as a state service);⁴⁵ in the UK (in English—Civil Service Commission, in Ukrainian—State Service Commission). Canada also has a State Service Commission (in English—Public Service Commission, French—*Commission de la fonction publique*). According to Abraham Jackson, in order to promote the effective functioning of the public service, particularly in the area of economic and

⁴⁴ Michael Tenner, “A Look at the World's Health Care Systems – 6,” 25 CITIZEN OF UKRAINE WEEKLY 232, <http://gukr.com/article2699.html>.

⁴⁵ Ustawa z dnia 21 listopada 2008 r, o służbie cywilnej (Dz.U. 2021 poz. 1233), <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210001233/T/D20211233L.pdf>

social welfare, leadership in the public service should be provided with mandatory services available to the community. They usually include basic services such as transport, education, healthcare and, in addition, a legal system that facilitates the proper functioning of markets—a deliberate requirement to stimulate growth in an economy.⁴⁶

In Germany, doctors are given the highest rank of state servants (from A13 to A16, from B1 to B11, from W1 to W3, from C1 to C4, from R1 to R10). The official name of these ranks is tied to the pay grades of Federal law. The salary of a state servant is determined by a fixed salary scale and legally approved salaries. The level of payment depends on the position, seniority and rank of the civil servant. They are also exempt from social security contributions and only pay income tax.⁴⁷

⁴⁶ Emerson Abraham Jackson, Importance of the Public Service in Achieving the UN SDGs, MPRA, University of Birmingham (2020) at 1-16.

⁴⁷ T. Gumenyuk, Public Service in EU Countries, European Information Research Center (2016), chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://infocenter.rada.gov.ua/uploads/documents/28926.pdf.

M.I. Tsurkan points to this question that the analysis of the forms of government in European countries allows us to conclude that simultaneously with the term “state service” such terms as “civil service,” “public service,” “professional bureaucracy,” and “public administration” are used.⁴⁸ Here again, one should address the problem of literal and correct translation of titles.

In this Article, the Authors will not delve into the features of state and public service in foreign countries as a whole—let this issue be the subject of further scientific research in the comparative legal aspect. However, it should be noted that one should be more attentive to the use of foreign legislation and find out more deeply what exactly regulates certain laws, and how exactly legislative terms are defined, and not “blindly” identify the state and public service in literal translation.

Consequently, the experience of foreign countries shows that activities in the healthcare

⁴⁸ M.I. TSURKAN, LEGAL REGULATION OF PUBLIC SERVICE IN UKRAINE, FEATURES OF LITIGATION: A MONOGRAPH (2010) AT 216.

sector have the status of a state service, which means that it is provided with state guarantees for financing, social benefits, etc.

C. Justification for Establishing the Legal Status of Healthcare Workers as State Servants

As for the healthcare sector, the relevant activity is one of the main directions for the implementation of the social function of the state, the fulfillment of the main duty of the state to establish and ensure human rights and freedoms (Art. 3 of the Constitution of Ukraine).⁴⁹ Also, the provisions of Art. 49 of the Constitution of Ukraine establish the right of everyone to healthcare, medical care, and medical insurance.⁵⁰ The right to healthcare is ensured by state funding of relevant socio-economic, medical and sanitary, and health-improving and preventive programs. The state is obliged to create conditions for effective and affordable medical care

⁴⁹ Constitution of Ukraine, Law of Ukraine, No. 254к/96-BP (June 28, 1996), Information of the Verkhovna Rada of Ukraine, No. 30 (1996) at 141. Constitution of Ukraine, art. 3.

⁵⁰ Constitution of Ukraine, art. 49.

for all citizens. It is also indicated that in state and municipal healthcare institutions, medical care is provided free of charge; the existing network of such establishments cannot be reduced. The state promotes the development of medical institutions of all forms of ownership.⁵¹ One of the basic principles of healthcare in Ukraine according to the content of Art. 4 of the Law of Ukraine ‘Fundamentals of Ukrainian Legislation on Healthcare’ is the recognition of healthcare as a priority for society and the state, one of the main factors for the survival and development of the people of Ukraine and the observance of human and civil rights and freedoms in the field of healthcare and the provision of related state guarantees.⁵² Hence, it seems necessary to recognize doctors as state servants because of their special role in ensuring the state constitutional rights to healthcare and medical care. This position is substantiated by the fact that for the development of

⁵¹ Constitution of Ukraine, Law of Ukraine, No. 254к/96-BP.

⁵² Law of Ukraine, Fundamentals of Ukrainian Legislation on Healthcare, No. 2801-XII (Nov. 19, 1992), <https://zakon.rada.gov.ua/laws/show/2801-12#n551>. Law of Ukraine, art. 4.

any state it is necessary that the people living in it should be educated and healthy. This is one of the main conditions for the effective development of the state and society.

Currently, the situation of doctors is truly destitute, as they are equated in pay to the lowest-paid specialties. The most educated and smartest of them are forced to either leave the profession or look for additional jobs in order to secure a decent existence for themselves. It turns out that less educated, initiating, and energetic people remain in their positions because they simply have nowhere else to go.

To stop the outflow of personnel in the field, people need social guarantees, decent salaries, and confidence in the future. The best solution seems to be the recognition of doctors as state servants. The status of a state servant will dramatically increase the importance of the profession in society, attract the best personnel, and strengthen the financial situation. People will not think about survival, but will be able to fully devote themselves to their vocation.

In the letter of the Ministry of Justice of Ukraine dated December 18, 2009 No. 967-0-2-09-22 “On providing an explanation of the terms used in the Law of Ukraine” “On Amendments to Certain Legislative Acts of Ukraine on Liability for Corruption Offenses,” it is noted that in accordance with the Concept of development of the system of providing administrative services by executive authorities, the scope of public services consists of services provided by state authorities, local self-governments, enterprises, institutions, and organizations under their management.⁵³ Depending on the subject of providing public services, state and municipal services are distinguished.⁵⁴ From the foregoing, it can be concluded that doctors, medical and medicinal institutions provide a variety of public services if their funding is provided for in the state or

⁵³ On providing an explanation of the terms used in the Law of Ukraine, “On Amendments to Certain Legislative Acts of Ukraine on Liability for Corruption Offenses,” No. 967-0-2-09-22, Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine (Dec. 18, 2009), <http://zakon3.rada.gov.ua/laws/show/v967-323-09>. See Concept of development of the system of providing administrative services by executive authorities (Feb. 15, 2006).

⁵⁴ Ministry of Justice of Ukraine, Verkhovna Rada of Ukraine (2009).

local budgets. Private healthcare institutions can provide public services if the medical institution has a contract with the National Health Service of Ukraine (NHSU). As of January 2023, 2,200 contracts have been concluded with primary healthcare centers, 241 contracts were signed, proposals for which were submitted by medical institutions under a simplified procedure. In general, specialized medical institutions have submitted more than 15,000 proposals, of which 13,500 have been confirmed and are awaiting a draft agreement.⁵⁵

Reforming the healthcare sector has a state level. From 2020, according to the Law of Ukraine “On State Financial Guarantees of Medical Care for the Population,” medical institutions at all levels were supposed to switch to the NHSU financing model on the basis of a concluded agreement.⁵⁶ Thus, the

⁵⁵ O.V. Ustinov, The Program of Medical Guarantees: The Status of Concluding Contracts for 2023, <https://www.umj.com.ua/article/237654/>.

⁵⁶ Law of Ukraine, On State Financial Guarantees of Medical Care for the Population, No. 2168-VIII, Information of the Verkhovna Rada of Ukraine (Oct. 19, 2017), <https://zakon.rada.gov.ua/laws/show/2168-19>.

program of medical guarantees, according to the Law, includes services for emergency medical care, primary medical care, secondary (specialized) medical care, tertiary (highly specialized) medical care, palliative care, rehabilitation in the healthcare sector, medical care for children under 16 years old and medical care for pregnancy and childbirth.⁵⁷ Hospitals have been transferred from the status of budgetary institutions to the status of economic entities engaged in non-commercial economic activities aimed at achieving economic, social and other results without the purpose of making a profit. From April 2020, this period has been extended.

It is important that now local authorities must realize that they have a responsibility for the availability of medical care for patients; it is responsible for the purchase of equipment, repair of medical institutions of communal ownership, etc. Currently, local authorities face a number of tasks that have already been completed for primary healthcare, namely the autonomy of all medical

⁵⁷ *Id.*

institutions that they own, as well as ensuring computerization and connection of institutions to the eHealth system. Of course, this entails certain costs, but the main thing is the result. The Authors also add that in the process of medical reform private healthcare institutions and private entrepreneurs were able to provide public medical services, thereby unloading the state and municipal healthcare sectors.

As for administrative services, in accordance with the Concept of development of the system of providing administrative services by executive authorities, approved by the Order of the Cabinet of Ministers of Ukraine dated February 15, 2006 No. 90-p. they are the most important component of both state and municipal services.⁵⁸ That is to say, “any administrative service is public by legal nature... Administrative services in the healthcare sector are the result of the exercise of power by an authorized subject that implements public functions in the healthcare sector and, in accordance with the law and

⁵⁸ Botvinov, *Development of Public Service of Special Purpose in Ukraine*. See Order of the Cabinet of Ministers of Ukraine (Feb. 15, 2006).

the application of an individual or legal entity, provides legal registration of the acquisition, change or termination of the rights and / or obligations of such a person.”⁵⁹

Therefore, it is necessary to legislate that the provision of public services (which, according to the above definition, include both administrative services for the management of a healthcare institution, and services for the provision of medical care, medical service and health insurance) is the basis for classifying their providers as state servants.

Therefore, considering the healthcare sector as a priority in the life of the Ukrainian state and society, it is advisable to grant the status of state servants to all its employees with the system of guarantees and benefits provided for by law.

According to Carmen M. Cusack and Matthew E. Waranius, Americans have the law and their shared principles to help them through suppression, hurt,

⁵⁹ O.A. Muzyka-Stefanchuk, *Public Administrative Services in the Field of Healthcare*, 22 ZAPOROZHYE MED. J. 261, 263 (eds. O.A. Muzyka-Stefanchuk, O.O. Otradsnova, T.V. Danchenko, L.A. Muzyka, & V.G. Savenkova, 2020).

and confusion. Citizenship is a safety barrier under them that will allow them to rise.⁶⁰

Perhaps for Ukrainian healthcare workers, the status of a state servant will be a protective barrier and a good incentive for effective work.

III. CONCLUSIONS.

Terminological analysis and research of the peculiarities of legal regulation in the legislation of Ukraine of the concepts of "public service" and "state service" leads to the conclusion that it is necessary to formulate and consolidate new and improved definitions in the legislation. They should reflect the legal nature, features, types, correlations. Author's suggestions are provided in the text of the article.

Based on world experience, taking into account the priority of the healthcare sector for the very existence and effective development of the state and society, the expediency of establishing the legal

⁶⁰ Carmen M. Cusack & Matthew E. Waranius, *American Capitalism and the Protestant Work Ethic: "I'll Always Be Your Slave,"* 25 J. L. & Soc. Deviance 40 (2023).

status of state servants for all healthcare workers with the system of guarantees and benefits provided for by the legislation of Ukraine is substantiated.