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CURRENT ATTEMPTS TO REFORM THE MACHINERY OF THE STATE IN UKRAINE

У статті директора Центру суспільно-політичних досліджень НаУКМА професора В. М. Якушика "Сучасні спроби реформування державного механізму в Україні" розглядаються особливості нинішнього етапу розвитку державного апарату в Україні і, зокрема, правове регулювання державної служби. Висвітлюється специфіка домінуючих теоретичних і практичних підходів до проблем адміністративної реформи. Подається аналіз форм і методів залучення міжнародного досвіду в сфері реформування державної служби.

Introduction

The contemporary world is increasingly characterised by the processes of internationalisation. Integration process in Europe leads to further strengthening, deepening and widening of supra-national and trans-national institutions. The West is experiencing radical structural changes. Western patterns are strongly influencing political and social life in the former socialist countries. The countries with the long-established democratic traditions are capable to provide a valuable experience in functioning of the state and civil institutions. One of the values of a prime historical and political importance is the experience of the Western Civil Service which has been widely used in the process of nation-building and/or national reconstruction in a number of transitional societies.

Nevertheless, in reality, few countries are looking around the international horizon to seek radical improvements to their systems of public administration unless they are in a deep crisis, or there is a specific need to make changes (for example to comply with membership requirements of the Council of Europe, the European Union, or the NATO). The fact is that since the break-up of the Soviet Union and Independence, Ukraine (in line with a number of other post-Soviet countries) has been at such a historical turning point, and like Grand Prince Vladimir of Kievan Rus more than a millennium ago, the more enlightened people in charge of the nation (or ready to take such responsibilities) are sensibly looking at features of foreign models which offer Ukraine the opportunity of taking short cuts towards a system which is suitable for their own country, and promising better

life to the people and a more worthy place in the world to the nation.

The post-Soviet countries provide a very diverse spectrum of experience in the sphere of nation-building and political reforms, with a variety of practical models of transformation of state institutions, ranging from the replacement of the old state bodies by totally new ones and introducing radical 'clear-outs' among the state employees, on the one hand, to preserving a de-facto intact state apparatus inherited from the Soviet times, on the other hand.

Ukraine represents an example of preserving an inefficient state machinery, which grants little respect for ordinary peoples' interests, is inactive, bulky, consuming excessive proportion of GNP, reluctant to reform itself.

The necessity of administrative reform (including the reform of the 'State Service') in the contemporary Ukraine is clearly perceived by Ukrainian politicians and general public, as well as by the international community of Ukraine's current donors — the international financial institutions (the World Bank, IMF), USA, EU and others, on whose financial 'life support', political and economic advice the present Ukrainian government is largely dependent.

The old-fashioned 'pure administrative' paradigm (logic) is still prevailing in Ukraine's official approaches to adapting the inherited state apparatus to the new economic and political conditions. Almost all the issues are looked at from the perspective of administrative control, possessing state authority etc., and not from the perspective of providing unbiased professional guidance for various sectors of public life. Even though a number

of legislative acts and regulations (moulded on the western pattern) were passed, and the concept papers and programmes (positively assessed by international experts) were drafted, actually there are few real positive changes in the situation in the state apparatus. The lack of adequate material resources, political will and 'vision' destroys any declared good intentions and promising plans. The introduction of a national integrity scheme and implementation of the principles of Good Governance remain one of the main strategic tasks for those who wish to see the post-Soviet society a part of a civilised and developed world. The adequate methodology of the efficient use of international (foreign) experience in the sphere of Civil Service has to be one of important components of the reform strategy in Ukraine.

The present stage of development of the State Service in Ukraine

In 1993 the Law of Ukraine "On State Service"² officially introduced the institution of the State Service which was defined as follows: "The State Service in Ukraine is the professional occupation of persons holding positions in the public bodies and their administration for the purpose of practical performance of tasks and functions of the state in return for pay from government funds" (in the literally wording: "receiving salary at the expense of the state finance").

In the Law "On State Service" a differentiation of the legal status of state servants was introduced according to the procedure of its regulation. Article 9 of the said law states that the legal status of the President of Ukraine, Speaker of the Supreme Rada of Ukraine and his deputies, Heads of Committees of the Supreme Rada of Ukraine, people's deputies of Ukraine, Prime-Minister of Ukraine, members of the Cabinet of Ministers of Ukraine, the Chairman (Head) and members of the Constitutional Court of Ukraine, Chairman (Head) and judges of the Supreme Court of Ukraine, Chairman (Head) and judges of the Highest Arbitration Court of Ukraine, Prosecutor General of Ukraine and his deputies is regulated by the Constitution of Ukraine and special laws.

As far as the legal statuses of state servants working in the prosecutor's office, courts, diplomatic service, customs control, security, internal affairs etc. are concerned, these are regulated by the Law "On State Service" unless otherwise is prescribed by the laws of Ukraine.³

Thus, it can be stated that there is a general State Service (regulated by the law of Ukraine "On State Service") and a specialised State Service in Ukraine (particularities are defined by the separate special legislative acts).

Taking into consideration the variety of functions of the state fulfilled by its bodies (as well as individual state servants) and according to the role and place of a public body in the hierarchy of "power pyramid", the following system of contemporary state service in Ukraine can be distinguished (on the theoretical level while considering the State Service in its institutional sense):

- political and public level (President, Prime-Minister, Vice-Prime-Minister, Speaker of the Supreme Rada and his deputies, Chairmen (Heads) of the Constitutional, Supreme and Highest Arbitration Courts, Ministers, Heads of the Court of Audit, National Bank of Ukraine, Anti-Monopoly Committee, State Property Fund, State TV and Radio Committee, State Securities and Stock Exchange Committee, Prosecutor General);

- coordination and provision level (Administration of the President of Ukraine and the Cabinet of Ministers, administration of the Supreme Rada of Ukraine, administration of the Constitutional, Supreme and Highest Arbitration Courts of Ukraine, patronage services);

- administrative and state level (administration of the Ministries and other central executive bodies as well as the Court of Audit, National Bank of Ukraine, Anti-Monopoly Committee, State Property Fund, State Securities and Stock Exchange Commission);

- administrative and territorial level (regional and district state administrations);

- administrative and representative level (deputies and administrations of 'self-government', i.e. local government, bodies).

Taking into consideration the real difference between the status of state servants that belong to different elements of the above-mentioned system and their roles, the following problems of their legal provision can be distinguished:

1. The necessity to ensure the differentiation of the State Service by the following criteria: political activity — State Service; according to the territory covered by the relevant body — State Service — municipal service.

2. The ways of legal provision, which are very closely connected with the concept of the State Service (admissibility and necessity of separation of positions of state servants from political posts; separate regulation of municipal service (or as an option, regulation by a separate normative legal act only the service in local government,— 'self-government' — bodies):

- through the adoption of separate special laws;⁴
- through the introduction of a coordinated system of normative legal acts. The basic thing in this system will be the State Service Code "which

will bring together the legislative and normative documents related to legal regulation of State Service in the bodies of all branches of power, local government ('self-government') bodies, issues of status of the State Service and their particularities in the courts, prosecutor's office, national security, internal affairs, tax and customs service bodies as well as other specialised state structures."⁵

Should any of these ways be chosen, there should be obligatorily defined the status of:

1. Persons holding political posts;
2. Persons whose positions are not related to political posts but are close to them by the nature of duties executed. Legal status of state servants of this category is different from the status of both the state servants and status of political posts;⁶
3. Functionaries of patronage service;
4. Functionaries of municipal service and/or local government ('self-government').

Today the norm of the Law "On State Service" envisaging the creation of a relevant body of management of State Service is implemented. By the Resolution of the Cabinet of Ministers of Ukraine dated 2 April 1994 No. 209⁷ in accordance with Article 6 of the said Law, the Chief Department of State Service (usually referred in Ukrainian as an acronym 'Golovderzhsluzhba') was created under the Cabinet of Ministers of Ukraine.⁸

According to par. 3 of the Regulation on Chief Department of State Service Golovderzhsluzhba, its main tasks are:

- to ensure (together with other state bodies) the realisation of main guidelines of state policy in the sphere of State Service in the central and local state executive bodies, in the local councils of people's deputies and their bodies;
- to ensure the functional management of the State Service;
- to elaborate current, long-term forecasts and plans of personnel demand of the central and local state executive bodies, local councils of people's deputies and their bodies;
- to prepare measures to be taken to increase the effectiveness of the State Service in the central and local state executive bodies, local councils of people's deputies and their bodies, coordination and control over their implementation;
- to implement methodological management of the selection of state servants in keeping with the due competitive procedure in the central and local state executive bodies, local councils of people's deputies and their bodies;
- to organise education and professional training of state servants;
- to organise, coordinate and set up grounds for the extension of academic research related to the State Service;

- to control the conditions of implementation by the citizens of Ukraine of their right to the State Service envisaged in the Law of Ukraine "On State Service."

The Law "On State Service" was unable to start a new phase in the development of Ukraine's machinery of state (as to its essence), it only introduced some minor modifications in the administrative structures. In fact, there were two main phases in the development of the modern Ukrainian State Service (as it was moulded in the Soviet times):

1. The period of a "dual system" (till 1991), when the Party (the ruling Communist Party) was performing the task allocation function, while the apparatus of the ministries and other state agencies was acting as a quite disciplined, pure administrative mechanism to implement the tasks stated by the Party. It was the time when the existing elaborate system of staff training, selection and promotion perfectly suited functioning of the autocratic system of the day. Vertical ties totally dominated within the system of state management.

2. The period (after 1991) of dismantling the Party structures in the situation of a lack of coherent administrative structures and discipline. There are no efficient vertical and horizontal ties within the machinery of state, and the remnants of the traditional Soviet administrative structures are functioning without major conceptual and organisational changes (as to the essence of their institutional nature) in a totally different economic and cultural environment. In fact, the situation in Ukraine's State Service is rather dangerous: often the whole system is close to the state of anarchisation and decay; there is a haemorrhage of talent and expertise, because the salaries are pitiful. The State Service is not attractive in today's Ukraine by many reasons, especially for the young who prefer business with its self-realisation possibilities and high salaries outside the strict subordination framework.

For sure, it is imminent that the third period in the development of the state apparatus is about to commence. No social system (not even politically and economically dependent ones) can survive for a long time without a sort of an 'efficient' machinery of state ('efficient' meaning at least 'adequate to the expected social tasks'). The choice would be between various types of efficiency and different types of administration. Those possible systems of administration may range from a some kind of self-sufficient' authoritarian, autocratic type (to which a Saddam Hussein's system is an extreme example) to a 'relaxed', cosmopolitan, 'open', 'foreign capital — friendly' 'neo-colonial' one (some such extreme examples exist in the Tropical Africa area). In the present situation no 'solution' can

theoretically be excluded, even though the dominant Ukraine's public opinion would prefer European-type approaches.

In order to make transition to the third period along the lines of the policy of europeanisation (including in the sphere of state machinery functioning), there is little use of general 'reformist' rhetoric, and it is not enough just to draft plans of Administrative Reform.⁹ A strong political will is needed combined with the correct organisation and orientation at the interests of the nation as a whole, not only at the interests of politically and economically dominant clans and other privileged strata. The accumulation of the adequate knowledge and skills in the social sphere (including the knowledge and skills related to the efficient use of international experience, in particular through technical assistance programmes) is a prerequisite of successful reforms.

Current programmes of administrative reform in Ukraine

With the assistance of international advisors some draft of legislation related to the issues of State Service were prepared, among them a draft Law "On Civil Service at State Organs and Offices" (prepared by the Committee on Legal Policy and Judicial and Legal Reform with the assistance of the US ARD / Checchi Rule of Law Consortium (in 1997).

In the current situation when the 'apparatus' of the Cabinet of Ministers often substitutes the role of the Ministers and Ministries' state servants, it is very important to use the best international patterns to define the role of the Cabinet of Ministers. Foreign donor organisations (the World Bank in particular) are paying special attention to their advisory work in Ukraine. Nevertheless, the legal status of the Cabinet of Ministers is still to be defined in accordance with the Ukraine's 1996 Constitution, the Law "On the Cabinet of Ministers of Ukraine" was vetoed by the President.

The Ministry of Justice of Ukraine has created a working group to draft the Code of State Servant Behaviour. In 1998 on the basis of generalisation of the relevant normative acts of other countries (including Britain) and the needs of Ukraine's State Service, that working group has prepared the draft "Code of General Rules of Behaviour of State Servant."¹⁰

There is quite a lot of confusion in relation to what state institutions or the *ad hoc* bodies are responsible for the elaboration of particular pieces of draft legislation. For some reason, in Ukraine there are two different bodies (nevertheless comprising a number of the same persons) entitled to draft proposals for the administrative reform:

1. On the initiative of the Ministry of Justice of Ukraine a working group (a different one from the mentioned above) was formed by the Order of the Cabinet of Ministers of 12 May 1997, to draft the Concept of Administrative Law Reform and the Administrative Code of Ukraine.

2. And on 7 July 1997, the President of Ukraine issued the Decree on State Committee for Conduct of Administrative Reform in Ukraine. That Committee was formed under the chairmanship of Ukraine's former President Leonid Kravchuk.

The task of the reform is to drastically change the system of state governance in all the spheres of public life, to develop the structure and functions of the executive bodies gradually shifting from the sectorial principle of Ministries arrangement over to the functional one, introduce an effective state control system, rearrange the state financial system, deregulate and simplify managerial services, improve the legislative basis of administrative relations, and reform the managerial training and re-training system. "

The Concept Paper on Administrative Law Reform was completed in May 1998, its Chapter 9 deals with the issues of development of the Law on State Service. Meanwhile on the 22 of July 1998, the Concept of the Administrative Reform in Ukraine was approved by the Decree of the President of Ukraine No. 810/98.¹² (Chapter 3 of the Concept refers to the issues of organisation of State Service.)

The way how that Concept was published is very symptomatic and reveals the predominance of the old Soviet patterns in legislative drafting and in relations between the state institutions and the public. The above-mentioned Decree states: "The main provisions of the Concept of Administrative Reform in Ukraine (worked out by the State Committee for Conduct of Administrative Reform in Ukraine shall be the basis of implementation of the reform of the state administration system." After the words "Concept of Administrative Reform in Ukraine" there is a footnote reference in the text of the Decree: "*enclosed to the original*". This interesting and ambiguous phrase concealed a simple fact that apart from a very limited number of top officials almost nobody could have got hold of that "original". Various drafts were circulating in the state apparatus, but the "basis for the reform implementation" de-facto remained a document of a very limited circulation. Ironically enough, for the author of this research paper, the World Bank was the only reliable source to obtain the real text of the officially approved Concept being somehow "enclosed to the original" Decree of the President of Ukraine.

Assessing the type of that document, it is possible to say that in its present form, the Concept

of Administrative Reform in Ukraine is not at all a 'concept', and certainly not a 'concept of reform'. It is only a description of an 'ideal model' of optimising administrative structures and procedures. A reform presupposes a vision of: (a) the existing situation and the difficulties (problems) characterising it; (b) the aims: what is intended to be changed (and it is important that the scope of the proposed changes should be relatively narrow in order to be feasible); (c) the means which will be used to introduce changes. The present 'Concept' is a kind of a 'wish list' where you mostly find just good intentions (something like: "How good it would be if all state servants were persons of integrity, well educated and patriots!") The authors of the 'Concept' do not specify the problems which they try to resolve, and what they intend to do. No concrete steps are described (even though there are some 'general considerations' on the stages of administrative reform and development of the State Service¹³). In fact, only 'ideal schemes' are proposed.

A concept of reform can not be all-embracing, it must be aimed at something particular. It is not possible to reform everything. A reform must point out a particular key target and a mechanism through which step by step the changes in other spheres would be achieved. (By the way, the relevant documents of the World Bank¹⁴ provide the necessary elements of organisational approaches to work out a type of a document which may be considered a concept of reform.)

Some of the most common features of the 'tragedy' of those, who in the predominant post-Soviet culture of Ukrainian society are trying to propose a reform, may be summarised in the following way:

1. The 'reformers' consider that the reforms should start from the law: first an ideal model is created, and then this model would be imposed by some means (mechanisms) which are not clear.

2. The 'switching on' of the mechanism of reform (of an 'ideal model') does not presuppose the initial pilot elaboration of the details of practical mechanisms. There is no much room left for a real experiment. Stages may be theoretically mentioned, but not practically elaborated.

3. The plans do not envisage a real re-distribution of functions between the state and various types of corporations (business structures, trade-unions and other professional bodies, local communities). For example, it is not clear why the state in Ukraine has to manage the sphere of science. Who decides which Academies of Sciences are state ones (like the Academy of Legal Sciences, or the Academy of Medical Sciences), and which ones are just social organisations — NGOs (like the Academy of Political Sciences, the Academy of City-

Construction etc.) Who is deciding that type of questions? It remains unclear.

It is expedient to conduct discussion and analysis of and take decision on the policy areas (spheres of political involvement) in which the Ukrainian state should: (a) maintain its involvement; (b) reform or reduce its involvement; (c) withdraw from its involvement. If the Government (in a wider sense of this term) is to be reformed and cut, it is necessary to define how feasible are such plans: (a) financially feasible; (b) administratively feasible.

4. There is no feasible personnel development component. (Where from the adequate required personnel will come, how it will be trained?)

In Ukraine there is no general strategy of the nation's development (no real answer to a question: "Where are we going?"); and in such situation of a vacuum of a viable national idea, the decisions concerning 'the reforms' are taken on the basis of 'general considerations'. Foreign experts may explain how particular policies are drafted and implemented in their countries, but the post-Soviet context is different. Meanwhile international experts due to their professional knowledge and skills (including due to their multi-cultural exposure) and in particular actual and retired civil servants and academics can provide an extremely valuable assistance to Ukraine in drafting and monitoring the implementation of specific reform programmes in various spheres, especially in the sphere of reforming the machinery of the state.

The forms and methods of organisational knowledge transfer to a post-Soviet society (in the sphere of public administration)

Generally speaking, all well known forms of the knowledge transfer are and should be used in order to assist Ukraine in creating a modern-type Civil Service system:

1. Publication of the existing experience, and making it available to the relevant institutions, specialists and the wide public.

2. Specialists exchange programmes.

3. Analytical, project designing and research work.

4. Training and re-training of specialists.

5. General education work.

6. Support for pilot projects aimed at changing governmental practices.

A number of foreign countries' embassies and representative offices of international organisations, foundations etc. are somehow involved in all these kinds of activities.

For example, Canadian Bureau of International Education, German Government through the German Academy for Civil Servants, the Hans Seidel Foundation and the Karl Duesberg Fund, the

French Government and the United States of America provide support for internships, visiting lecturers, other kinds of support for training activities.¹⁵ Within the EU TACIS programme there are projects in Ukraine aimed at reforming Ukraine's State Service. In 1993—1996 there was a project "Reform and Strengthening of Public Administration". Currently there is a project "Institutional Building of Public Administration and Organisation of Vocational Training for Civil Servants". "One of the main tasks of another EU TACIS project in Ukraine "The Ukrainian-European Policy and Legal Advice Centre" is to provide advice to Ukraine's State institutions on the administrative reform.¹⁷

During several years, the British Government Know How Fund (together with the relevant Ukrainian State institutions) has run a "Project on Machinery of Government in Ukraine". Even though there is a lot of disappointment connected with the results of that project (due to the lack of readiness on the Ukraine's part to effectively use the proposed technical assistance), it has produced some important theoretical and practical results. Now the Know How Fund has decided to primarily concentrate its technical assistance (in the sphere of administrative reform) on the local and regional government issues.

A promising channel for the active use of the British Civil Service experience is provided by the arrangement done by the Academy of State Administration under the President of Ukraine in cooperation with the relevant British institutions. In particular, this Academy is not only jointly teaching its students but also jointly awarding its graduates the Master degrees in Public Administration together with the University of North London (UK).

The University of 'Kiev-Mohyla Academy' (UKMA) has obtained a large Know How Fund grant for development of the Law Faculty, and there is hope that partially these available resources will be used to train lawyers within the specialisation "Public Administration and Law". Currently some units within this future specialisation (at the level of a Master degree course) is being developed in the UKMA together with the University of East London (UK) under the British Council REAP programme.

The United Nations, the British Know-How Fund and other foreign donor organisations are supporting (financing and in other way assisting) an interesting experiment (aimed at the fusion of strength of both the state servants and the experts from outside the state apparatus) undertaken by the team of the Deputy Prime Minister Sergii Tygipko as to the organisation and work of the Secretariat of the Inter-Institutional Council for the

Implementation of the Programme of Economic Reform¹⁸ (functioning within the Office of the Deputy Prime Minister). This Council is mainly staffed by the outside experts working under the leadership and guidance of a top state servant.

For sure, there should be a more efficient coordination of foreign and international donors' technical assistance to Ukraine. The USAID is trying to promote the process of coordination. Nevertheless, in the final analysis, basically everything depends upon the seriousness and professionalism of the Ukrainian top officials and institutions entitled to coordinate and better use international technical assistance. In this sphere the institutional and legal arrangements of some 'Third World' countries may be of great help. Besides, the World Bank's Economic Development Institute may be very useful for those in Ukraine who are drafting and implementing the administrative reform, because this international institution has accumulated valuable information on the global experience in this sphere.

The following stages in the changing attitudes in Ukraine (as in the rest of the ex-USSR before 1991) towards the use of Western organisational experience may be singled out:

1. 1920s — orientation towards direct adoption of Western technical-organisational schemes;
2. 1930s— adoption of technical aspects and rejection of those called 'ideological' ones;
3. 1940 — beginning of 1950s — total rejection of Western experience;
4. The second half of 1950s — 1970s (like in the 1930s) — adoption of technical aspects of Western experience, attempts to 'critically learn' it;
5. 1980s— decline in the effectiveness of the system of learning Western experience (to a large extent due to the use in the USSR of classifications, typologies etc. dissimilar to the international ones);
6. 1990s— attempts of direct assimilation of Western patterns. This was not at all successful, even though there were some signs of positive results.

There always is a danger that rendering technical assistance to a post-Soviet country may be corrupted, as this process takes place in a predominantly corrupt environment of a survival state. Meanwhile any technical assistance project could hardly be free from an element of a 'narrow self-interest' of those who draft and/or directly implement it on both sides. It is just natural. The crucial in this respect (to limit irregularities and mistakes) is the attitude of the recipient state. In order to be able to fully utilise the enormous possibilities of international technical assistance, a new independent nation must have the adequate state structures, capable to organise and guide this process. With the real reform of Ukraine's

machinery of the state, there is hope that the country would soon enter into a new (the 7th, according to the above-mentioned periodisation) stage of adaptation of international experience in the social sphere — a formation of a rationally planned, supported by the state, comprehensive system of learning and critical application of the world best patterns (in accordance with the methodological principles of organisational knowledge transfer).

Conclusions

Ukraine has to change the lines of accountability and the culture what will lead towards the 'Weberian'-type system. It is necessary to emphasise the division of responsibilities. The 'Chinese walls' between what the civil servant can do and what he can not do must be in place. In Ukraine you can expect a lot of irregularities in this respect (e.g. as to connections with business, specific 'boss culture' etc.)

Americans like to talk about 'iron triangles': Civil Service, politicians, big business (commercial companies). It is really the problems in today's Ukraine. The issue of excess of business influence, the lack of the 'Chinese walls' has to be resolved. The members of the executive must not be employed (in any form) in business.

It is very important for Ukraine to implement the principles of meritocratic pyramidal 'Weberian' structure under which the expertise is a basis for employment in the Civil Service, and the appointments and promotions are determined by the structure of the Civil Service itself, and are not the result of political decisions.

The state structures in Ukraine are too often arbitrary, too much bribery is needed even to gain what in theory is your right, there is too much personalisation (just the opposite to the 'Weberian' paradigm within which administration must act according to rules). The old Russian 'Gogolian' paradigm (vividly described by N. V. Gogol in the 'Revisor') in which the administration is personalised, has still to be overcome. Of the same high priority as the task of sorting out relations between the bureaucrats, politicians and business, is the task of establishing clear principles of Good Governance in relations between bureaucrats and the citizens.

Introduction of business/commercial service culture (good service to the citizens) in public sector, in the Civil Service is a very valuable idea, even though it may be subject to absolutisation (which is dangerous and counterproductive). The new right are correctly saying that the aggrandisement of the state is always threatening the society unless there are mechanisms of control. While the ideologised 'remedies' may be very dangerous, meanwhile understanding of the logic of reforms and various

tools of social engineering is very important. In any case, the rationalisation of the state structures and political accountability (in two aspects: collective responsibility of the Cabinet, and ministerial responsibility of each civil servant) are the key ideas of any viable reform programme in Ukraine.

Ukraine is gradually adopting some elements of European forms of organisation of the state, borrowing models from the West (it is reflected in legislation and institution-building). Nevertheless basically this process touches only the form, not the essence of the state. In a difficult and complex process of change of the type of its political system,¹⁹ Ukraine is undertaking significant steps to reform itself, but the old and newly created socially conservative (ochlocratic and oligarchic) structures are hampering the process of modernisation.

Ukrainian state on all levels (national/central, regional, local and micro-institutional) lacks rational organisation, including organisation of proper intellectual process. Primarily due to that fact (not only because of the lack of material resources), a number of functions which are performed by 'normal' (i.e. properly organised and managed) states, are lacking in Ukraine. Some of intellectual functions are not performed at all in Ukraine, some are substituted by the activities of foreign and international donor organisations.

Assessing the mechanisms of technical assistance to Ukraine, one must admit that the West was quite sincere and rather generous in allocating its significant resources to the programmes of institutional development of this country (even though it is obvious and natural that almost any assistance contains some kind of self-interest). Unfortunately, the major barriers to a successful adaptation of organisational knowledge (which has to be transferred from the West) are still connected (in Ukraine itself) with the lack of real political will and predominance of vested interests which are contrary to the cause of implementing principles of Good Governance. Excellent draft programmes elaborated with foreign advice (and even adopted programmes) often degenerate into a mere rhetoric, a lip-service to fashionable catch-words aimed at pleasing international financial donors and the naive strata of local public.

In future because of that, the donors may face unpleasant side-effects when 'ungrateful' recipients start blaming the donors for their own (the recipient's) deficiencies and inability to use the rendered or proposed assistance.

Any serious concept of reform must clearly specify: (a) problems to be settled; (b) what particularly has to be changed in order the defined problem to be resolved; (c) mechanisms of problem resolution (including specifying the necessary

stages); (d) one, two or three concrete "directions of the attack" (not more than that; otherwise the reforms become hardly manageable). Time-bound activity plans must envisage: (a) what has to be achieved; (b) when; (c) who will do it; (d) in what form; etc. Unfortunately, the predominant administrative culture in Ukraine often ignores these basic principles.

The post-Soviet countries need to use the available Western patterns in reforming their State machinery. Nevertheless the application of foreign experience should be critical and creative, must not be limited mostly to imitating the formal aspects of legal and organisational framework while ignoring essential aspects of normative regulation (especially customary), informal structures and procedures, psychological and other types of specific 'national'

and 'regional' environment. Serious theoretical and practical work should be done both in the sphere of re-thinking the functions and structures of the state in a post-Soviet transitional society, and in the elaboration of effective methodology of the use of Western experience.

The Western countries' Civil Service experience can not be directly implanted in a post-Soviet state machinery, there should be elaborated an adequate methodology of organisational knowledge transfer, methodology of efficient consultancy in the sphere of use of international experience. Such methodology still has to be worked out within the process of constructing of a 'communication space' for different Ukrainian State institutions and social organisations, and actors of international technical assistance to Ukraine.

Примітки

¹ Ukraine's administrative practice and theory lack the term "Civil Service."

- Zakon Ukrainy vid 16 grudnia 1993 roku "Pro Derzhavnu Sluzhbu". (Law of Ukraine dated 16 December 1993 "On State Service".) — In: Uriadovyi Kurier. 1994, 4 January.

³ The development of legislation concerning the status of state servants has taken a form of adoption of special laws for their specific categories defined by the type of professional activity.

⁴ *Dubenko S.* Stan i perspektivy rozvytku derzhavnoi sluzhby v Ukraini. (Status and Prospects of Development of the State Service in Ukraine.) — In: Parlamentar. (Parliamentarian.) — (Kiev.) No. 3. 1998.— P. 23.

⁵ *Lelikov G.*, *Obolenskyi O.* Derzhavna sluzhba konstytutsiyni zasady, zadachi ta pryncypy. (State Service: Constitutional Grounds, Tasks and Principles.) — In Parlamentar. (Parliamentarian.) (Kiev.) No. 3. 1998.— P. 11.

⁶ *Dubenko S.* Stan i perspektivy rozvytku derzhavnoi sluzhby v Ukraini.— P. 21.

⁷ Changes and additions to this resolution were introduced by the Resolution of the Cabinet of Ministers of Ukraine dated 7 September 1995, No. 719.

⁸ Regulation on Chief Department of State Service of the Cabinet of Ministers was adopted by the Resolution of the Cabinet of Ministers of Ukraine dated 8 September 1994, No. 631 "On the Adoption of Regulation on Chief Department of State Service of the Cabinet of Ministers" (Pro zatverdzhennia polozhennia pro holovne upravlinnia derzhavnoi sluzhby pry Kabineti Ministriv Ukrainy). This resolution also envisages that the Coordination Council on the State Service (interministerial advisory body intended to set out ways, means and forms of realisation of the main guidelines of the state policy in the field of State Service, uniting all public bodies' endeavours to increase the effectiveness of the State Service) is presided by the Minister of the Cabinet of Ministers of Ukraine who carries out operational management of the Chief Department of State Service of the Cabinet of Ministers of Ukraine.

⁹ Ukaz Prezydenta Ukrainy No. 810/98 "Pro zahody shchodo vprovadzhennia Kontseptsii administratyvnoi reformy v Ukraini. In: Uriadovyi kurier, 1998, 25 July, p. 5; Concept Paper on Administrative Law Reform in Ukraine. (Ukrainian Cabinet of Ministers' Working Group on the Preparation of the Concept paper on Administrative Law Reform and Draft Administrative Code: Kyiv, 1998).

¹¹ Kodeks zagalnyh pravyl povedinky derzhavnogo sluzhbovtstva. (Ministry of Justice of Ukraine: Kiev, 1998.)

¹² *Derkach, I.*, Problems of Administrative Law in Ukraine: an Overview.— In: Ukrainian Law Review. No. 1. Vol. 1. 1998,—P., 24—25.

¹³ Concept Paper on Administrative Law Reform in Ukraine. (Ukrainian Cabinet of Ministers' Working Group on the Preparation of the Concept paper on Administrative Law Reform and Draft Administrative Code: Kyiv, 1998); Ukaz Prezydenta Ukrainy No. 810/98 "Pro zahody shchodo vprovadzhennia Kontseptsii administratyvnoi reformy v Ukraini. In: Uriadovyi kurier, 1998, 25 July, p. 5; The Concept of the Administrative Reform in Ukraine. (State Commission for Administrative Reform in Ukraine: Kyiv, 1998).

¹⁴ The Concept of the Administrative Reform in Ukraine. (State Commission for Administrative Reform in Ukraine: Kyiv, 1998).— P. 5—6, 34—35.

¹⁵ Ukraine: Civil Service Transition. Document of the World Bank. Volume I: Main Report & Volume II: Annexes. (Public Sector Management Group, Poverty Reduction / Economic Management Europe and Central Asia Region: 8.L., s.a. [1997].)

¹⁶ Ukraine: Civil Service Transition. Document of the World Bank. Volume I: Main Report.— P. 16—17.

¹⁷ EU TACIS 1996 Technical Assistance Programme for Human Resources Development. Terms of Reference. Institutional Building of Public Administration and Organisation of Vocational Training for Civil Servants. (EU TACIS: Brussels, 1996.) — 29 p.

¹⁸ See: *Watts Julyan.* Introduction to the First Issue of the Ukrainian Law Review by the Executive Director.— In: Ukrainian Law Review. No. 1. Vol. 1. 1998.— P. 3—4.

¹⁸ Polozhennia pro Mizhvidomchu radu z vprovadzhennia programy ekonomichnyh reform.— In: Kabinet Ministriv Ukrainy. Postanova vid 17 travnia 1997 r. No. 455.

¹⁹ See: *Yakushik Valentin*. Change of the Type of Political System (Ukrainian Case). (Institute of International and Cultural Studies, Tsuda College: Tokyo, 1995.) — P. 12—

19; Post-Communist Ukraine: Contradictions and Prospects for Socio-Political Development.— In: Political Thought. Ukrainian Scientific Journal. No. 1. 1993.— P. 117—120.

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CURRENT ATTEMPTS TO REFORM THE MACHINERY OF THE STATE IN UKRAINE

The article "Current Attempts to Reform the Machinery of the State in Ukraine" written by Professor Valentin Yakushik, Director of the UKMA Centre for Social and Political Research, deals with the issues of peculiarities of the present stage in the evolution of the State apparatus in Ukraine, and in particular legal regulation of the State (Civil) Service. The prevailing theoretical and practical approaches towards the administrative reform and the forms and methods of using international experience in the sphere of Civil Service reform are analysed.