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Ethical Conduct of Public Servants

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Anatolii Anatoliiovych Rusetskyi *
Yevhen Yuriyovych Podorozhnii **
Andrii Tanko ***
Oleksandr Oleksandrovych Frolov ****

Abstract

The objective of the investigation was to examine the content and specific characteristics of the ethical conduct of public officials in Ukraine and the world. To achieve the objective, the authors used the following methods: epistemological, comparative-legal, structural-functional, analytical, informative-analytical. Among the results of the article, it was possible to consider the ethical conduct of public servants in a broad and narrow sense. In the same way, the main requirements of the legislation that regulate the conduct of public servants have been analyzed and the conditions that standardize in detail the legal relationships in the field of professional activity of public servants, their relationships with each other and with citizens. Finally, everything allows us to conclude that a Code of Ethics for public servants establishes common rules of conduct for them and determines responsibility for their violation. To be effective, this regulatory legal act must also include the following obligations for public servants: requirements for the performance of official functions; requirements for advanced training; requirements for relationships with colleagues, managers, and subordinates; norms of communication with citizens and norms to resolve conflicting interests.

Keywords: public service; ethical conduct; code of ethics; standards of ethical conduct; comparative law.

* Doctor in Law, Professor, Honored Lawyer of Ukraine, Principal Researcher of the National Scientific Center "Hon. Prof. M. S. Bokarius Forensic Science Institute". ORCID ID: <https://orcid.org/0000-0003-2234-4392>

** Doctor of Jurisprudence, Professor, Professor of the Department of Labor and Economic Law of the Faculty No. 2 of Kharkiv National University of Internal Affairs. ORCID ID: <https://orcid.org/0000-0003-1677-1937>

*** Candidate of Law (PhD), Doctoral Student of Educational and Scientific Training Organization Department of Kharkiv National University of Internal Affairs. ORCID ID: <http://orcid.org/0000-0001-8425-2202>

**** Candidate of Legal Sciences, Associate Professor, Associate Professor of the State Building Department, Yaroslav Mudryi National Law University. ORCID ID: <https://orcid.org/0000-0002-1870-7165>

Conducta ética de los servidores públicos

Resumen

El objetivo de la investigación fue examinar el contenido y las características específicas de la conducta ética de los funcionarios públicos en Ucrania y el mundo. Para lograr el objetivo los autores utilizaron los siguientes métodos: epistemológico, comparativo-legal, estructural-funcional, analítico, informativo-analítico. Entre los resultados del artículo se pudo considerar la conducta ética de los servidores públicos en sentido amplio y estrecho. Del mismo modo, se han analizado los principales requisitos de la legislación que regula la conducta de los servidores públicos y se ha establecido las condiciones que normalizan detalladamente las relaciones jurídicas en el ámbito de la actividad profesional de los servidores públicos, sus relaciones entre sí y con los ciudadanos. Finalmente, todo permite concluir que un Código de Ética para los servidores públicos, establece reglas comunes de conducta para ellos y determina la responsabilidad por su violación. Este acto jurídico reglamentario debe incluir además para ser efectivo las siguientes obligaciones para los servidores públicos: requisitos para el desempeño de funciones oficiales; requisitos para la formación avanzada; requisitos para las relaciones con colegas, directivos y subordinados; normas de comunicación con los ciudadanos y normas para resolver intereses contrapuestos.

Palabras clave: servicio público; conducta ética; código de ética; normas de conducta ética; derecho comparado.

Introduction

The establishing the guilt of a particular official in committing an offense in the field of his professional activity may result in his removal from office and a ban on holding this position in the future. All the standards of purification of power will be observed in this case: the guilt will be personal, an individual objective investigation will be carried out, and the person will be able to use all the mechanisms to protect his own rights (Pchelin, 2020: 17). Ukraine's integration into the European Community requires our state to introduce qualitatively new standards of public service, which are based on European values and national experience.

At the same time, the issue of rethinking the requirements for public servants, their business and moral qualities become important, since their activities are always under the close attention of society. Their conduct, performance discipline, attitude, communication style and behavior must be impeccable. Ethical conduct is one of the important factors of internal

provision of the subject of public administration's activities. In this regard, the issue of ethical conduct of public servants is relevant and requires detailed study. At the same time, despite the considerable interest in the researched issue, many matters of ethical conduct of public servants need additional research. This determines the relevance of this work.

Nowadays, one can confidently state that the implementation of quality public administration remains the key element in the state system functioning and its individual mechanisms of government. Thus, we understand that the adoption of useful experience from private spheres of public life to public ones (state or local) can be applied as one of the types of significant improvement of the efficiency of the state system or its individual mechanisms (Serohina, Mykolenko, Seliukov, Lialiuik, 2021: 281).

The scientific novelty of the research is that this article is one of the first comprehensive studies, which determines the content and specific features of ethical conduct of public servants based on the analysis of scientific papers and legal regulation, and which provides reasonable propositions for amending national legislation in the researched area.

The purpose of the research is to determine the content and specific features of ethical conduct of public servants based on the analysis of national and international legislation, scientific works, as well as to develop propositions for improving its legal regulation. To achieve the set purpose, it is necessary to solve the following main tasks: to determine the content of the concepts of "public service", "a public servant", "ethical conduct" based on the analysis of the current legislation and scientific works; to study national and international legislation that establishes requirements for the conduct of public servants; to provide propositions for improving the legal regulation of ethical conduct of public servants.

1. Methodology of the Research

General scientific and special methods of scientific cognition constitute the methodological basis of the work. The *epistemological method* was used to clarify the content of public service, public servants, ethical conduct of public servants. The use of the *comparative and legal method* is the basis for comparing the legal regulation of ethical conduct of public servants in different countries, as well as for clarifying the positive aspects of such regulation to implement them in Ukraine.

The *structural and functional* analysis was used for determining the basic requirements for the conduct of public servants. The *analytical method* provided an opportunity to develop propositions and recommendations for improving the ethical conduct of public servants in Ukraine.

Information and analytical basis of the scientific research was the regulatory base regulating relations in the field of ethical conduct of civil servants, as well as scientific achievements of scholars in the field of public administration.

2. Results and Discussion

The realities of life have shown that top business managers, who are committed to formulating public policy aimed at the development of a particular industry, do not understand the peculiarities of public administration, namely – responsible service to all citizens of Ukraine. At the same time, the issue of combining bureaucracy based on strict adherence to the rule of law and procedures and the application of innovative approaches to management decisions remains unsolved. The key problem is the professional ability of those who shape and implement public policy to solve socially significant problems in an indeterminate environment during the implementation of decentralization reform. This requires the application of innovative approaches to the training of public servants (Vasylieva et al., 2020: 304-305).

Problems of ethical conduct of public servants are receiving more and more attention in all countries of the world. The issue of developing and implementing certain rules of conduct into practical activities of public servants has always been relevant for both national and international science. Analysis of such experience and critical assessment of the current state of ethical conduct of public servants, development of directions for its improvement will bring the prestige of both the public service and the relevant subjects of public administration to a new level.

It is expedient to begin the research of the specified problems with defining the content of the concepts of public service and public servants. Public service – is the activity on state political positions, in state collegial agencies, professional activity of judges, prosecutors, military service, alternative (non-military) service, other civil service, patronage service within state authorities, service in the authorities of the Autonomous Republic of Crimea, local self-government agencies (The Code of Administrative Proceedings of Ukraine, 2005). Accordingly, a public servant is a person who holds one of these positions and performs the functions of the state within the limits set by law.

The legal status of public servants provides (Serohin, Lypovska & Borodin, 2019: 69):

- 1) direct involvement in the preparation, adoption, and implementation of decisions in the field of executive and administrative activities of

the state within the performance of official duties, in particular in some cases these actions entail political, economic and other social consequences for the whole society or any part of it.

- 2) a public official's authority and opportunity to act within his competence on behalf of a public administration agency (and thus, as if on behalf of the state), representing the state interest.
- 3) combination of strict normative regulation of activity in the formal and procedural relation with rather wide possibilities to take volitional decisions on the basis of subjective interpretation of both a situation, and its legislative norms.
- 4) belonging to a special professional status group; although it consists of representatives of different professions, but its unifying factor is the work within public administration agencies.

One of the important features of the status of a public servant is the strict normative regulation of his activity, which provides not only regulation of the state of his official duties, but also determines the rules of his ethical conduct.

Ethical conduct is a set of deeds, actions of people that meet the norms of morality, consciousness, order, formed in society or it strives to (Shcheblykina and Hrybova, 2015). This concept can be considered in broad and narrow senses. In the first case, ethical conduct should be understood as human behavior that meets the norms of morality, legal principles, order, which have been formed in society. In a narrow sense, it should be interpreted as the behavior of a person that complies with legal principles and principles, norms of morality and order in a particular team, where a person lives, works, studies, etc.

The ethical conduct of public servants in Ukraine is regulated by several laws and regulatory legal acts. A prominent place among them is occupied by the Law of Ukraine "On Civil Service" (December 10, 2015, No. 889-VIII). It stipulates that a civil servant is obliged to perform duties, as well as: 1) not to allow acts incompatible with the status of a civil servant; 2) to show a high level of culture, professionalism, endurance and tact, respect for citizens, management, and other civil servants; 3) to take care of state property and other public resources. The control over the observance of ethical conduct by the employees is entrusted to their managers. A public servant may be subject to disciplinary action for violating the established requirements. Even if the actions of the employee outside the service significantly affect the interests of his department, in particular affect the "respect and trust in his position", it is considered that he is committing a misdemeanor (Hubanov, 2016: 42).

According to the Law of Ukraine “On Prevention of Corruption” (October 14, 2014, No. 1700-VII), the ethical conduct of public servants must meet the following requirements: the priority of the interests of the state or community; political neutrality; impartiality; competence and efficiency; non-disclosure of information that became known in connection with the performance of official duties; refraining from executing illegal decisions or orders. Having compared these legal norms, we can conclude that they pose different requirements for the ethical conduct of public servants.

Besides, there is a separate legal act that defines the rules of ethical conduct for almost every type of public servants. For example, the Order of the Ministry of Internal Affairs of Ukraine dated from November 9, 2016, No. 1179 “On approval of the Rules of ethical conduct of police officers” stipulates that a police officer while performing official duties must: strictly comply with the Constitution and laws of Ukraine, other regulatory legal acts regulating the activities of the police and with the Oath of a police officer; professionally perform the duties, act only on the basis, within the powers and in the manner prescribed by law; to respect and not violate human rights and freedoms; in each case, choose the measure from among the measures provided by the legislation of Ukraine, the application of which should lead to the least negative consequences; strictly adhere to the anti-corruption legislation of Ukraine, restrictions related to service in the National Police of Ukraine defined by the Laws of Ukraine “On the National Police”, “On Prevention of Corruption” and other legislative acts of Ukraine.

To show respect for the dignity of each person, to treat everyone fairly and impartially; behave restrained, friendly, open, attentive and polite causing the population to respect the police and a willingness to cooperate; control own behavior, feelings and emotions, not allowing personal likes or dislikes, hostility, bad mood or friendly feelings to influence decision-making and official behavior; to have a neat appearance, to be in the established form of clothes; to adhere to the norms of business speech, to prevent the use of profanity; to keep the information with limited access, which became known in connection with the performance of official duties; to inform the immediate supervisor about the circumstances that make it impossible to continue the service in the police or to hold the position (On approving the rules of ethical conduct of police officers, 2016).

To systematize the legal norms on ethical conduct of public servants, the Order of the National Agency of Ukraine for Civil Service “On approval of the General rules of ethical conduct of civil servants and officials of local self-government” dated from August 5, 2016, No. 158 was adopted. It stipulates that public servant and official of local self-government while performing their official duties are obliged to strictly adhere to generally accepted ethical norms of conduct, to be friendly and polite, to adhere to a high culture of communication, to respect the rights, freedoms and

legitimate interests of a man and citizen, association of citizens, other legal entities.

Civil servants and officials of local self-government should strengthen the authority of the civil service and service in local self-government agencies, as well as the positive reputation of state authorities and local self-government agencies (On approving General rules of ethical conduct of civil servants and officials of local self-government, 2016). This regulatory legal act establishes in great detail the rules of conduct of civil servants both while performing their official duties and while communicating with citizens, management, subordinates, in everyday life, etc. Particular attention is paid to the compliance with the principle of integrity.

Given the urgency of the compliance with the rules of ethical conduct by public officials worldwide, the Committee of Ministers of the Council of Europe has developed and approved the Model code of conduct for public officials (Annex to the Recommendations of the Committee of Ministers of the Council of Europe of 11 May 2000, No. R (2000) 10). It both defines the general principles of conduct of public officials and establishes the basic principles of proper conduct, namely: the need to put public interests above the own ones (the Art. 6); the public official has a duty always to conduct himself or herself in a way that the public's confidence and trust in the integrity, impartiality and effectiveness of the public service are preserved and enhanced (the Art. 9); the public official should report to the competent authorities any evidence, allegation or suspicion of unlawful or criminal activity, or any violation of the Code by other public officials (the Art. 12).

The Articles 13-15 focus on conflict of interest; the definition of conflict of interest and personal interest is given, the responsibilities of the public official to prevent such a conflict are listed in details; protection of the public official's privacy (the Art. 17); the public official should not demand or accept gifts and services; this does not include conventional or minor gifts (the Art. 18); the public official must not misuse of his official position (the Art. 21); the public official should not take improper advantage of his or her public office to obtain the opportunity of employment outside the public service and to disclose confidential official information (the Art. 26) (Appendix to Recommendation No. R (2000) 10). All the indicated provisions are enshrined in the norms of national law.

Another important normative document on the observance of rules of ethical conduct by public officials is the International Code of Conduct for Public Officials (UN General Assembly Resolution 51/59 of 12 December 1996). The International Code lists the basic principles of conduct (efficiency, competence, attentiveness, fairness, impartiality) and summarizes the basic rules for preventing conflict of interest, declaring income information, accepting gifts, handling confidential information, etc. As we can see, international legal norms quite briefly enshrine the rules of

ethical conduct, ignoring many aspects of the activities of public servants and their compliance with ethical norms.

The rules of ethical conduct of civil servants in other states are enshrined in a rather general form. Thus, the Civil Service Code (Statutory guidance, updated 16 March 2015) of the United Kingdom establishes the basic principles of civil servants, namely: decency, honesty, objectivity, impartiality.

Ethical rules for civil servants of the Republic of Lithuania determine the following basic principles of ethical conduct of public servants: respect for people and the law (the Art. 2); a civil servant must be fair (the Art. 3); a civil servant must be guided only by public interests, not to use his official position in personal interests or in the interests of family / friends (the Art. 4); be incorruptible, not to accept gifts or money (the Art. 5); to be objective, to act impartially and lawfully (the Art. 6); be responsible (the Art. 7); be polite, perform own duties in time and professionally (the Art. 9) *Valstybės tarnautojų veiklos etikos taisyklės* (2002). The analysis of these provisions demonstrates that much attention in Lithuania is paid to civil servants' compliance with anti-corruption legislation. At the same time, many other aspects of such behavior have gone unnoticed by the legislator. This list should be supplemented with requirements for professional growth, communication with citizens, management and subordinates, principles of morality, etc.

The ethical principles of civil servants of the Kingdom of Norway enshrine the following principles of civil service: the principle of loyalty – to perform the tasks of management and report to it in a timely manner (the Art. 2); the principle of openness – public access to public services, the right of employees to report unacceptable circumstances in the institution (the Art. 3); impartiality; it is also necessary to be careful when communicating with former colleagues, not to accept gifts (the Art. 4); the principle of professional independence and objectivity (the Art. 5) (*Etiske retningslinjer for statstjenesten*, 2017). These principles define the rules of ethical conduct in a general way and need to be supplemented and clarified.

The main provisions of the Code of Ethics for Civil Servants of Croatia establish the following requirements for the conduct of civil servants: a civil servant must respect citizens and other civil servants (the Art. 6); a civil servant at official events and during public speeches must clearly distinguish his or her own opinion from the position of the institution, where he or she works (the Art. 8); civil servants should not use their position to influence the decisions of the legislative, executive or judicial branches of power (the Art. 9); civil servants in relation to citizens must act professionally (the Art. 10); communication between civil servants should be based on mutual respect, trust, cooperation and courtesy (the Art. 12) (*Etički kodeks državnih službenika*, 2011).

There is currently a number of problems in Ukraine related to the formation of the level of ethics of a civil servant: first of all, there is a great need for highly qualified personnel who have the theory and practice of regional development, who are able to work in conditions of fierce professional competition and have a high stress-resistant threshold and adhere to ethical and moral norms in business relations. Secondly, there is the lack of appropriate professional education (and sometimes specialized) and the level of professional training, which is a mandatory requirement for holding public office. Thirdly, there is insufficient legislative enshrinement and legal establishment and coverage of moral norms for civil servants, as well as insufficient responsibility for violating these norms (Bobrovnyk, 2016).

In this regard, there is a widespread opinion among scholars about the need to develop and adopt the Code of Ethics for Civil Servants at the central level, which should consist of basic principles, norms, requirements, rules of conduct for civil servants and include tools for assessing moral and ethical competencies, and most importantly, which would define mechanisms for monitoring its implementation and develop a system of specific actions and measures in case of its violation. It is appropriate that this Code should include the following types of requirements for public servants: requirements related to the profession; requirements for relations with colleagues; requirements for advanced training and self-education; norms of communication with citizens; requirements for off-duty behavior; norms of relations with superiors and subordinates; norms for resolving conflicts of interest; a list of sanctions, in case if these rules are ignored or unethical behavior of a public servant is detected.

It is also important that this Code becomes a “model” for the creation of the “Rules of ethical conduct of public servants” in every public agency. The content of these rules should include already typical, specific norms and values for the relevant agency (Sorokina, 2020). Supporting this suggestion, it should be noted that the adoption of such a legal act will ensure the unity and systematization of the rules of conduct for all civil servants, will improve the performance and behavior of the employees, increase the prestige of civil service and public confidence in government.

Conclusions

Summarizing the above, we can conclude that there is a current need to adopt the Code of Ethics for civil servants in Ukraine, which would establish general rules of conduct common to everyone and would establish responsibility for their violation. This regulatory legal act should include the following requirements for public servants:

– requirements for the performance of official duties: to perform their official duties in the best possible way, honestly and impartially; to direct their actions to protect public interests and to prevent conflicts between private and public interests; to comply with anti-corruption legislation; not to use official position in private interests or for illegal private interests of other persons; not to disclose information that has become known in connection with the performance of official duties; to use own official position, official resources exclusively for the performance of their official duties and lawful assignments of managers; to adhere to political impartiality and neutrality; not to use own official position for political purposes; not to harm the environment or human health;

- requirements for professional advanced training: to constantly improve own cultural level, the level of own professional development, to improve own skills, knowledge and abilities in accordance with the functions and tasks on the position, in particular in terms of digital literacy, to improve the organization of official activities.
- requirements for relations with colleagues, management and subordinates: to communicate on the basis of mutual respect, trust, cooperation and courtesy; to prevent conflicts; not to allow discussion of personal or family life of colleagues, members of their families and other close persons.
- rules of communication with citizens: to show respect for the dignity of each person, to treat everyone fairly and impartially; to behave restrainedly, kindly, openly, attentively and politely, causing respect and willingness to cooperate in the population; to show restraint in case of criticism or insult on the part of citizens, to remark on the unacceptability of such behavior and the need to comply with the norms of polite communication; to prevent conflicts; to strengthen the authority of the civil service and service within local self-government agencies, as well as the positive reputation of state authorities and local self-government agencies by their behavior; not to allow:
 - a) the use of obscene language, high intonation, humiliating comments.
 - b) the spread of rumors.
 - c) manifestation of any of the forms of discrimination.
 - d) acts of a sexual nature expressed verbally (threats, intimidation, obscene remarks) or physically (touching, slapping), humiliating or insulting persons who are in a relationship of labor, official, material, or other subordination.

- norms for resolving competitive interests: to direct their actions to prevent conflicts between private and public interests, to avoid the emergence of real and potential competitive interests in their activities.

The indicated requirements are not exhaustive and can be supplemented and detailed in the Code of Ethical Conduct for a particular type of public servants.

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