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PAGE OF PUBLIC WORKERS IN UKRAINE: ORIGIN, CONCEPT AND CONTENT

Abstract. The article is devoted to the definition of the concept, essence and content of the oath of a civil servant, as an integral part of their legal status. The role and significance of the oath of a civil servant in accordance with the current legislation and the strategy of reforming the civil service and service in local self-government bodies are analyzed.

It is determined that the oath of a public servant is a special type of state-management relations, the content of which is the solemn oath of a citizen who enters the civil service for the functions of the state, loyalty to the Ukrainian people and the state. However, the legislator does not provide a clear definition of the oath of a public servant as a legal and public-management phenomenon in the mechanism of civil service, which in turn makes it impossible to form a highly-qualified civil service. It is the concept, content, essence of the Oath of a public servant who remains little investigated and theoretically worked out. In addition, the analysis of the current legislation shows that there is no single approach to the oath of a civil servant, as to the fact that a citizen of Ukraine acquires the corresponding legal

status and negatively affects the functioning of public administration bodies in general and causes certain conflicts in the legislation.

It was concluded that the oath of a public servant is an integral part of his legal and state-management status, from which the citizen of Ukraine acquires all the rights and duties of a civil servant, including the responsibility to be responsible for refusing to make an oath of a civil servant, or for violation of it. A refusal to make an oath by an entity that enters the position of a civil servant makes it impossible for a person to acquire the subjective rights and legal obligations provided for by the status of a civil servant. Concept, content and essential features The oath of a civil servant is regulated by the system of current legislation, as well as ethical norms of public service and traditions of the corresponding state-management practice in Ukraine.

Keywords: oath, civil service, civil servant, oath of a civil servant, legal status of a civil servant.

ПРИСЯГА ДЕРЖАВНОГО СЛУЖБОВЦЯ В УКРАЇНІ: ПОХОДЖЕННЯ, ПОНЯТТЯ ТА ЗМІСТ

Анотація. Стаття присвячена визначенню поняття, сутності та змісту присяги державного службовця як складової частини їхнього правового статусу. Проаналізовано роль і значення присяги державного службовця відповідно до чинного законодавства та стратегії реформування державної служби та служби в органах місцевого самоврядування. Визначено, що присяга державного службовця є спеціальним видом державно-управлінських відносин, зміст яких полягає в урочистій клятві громадянина, який вступає на державну службу для виконання функцій держави, на вірність українському народові та державі. Проте законодавець не надає чіткого визначення Присяги державного службовця, як правового та державно-управлінського феномена в механізмі проходження державної служби, що, у свою чергу, унеможливорює формування висококваліфікованого кадрового складу державної служби. Саме поняття, зміст, сутність Присяги державного службовця залишаються мало дослідженими і теоретично напрацьованими. Окрім цього, аналіз чинного законодавства свідчить про відсутність єдиного підходу щодо Присяги державного службовця, як до факту набуття громадянином України відповідного правового статусу та негативно впливає на функціонування органів державного управління в цілому і спричиняє певні колізії в законодавстві.

Отже, присяга державного службовця є невід'ємним елементом його правового та державно-управлінського статусу, точкою з якої громадянин України набуває всіх прав і обов'язків державного службовця, включаючи й обов'язок нести відповідальність за відмову від складення Присяги державного службовця чи за її порушення. Відмова від складання Присяги суб'єктом, який вступає на посаду державного службовця, унеможливорює особу набуття суб'єктивних прав та юридичних обов'язків, які передбачені статусом державного службовця. Поняття, зміст та сутнісні ознаки Присяги

державного службовця регулюються системою чинного законодавства, а також етичними нормами публічної служби і традиціями відповідної державно-управлінської практики в Україні.

Ключові слова: присяга, державна служба, державний службовець, присяга державного службовця, правовий статус державного службовця.

ПРИСЯГА ГОСУДАРСТВЕННОГО СЛУЖАЩЕГО В УКРАИНЕ: ПРОИСХОЖДЕНИЕ, ПОНЯТИЕ И СОДЕРЖАНИЕ

Аннотация. Статья посвящена определению понятия, сущности и содержания присяги государственного служащего как составной части их правового статуса. Проанализированы роль и значение присяги государственного служащего в соответствии с действующим законодательством и стратегии реформирования государственной службы и службы в органах местного самоуправления.

Определено, что присяга государственного служащего является специальным видом государственно-управленческих отношений, содержание которых заключается в торжественной клятве гражданина, поступает на государственную службу для выполнения функций государства, на верность украинскому народу и государству. Однако законодатель не предоставляет четкого определения Присяги государственного служащего, как правового и государственно-управленческого феномена в механизме прохождения государственной службы, что, в свою очередь, делает невозможным формирование высококвалифицированного кадрового состава государственной службы. Само понятие, содержание, сущность Присяги государственного служащего остаются мало исследованными и теоретически наработанными. Кроме этого, анализ действующего законодательства свидетельствует об отсутствии единого подхода к Присяге государственного служащего, как к факту приобретения гражданином Украины соответствующего правового статуса и негативно влияет на функционирование органов государственного управления в целом и вызывает определенные коллизии в законодательстве.

Констатируется, что присяга государственного служащего является неотъемлемым элементом его правового и государственно-управленческого статуса, точкой с которой гражданин Украины приобретает все права и обязанности государственного служащего, включая обязанность нести ответственность за отказ от принесения Присяги государственного служащего или за ее нарушение. Отказ от принятия Присяги субъектом, который вступает в должность государственного служащего, делает невозможным лицо приобрести субъективных прав и юридических обязанностей, предусмотренных статусом государственного служащего. Понятие, содержание и сущностные признаки Присяги государственного служащего регулируются системой действующего законодательства, а также этическими нормами публичной службы и традициями соответствующей государственно-управленческой практики в Украине.

Ключевые слова: присяга, государственная служба, государственный служащий, присяга государственного служащего, правовой статус государственного служащего.

Statement of the problem. According to the Basic Law, Ukraine is a sovereign and independent, democratic, social, legal state which passed a long history of state and took a course on European integration, which pushed Ukrainian society to reforms in all state bodies. At the present stage of development of the Ukrainian state, among the challenges for countries in transition the reform of state administration, its reorientation, which will meet European standards of good governance. The main purpose of the reform is development of strategic directions in forming an effective state management system and all its segments that are able to develop and implement a comprehensive state policy.

According to the Strategy for state administration reform of Ukraine for the years 2016–2020, the main directions of reforms in state administration and state services is the modernization of state service [1]. After all, effective state service, aimed at implementing the main functions of the Ukrainian state, is one of the most important factors of successful economic, social and political reforms in Ukraine.

Therefore, according to the action Plan on realization of strategy of reforming of state service and service in local self-government in Ukraine for the period until 2017 [2], the Law of Ukraine “On state service” dated 10.12.2015 № 889[3] was adopted, which enshrined in its provisions the principles of state service, status of a

state servant, as well as the adoption of the state service and its passage in accordance with the European principles of democratic governance.

However, the legislator does not define the oath of state servant as a legal and public-management phenomenon in the mechanism of the state service, which in turn makes impossible the formation of highly skilled personnel in the state service. That is the concept, the nature of the Oath of the state servant remain is little studied and theoretically worked out. In addition, the analysis of current legislation indicates the absence of a uniform approach to the Oath of state servant, as to the fact of acquisition by the citizen of the appropriate legal status and negatively affects the functioning of the state administration in general, and raises some conflict in the legislation.

Analysis of recent publications on the subject. Problems of the theory and practice of research into particular aspects of oath of state servant, as the legal element in the state service is to be investigated by such scientists: H. Ajejanova, T. Vasylevska, N. Hanopolskyi, A. Honcharenko, V. Zavalniuk, O. Kravchuk, V. Krivenko, V. Krugliakov, P. Mykhailenko, N. Mokrytska, N. Nikiforov, Ye. Papenko, A. Rachanskyi, Ye. Romanenko, N. Rusakova, V. Shadra, O. Selivanova, S. Semenov, and others.

However, the problem of defining the concept, content and nature of the oath of state servant, as part of gain-

ing the legal status of state servants in Ukraine remains unexplored.

Statement of objectives (purpose) of the article. The main purpose of the article is the definition of the concept, content and nature of the oath of state servant as an important component of his/her legal and public-management status.

The main material of the study. The primary meaning of the term “oath” (oath, vow, promise) means “touching the subject of the oath” [4, p. 126]. In Kievan Rus the oath or vow was also called “kissing the cross” which meant commitments to the name of Christ.

The oath is mainly interpreted with the concept of “vow”, and in most cases, the authors reduce it to the banal official, solemn promises to adhere to certain obligations. A study of the scientific literature suggests that the oath was positioned primarily as a ritual that served to confirm the fidelity, obedience and devotion.

As you can see, the oath as a social phenomenon has long historical roots that reach to the time of the animistic cults and customary law. It is based on fear of an invisible force, the ravages of which may affect the person sworn in the case of violations [5, p. 479–480], that is the meaning of it corresponded to a religious ceremony.

The institution of the oath has undergone a challenging process of transformation in the historical development of society, from the collapse of primitive society to which this “ritual” was the institution of “taboo”, to the present, where the institution of the oath gets important for the formation of a democratic legal state. However, until now, quite often in science, the term “oath”

shall be interpreted in a general aspect, which makes it impossible for legal identification. However, archaic ideas about the phenomenon of the oath, do not reflect its legal and public-management nature, the socio-moral and cultural purpose in the modern state.

To understand the legal phenomenon of “oath”, its essence and content, it is necessary to analyze the etymological meaning of not only the concept of the “oath”, but the vow, too. The basis of the oath, as a primary ritual, is not a word, but a certain movement or gesture. The oath in ancient times according to the form was a kind of “body move”. During the ritual of the oath the person touched the sacred object, to confirm fidelity to the oath. From this point on the person was actually assigned specific duties, such as loyalty, obedience, devotion.

Given the above it can be stated that the oath is a kind of vow, which is endowed with all its attributes, but at the same time has a number of specific characteristics. The oath has signs of a legal phenomenon, which distinguish it from other legal phenomena. Therefore, the oath is a kind of vow, formally or legally establishes the legal relationship of a person who swears, with the state for whose benefit the oath is taken, through the acquisition of a certain status.

The oath is taken in a specific order, i.e. a specific procedure when performing certain actions. The ritual of the oath existed throughout the history of the formation of the institute of the oath in the constant reproduction of certain behaviors during the official important situations. Regardless of the historical stage of formation of the in-

stitute of the oath, the oath, the text or the person that made the oath, the ritual has always been characterized by the aim of this oath, namely: the service to the country and people.

Regarding the definition of the concept, content and essence of the oath in the legal literature there is no single point of view. Some authors believe that the oath is a solemn official promise to adhere to certain obligations, the oath of allegiance to anything; a solemn promise, often reinforced by the mention of something precious, sacred to the one who promises; assurance of the truthfulness of the said words [6, p. 654].

In our opinion, the definition of the concept and essence of the oath by N. Rusakova deserves attention. She believes that the oath is a legal fact, which is the adoption of a formal oath to respect and implement the rights and obligations in accordance with the position, which defines the moment changes in the legal status of the subjects and carried out in a special ritual order based on a specialized symbolic actions [7, p. 109].

As you know, a symbol is an object, concept or phenomenon [8, p. 159]. The state symbols are symbols of statehood and sovereignty. However, they are considered to be important attributes of statehood, able to contribute to the patriotic education of citizens, and also used during the procedure of taking the oath. Thus, the legal symbol means specific images enshrined in normative legal acts for the expression of the legal content.

In turn, the legal symbol has its own specific features, reflecting its legal nature, namely: it is an artificial sign,

which is a distinctive sign, image, visible, rarely head phenomenon; a sign having a conventional nature, because the shape of the sign and legal content pronounced by it is not linked by their nature; a sign authorized by a particular state in a procedural manner; the sign that is protected by the state; the token, which is used in the manner prescribed by law; a sign which serves to secure and expression of the socially significant legal content [9, p. 101].

Analyzing the above it can be stated that the oath has all the signs of a legal character. The oath is a visible and audible phenomenon, which represents a change (transformation) of legal status of the person while taking the oath. Oath entails appearance or loss of legal ties to the state, and the acquisition of certain rights and responsibilities. Securing the required procedure related to the oath as the need to acquire or change the legal status of the entity in the normative legal acts of the state. Under current law, legal liability is stipulated for violation of the oath, which is regulated by the apparatus of state coercion. Taking the oath is stipulated in the cases expressly specified in the legal acts. The oath is one of the elements of the legal status of the authority.

The oath is a legal and administrative symbol, and the procedure for its implementation is a system of symbolic actions. The symbolism of the oath is dichotomous. First, the oath as a legal phenomenon constitutes a legal symbol — legislated conditional way that expresses the time of change of the legal status of the subject. From this point of view, the oath symbolizes the adoption of the official new subjective rights and legal duties, its responsibility to society

and the acquisition of new rights and duties [9, p. 32].

The essence of an oath lies in the performance of certain actions, the procedure of taking the oath, that is, the ceremonial of inauguration and the announcement of the text of the oath, which is also a legal symbol. During the ceremony and the proclamation of the oath, as in the days of the formation of the institution of the oath things that carry a certain symbolism are applied, such as: Constitution of Ukraine, the State Flag of Ukraine, State Emblem of Ukraine, the State Anthem of Ukraine.

Thus, all the elements that are inherent in the institution of the oath, not only the procedure of taking the oath and all the necessary attributes for that, but the proclamation of it, change the legal status of the person.

The current legislation of Ukraine establishes the procedure of taking the oath by different categories of persons for positions in the state authorities. In the mechanism of legal regulation the oath is one of the oldest institutions, which has occupied a prominent place in the current legislation of Ukraine.

Consequently, the institution of the oath is reflected in the Constitution that tells about its importance. Article 79 of the Constitution, which enshrines the duty of the MP to take the oath before taking office. In case of refusal of taking the oath, as a consequence there can be the loss of the parliamentary mandate. At the constitutional level, article 104 provides for the procedure of taking office of the President, subject to taking the oath to the people at a ceremonial meeting of the Verkhovna Rada of Ukraine [10]. The legal force

and meaning of the oath of the President is that the rejection of compiling this oath excludes the candidate from gaining the appropriate status.

Oath is pronounced by other categories of officials when they are accepted for state service. In particular, police officers at receipt for service; persons appointed to the position of: senior staff of NABU, SIB, state attorney; first-time appointed judges; person appointed to the position of member of the Cabinet of Ministers of Ukraine; citizens of Ukraine who are accepted for the service of state protection; the members of the High Council of Justice; the Commissioner of the Verkhovna Rada of Ukraine on Human rights; judges of the constitutional court; persons who are appointed for the state service.

The subject, who is for the first time appointed as a state servant, in accordance with paragraph 3 of article 21 of the Law of Ukraine "On state service" takes the oath of a state servant [3]. The procedure of taking the oath provides for a state symbols such as the State Emblem of Ukraine and the State Flag of Ukraine, the official logo or emblem of a state authority, which hires the person. In the presence of the head of a state body, employee of the personnel office and the staff of structural divisions of governmental body, the subject reads out the oath and confirms its text with his signature, what confirms his awareness of high responsibility for compliance with this oath. The text of the Oath of the state servant is the part of his personal file.

According to paragraph 4 of article 36 of the Law of Ukraine "On state service", in case of refusal of the person from taking the oath of state serv-

ant, it is considered that he refused from the position of state service, and the act on his appointment to the position is canceled by the hiring authority. In this case the pending right of the second is applied based on the results of the competition for a candidate for the vacant position of state service. If the Competition Commission does not find such a candidate, there will be a new contest [3].

Analyzing the Law of Ukraine “On state service”, it can be stated that only under the condition of taking the Oath, the person on legal grounds acquires the legal status of a state servant. That is, a citizen of Ukraine, who became the winner in the contest for the vacant position of state service employee acquires all the rights and obligations which the Law of Ukraine “On state service” conferred on him under the specific position.

The Law of Ukraine “On state service” stipulates in the oath as follows: “Being aware of my high responsibility, I solemnly swear that I will faithfully serve the Ukrainian people, will observe the Constitution and laws of Ukraine, will bring them to life, will respect and protect rights, freedoms and legitimate interests of man and citizen, the honor of the state, will bear with dignity the high rank of the state servant and faithfully carry out my duties” [3].

Thus, based on the content of the Oath of the state servant, the oath is the obligation of the person who swears clearly and strictly to comply with rules embodied to state servant by the Oath. In this context, the oath acts as a composite element of legal status of state servants, who are endowed with certain rights and responsibilities.

Some scientists believe that the moment of transition from an ordinary person to the status of the individual, which is endowed with certain powers is the legal meaning of oath. But the moral and ethical meaning of the oath is the substance of the oath [15, p. 233]. It is difficult to accept this statement as the oath in its content contains a duty not just of moral content: to faithfully serve the people of Ukraine, to bear with dignity the high rank state servant, but also the legal content to comply with the Constitution and laws of Ukraine, to bring them to life, to respect and protect the rights, freedoms and legitimate interests of man and citizen.

The jury rules, which are enshrined in the content of the oath of state servant are based on the principles of state service: rule of law – ensuring the priority of rights and freedoms of man and a citizen according to the Constitution of Ukraine, which define the content and direction of a state servant during the execution of the tasks and functions of the state; the rule of law – the duty of a state servant to act only on the basis, within powers and in the way provided by the Constitution and laws of Ukraine; patriotism – devotion and faithful service to the Ukrainian people; honesty – aiming to protect public interests and the rejection of a state servant from prevalence of private interests during the implementation of the powers granted to him; effectiveness – rational and efficient use of resources to achieve state policy objectives; political impartiality – not letting political views, hopes and decisions of the state servant influence his decisions and rejection from demonstrating of his relationship to the political parties,

demonstration of his political views under during the term he performs official duties; transparency – openness of information about the activities of the state servant, except in cases determined by the Constitution and laws of Ukraine [3].

Thus the content of the oath of the state servant acquires legal value and contains the original standards and the evaluation of the concept of legal and moral character. We agree with the authors of the Scientific-practical commentary to the Law of Ukraine “On state service” (2017), which determine the state employee Oath as a “solemn oath of the state servant for the allegiance to the Ukrainian people” [13]. However, a Ukrainian citizen who enters the state service takes the oath of allegiance not only to the people of Ukraine, but to the Ukrainian government, whose functions he is mandated to implement.

The Oath of the state servant is a legal fact that changes his legal status, the “nationalization” of this status. The procedure of taking the Oath by a person entering state service positions is the responsibility stipulated by the current legislation of Ukraine. The text of the Oath of a state servant is an act which creates legal consequences, and in the case of violation of which a legal liability arises. Thus, from the moment of taking the oath of state servant, the citizen acquires subjective rights and legal duties, and the fact of taking the oath by such person records the occurrence of a change in the legal status of the person.

Conclusions and prospects for further research. So, the Oath of a state employee is a special kind of pub-

lic-administrative relations, the content of which lies in the solemn oath of the citizen who enters the state service to perform functions of the state, allegiance to the Ukrainian people and state.

The Oath of the state servant is an essential element of his legal and public-management status, with which the citizen of Ukraine acquires all the rights and duties of the state servant, including the obligation to be responsible for the refusal of taking the Oath of state servant or for its violation. The refusal of the Oath-taking on the part of the person who enters the job of a state employee, makes it impossible for a person to acquire subjective rights and legal duties, provided for status of a state servant.

The concept, content and the essential characteristics of Oath of state servant are governed by the system of current legislation and ethical standards of state service and traditions of the relevant public-management practice in Ukraine. In this sense we can agree with N. Tsurkan, who thinks that the oath of the state servant induces a state servant not only to his duties, but also to “the observance of moral and ethical demands”, which are not just desirable but also necessary [3, p. 26]. In turn, the Oath of the state servant is a sophisticated state-management phenomenon, with the functional and semantic load, which requires further comprehensive research.

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