



# International Experience of Legal Service Relations in the National Security Sphere: Issues of Implementation in Ukraine

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## Abstract

The purpose of the document is to study the international experience of the development and operation of legal service relations in the field of national security and, furthermore, to elaborate proposals on the adoption of its best practices in Ukraine. The document aims to identify problems and improve current Ukrainian legislation dealing with public service and legal service relations in the field of national security. The main method was comparative. The following proposals are developed: the adoption of a single codified normative act to regulate legal service relations between all categories of public servants; the introduction of an open competition system for high-ranking officials; depoliticization of public service; implementation of international experience of legal regulation of service relations in the field of national security of Ukraine. In conclusion, the document materials can be of theoretical and practical value for academics investigating various aspects of the implementation of legal service relations and the sphere of national security in general, experts in the security and defense sector of Ukraine.

**Keywords:** legal service relationships; Ukrainian national security; public service; comparative law; elaboration of proposals.

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## Experiencia internacional de las relaciones del servicio jurídico en el ámbito de la seguridad nacional: problemas de implementación en Ucrania

### Resumen

El propósito del documento es estudiar la experiencia internacional del desarrollo y funcionamiento de las relaciones de servicio legal en el ámbito de la seguridad nacional y, además, elaborar propuestas sobre la adopción de sus mejores prácticas en Ucrania. El documento tiene como objetivo la identificación de problemas y la mejora de la legislación actual de Ucrania que se ocupa del servicio público y las relaciones del servicio legal en el ámbito de la seguridad nacional. El método principal fue el comparativo. Se desarrollan las siguientes propuestas: la adopción de un acto normativo único codificado para regular las relaciones de servicio legal entre todas las categorías de servidores públicos; la introducción de un sistema de competencia abierta para funcionarios de alto rango; despolitización del servicio público; implementación de la experiencia internacional de la regulación legal de las relaciones de servicio en el ámbito de la seguridad nacional de Ucrania. Como conclusión los materiales del documento pueden ser de valor teórico y práctico para académicos que investigan diversos aspectos de la implementación de las relaciones del servicio legal y la esfera de seguridad nacional en general, expertos del sector de seguridad y defensa de Ucrania.

**Palabras clave:** relaciones de servicio legal; seguridad nacional de Ucrania; servicio público; derecho comparado; elaboración de propuestas.

### Introduction

Legal service relations arise, function and terminate while the citizens exercise their right to public service. That is, legal service relations exist within the public service. The public service is relevant for the national security sphere of Ukraine. Thus, the Code of Administrative Procedure of Ukraine (2005) defines the concept of public service as: “an activity in public political capacities, in state collegial bodies, professional activity of judges, prosecutors, military service, alternative (non-military) service, other public service, patronage service in state bodies, service in the authorities of the Autonomous Republic of Crimea, local self-government bodies”. The connection between the public service and national security of Ukraine in this definition is considered from the perspective of public service subjects who, according to the Law of Ukraine “On National Security”, are the

subjects of its support. Legal service relations in this context are the main component of public service (Law of Ukraine, 2018).

The problem of legal regulation of public service on the whole and legal service relations in the national security sphere of Ukraine in particular consists in high diversity, imperfection and lack of systematization of the legislation in this sphere. Legal service relations between the security and defense sector bodies are regulated by different normative and legal acts. Therefore, such situation does not provide for a uniform functioning of such legal relations. However, it is worth mentioning that automatic adoption of foreign experience in organization and regulation of legal service relations in the national security sphere into Ukrainian reality cannot guarantee an unconditional result. To our mind, it is necessary to analyze such experience and use it in the mental and legislative field of our country.

The issue of legal service relations in the national security sphere of Ukraine is, in our opinion, of utmost importance in the process of developing a rule-of-law, democratic state, public demand for social justice, taking into consideration the military aggression against the state, low living standards, political and petty corruption, as well as many other factors. That is why, the experience of rational development and proper functioning of legal service relations in foreign countries and its application into the national security sphere of Ukraine is very important for the reformation of public administration system of Ukraine. Thus, the proper functioning of legal service relations will promote the efficiency of national security protection.

Various issues of legal service relations in the national security sphere of Ukraine were investigated by G.V. Atamanchuk (2014), O.O. Grishkovets (2015), M.I. Inshin (2002), V.A. Lipkan (2008), A.F. Nozdrachev (2017), Yu.M. Starilov (1996) and others. Foreign experience of legal service relations was studied by I.A. Vasilenko (2001), M.P. Gray (2008), Pukhtetska (Gritsenko *et al*, 2015), V.P. Tymoshchuk (2007), N.V. Yanuk (2010) and others.

However, the issue of implementing the international experience of legal service relations in the national security sphere of Ukraine still remains scantily explored. In view of the above-mentioned, it is necessary to analyze the international experience of legal service relations and to develop proposals for their further implementation in Ukraine.

## 1. Materials and methods

The following methods were used in the research: theoretical (modeling, analysis, synthesis, comparative-legal, special-juridical). Experimental base of the research was the National Academy of the Security Service of Ukraine. The study of the problem was conducted in three stages:

At the first stage there was a theoretical analysis of existing approaches in the legal literature, legislation, dissertations, monographs on the problem; the problem is highlighted, which is the lack in Ukraine of a perfect legal framework for the implementation of official legal relations in the field of national security of Ukraine, which, in turn, negatively affects the national security of Ukraine; purpose, namely the study of the experience of foreign countries in the construction and implementation of official relations, as well as training in the field of national security and development of proposals for use in Ukraine and research methods such as modeling, analysis, synthesis, comparative law, special law.

At the second stage, complex problems of implementation of official legal relations in the field of national security of Ukraine were revealed and proposals for improving the regulatory framework in the security and defense sector were substantiated, international experience in solving such problems was analyzed, specific models of effective implementation of official legal relations in the field of national security were studied. foreign countries; the conclusions obtained as a result of theoretical and practical work were analyzed and specified. It is stated that the subjects of official legal relations in the security and defense sector of Ukraine are guided in their activities by various regulations. Entities related to the executive branch - the legislation on civil service, entities related to law enforcement agencies and military formations – statutes, regulations, orders, instructions. This introduces a serious imbalance in the functioning of the security and defense sector as a whole. Therefore, the creation of a single regulatory framework for the security and defense sector will ensure the effective detection and response to external and internal threats facing Ukraine. The use of international experience, study of foreign legislation on this issue, implementation in domestic legislation, comparison of models of training of foreign specialists in security and defense, as well as the use and introduction of new elements of training such specialists will significantly improve the security and defense sector of Ukraine.

At the third stage the theoretical work was completed, theoretical and practical conclusions were specified, the obtained results were generalized and systematized. With the help of methods of scientific knowledge, proposals were developed to improve the legislation of Ukraine on the regulation of official relations in the field of national security of Ukraine. The comparative legal method was used to study the legislation of other countries in the field of national security on the implementation of official relations. On this basis, proposals were made to improve the training process for Ukraine's national security sector, namely the security and defense sector. The special legal method facilitated a detailed analysis of the current state of legislative provisions, thanks to which proposals were developed to overcome the existing theoretical, practical and legal contradictions, as well as conflicts in legislative acts. Using the modeling

method, positive properties were identified in the training systems of specialists in the field of national security of foreign countries, which made it possible to make proposals to improve the training system of specialists in the security and defense sector in Ukraine. The method of analysis was used to study in detail the individual elements of official relations in order to determine the effectiveness of their impact on the training process in the field of national security, namely the subjects of the security and defense sector of Ukraine. The method of synthesis was used to unite the elements of official legal relations into a single whole in order to build a holistic system of training in the security and defense sector of Ukraine, taking into account international experience.

Since the current legislation regulating the conduct of public and other types of service is numerous and not properly systematized, usually regulated by bylaws, it is necessary, in our opinion, to develop and adopt a single normative act at the level of Ukrainian law that will regulate all aspects of public service. Such a law should include provisions on the specifics of civil service, service in local self-government bodies, military service and service in law enforcement agencies. In our opinion, it is quite important in this law to single out the peculiarities of service by subjects of the security and defense sector of Ukraine in comparison with the general civil service, namely to provide regulation of specifics of selection of candidates for service, their certification during service, special examination of candidates for service, features of promotion, retraining, advanced training of employees, termination of service.

Ukraine should develop a model for building a public service in the security and defense sector that responds to current threats and challenges, is able to effectively identify such threats and actively address them. This is possible only with a clear organization of entry and service by employees of the security and defense sector, as well as proper interaction of the latter with other state bodies that have the authority to ensure the national security of Ukraine. To achieve this goal, it is necessary to constantly study and take into account the positive aspects of the functioning of official legal relations in the field of national security of foreign countries, as well as to carry out a constant practical exchange of experience.

The materials of the article can be useful for teachers of higher education institutions that train employees of the security and defense sector of Ukraine, practitioners of the security and defense sector to use international experience in regulating official relations in the field of national security of Ukraine. In the process of research, new issues and problems have arisen that need to be addressed. It is necessary to continue the study of the implementation of official legal relations in the field of national security of Ukraine at the theoretical and practical levels.

## 2. Results and discussion

According to the current legislation, the security and defense sector of Ukraine includes quite a large number of subjects. Among them: the Ministry of Defense of Ukraine, the Armed Forces of Ukraine, the State Special Transport Service of Ukraine, the Ministry of Internal Affairs of Ukraine, the National Guard of Ukraine, the National Police of Ukraine, the State Border Guard Service of Ukraine, the State Migration Service of Ukraine, the State Emergency Service of Ukraine, the Security Service of Ukraine, the Department of the State Guard of Ukraine, the State Service of Special Communication and Information Protection of Ukraine, the National Security and Defense Council of Ukraine, the intelligence agencies of Ukraine, the central executive authority that provides for the formation and implementation of state military and industrial policy. Other state and local self-government bodies perform their national security functions in cooperation with the bodies that comprise the security and defense sector (Law of Ukraine, 2018). The legal relations between civilian subjects of national security protection are mainly regulated by the Law of Ukraine “On Civil Service” (Law of Ukraine, 2015). On the other hand, the law enforcement and military service activities are regulated by a number of laws and regulations (statutes, provisions, orders, instructions).

Legal service relations are viewed by scholars as the relations between public servants whose official duties imply direct or indirect participation in the realization of public authority rights or protection of rights, freedoms and legal interests of physical and legal entities (Movchun, 2015). Legal service relations can be considered as public-law civil relations subject to legal regulation of a public service between a state (territorial community) acting through its bodies and a physical entity starting with the assignment to a position, in the process of performing duties as a civil servant and in case of employment termination (Anischenko, 2015).

The legal service relations in the system of state power bodies of Ukraine, including the relations of the organizational and functional structure of public bodies, can be viewed as: the system of legal service relations that arise within a state body due to a special procedure of recruitment, service based on the special principles of organization and functioning; their special legal status as the representatives of public authority and the peculiar features of their professional education and professional environment, caused by their specific professional duties, rigid discipline requirements, certain restriction of rights and freedoms; special responsibility for non-fulfillment or improper fulfillment of their obligations; their special legal and social protection and a special procedure of service termination for corresponding categories of civil servants and employees (Stolbovyi, 2019).

Based on the analysis of the views of the above-mentioned scholars on the definition of “legal service relations”, the following basic elements of such relations can be distinguished: recruitment to public service, service career and its termination. Moreover, it should be emphasized that recruitment to public service (military, law enforcement) is an important element of future effective fulfillment of an employee’s direct duties. Whereas, the improper implementation of this element of legal service relations may adversely affect the employee’s future performance (corruption, disciplinary violation, premature dismissal, negative psychological climate in the team, etc.).

Now let us consider the experience of other countries dealing with the issue of recruitment, as an element of legal service relations. Thus, in the US, the general requirements for FBI candidates are: 1) American citizenship or citizenship of the Northern Mariana Islands; 2) age from 23 to 37 years; 3) college or university education (bachelor’s degree); 4) three years of professional experience; 5) valid driver’s license (Buhaichuk *et al*, 2016).

The training process at the FBI National Academy starts at 8 am and ends at 5 pm with 1-hour lunch break. The daily workload is usually 8 academic hours, each 50 minutes long. Much attention is paid to practical training, when everything is as close to the real situation as possible. Very often, business games are practiced in the classroom to ensure better understanding and communication. It is worth mentioning that there is no military discipline at the FBI Academy. The communication is sincere and human. Everyone is called by name. Considerable attention at the Academy is paid to physical education. Everyone who arrives to take courses is supposed to pass a fitness test, which determines the level and type of future workload. The trainees are divided into groups depending on their fitness level and get appropriate (according to their group) physical exercise (Buhaichuk *et al*, 2016).

Shortlisting to the German police is carried out by a selection board, which carefully examines the candidate’s credibility and checks the absence of compromising materials against him. For instance, in Bavaria (Germany) the entrance examinations include an essay-writing, fitness check, medical screening and an interview. The first year of study includes the theory and practice of police operations, followed by a year of service in the operating units with another six months of theoretical training ending with an examination. The selection of candidates for police service in the Baltic States is carried out by local recruitment units on a competitive basis, in order to verify the person’s ability to perform police functions and to avoid recruiting those who may act in bad faith in future (Buhaichuk *et al*, 2016).

Therefore, global experience suggests that nationwide professional education systems for civil servants play an important role in their professional and career development in terms of global and regional



integration, national differentiation and acceleration of social change. Such special professional education systems should be functionally capable in equal, sectoral, institutional and uninterrupted manner to meet the diverse professional needs of both civil servants and public authorities, as well as provide various forms of educational services. According to the two polar types of recruitment to civil service (elitist or closed and public or open) national educational systems of professional training for civil servants are characterized by a different degree of commonality-corporativity, public openness-closeness. However, for any of these types, according to the requirements of modern competency approach, it is important that professional education and improvement will not focus only on the requirements of the organization, but also meet the needs of staff, their aspirations and the potential for self-fulfillment (Sliusarenko, 2007).

Turning back to the issue of advanced training and development of civil servants in Ukraine, it is important to introduce short-term training courses and programs that will allow civil servants to acquire new knowledge and skills in a short period of time to effectively fulfill their duties. The development of pilot projects and programs will save costs for their organization and ensure their efficiency, taking into account current trends in public administration (Kovbasiuk *et al*, 2012). With regard to such an element of legal service relations as performing service, it should be emphasized that it is the largest element, which includes direct fulfillment of duties, promotion (career), certification, application of awards and penalties, etc.

In all modern states, one of the three main models of public service is used – career, position and mixed one, which combines elements of career and post models. Most countries of the European Union have developed their public service on the basis of a career model where an employee can move up the ranks, if he receives the necessary education, undergoes training, has sufficient work experience. Such career model is widely used in France, Germany, Denmark and Spain. The position model is common in Sweden and the Netherlands, while the mixed model is used in Italy and the United Kingdom. Among new EU members there are those who adhere to the career model (Bulgaria, Cyprus, Romania, Slovakia, Slovenia) as well as those who prefer a mixed one (Latvia, Lithuania, Malta, Poland, Hungary, Czech Republic). The exception is Estonia, where a position model prevails (Ziller, 1996).

In respect to Austria, a characteristic feature of its civil service system is promotion. Promotion means, first and foremost, the appointment to higher positions. Only those of civil servants who fulfill top-level and more complex tasks can be promoted to senior positions. In order to be appointed to a higher position, civil servant should wait for a certain amount of time, that is the so-called “waiting period”. The length of this period depends



on the position rating and the employee's performance evaluation. There are no legal norms for promotion; internal promotion regulations and directives are approved. As for the salaries, civil servants receive 14 salaries a year. The federal government acts as a major employer and covers a wide range of activities: from teachers, police officers, judges or state attorneys and prosecutors to financial sphere professionals (Kovbasiuk *et al*, 2012).

In Italy, there is a well-established and regulated state and administrative apparatus, whose efficiency, as a rule, does not depend on a change of state power. Although formally everyone working in the public sector can be considered as a civil servant, in practice there is a rather clear distinction between employees of state-owned enterprises and civil servants. Thus, the legal status of the latter ones is regulated by special normative acts. In particular, the constitution states that only those who work in the public administration are civil servants.

The constitution is the basic act that determines the role and place of civil servants in the system of administrative and legal institutions. According to the constitution, civil servants are supposed to serve the people. Therefore, in Italy, the civil service and political power are separated from each other. Most line-level employees are recruited directly after graduating from high school and receive work-oriented training already from the very beginning. As a rule, senior executives are appointed from among those who have started their careers in local government bodies. Employees and their senior executives who neglect their responsibilities may be subject to various disciplinary sanctions. In case of proper fulfillment of their duties, employees have the right to retain their positions and get career promotion (Kovbasiuk *et al*, 2012).

According to the legislation on the civil service of the Republic of Kazakhstan, after three years in office the administrative civil servants are certified in order to determine the level of their professional competence, legal culture and ability to work with citizens. The certification procedure involves the submission of a civil servant's efficiency report by his direct supervisor, where his professional, personal qualities and performance are reflected. However, nowadays there is a need to improve the certification procedure by focusing it on assessing the quality and final results of the activity of civil servants in order to ensure the correlation between their performance and career promotion. In Kazakhstan, there is a unified remuneration system for civil servants, whose salaries are paid from the state budget and from the budget of the National Bank of the Republic of Kazakhstan. The system is based on coefficients and allows to take into account the duration of service and the category of occupied administrative state position. The bonus award criteria, financial assistance and salary increments for the civil servants are provided from the state.

In Kazakhstan's 2030 Development Strategy the priorities of the civil service development are defined: "improving the system of recruiting, training and promotion of the personnel", "civil service serves for the nation", "creating and maintaining a high reputation of the civil service". These are the basis for the development of a new civil service model of the Republic of Kazakhstan (Kovbasiuk *et al*, 2012).

The analysis of international experience allows us to distinguish the following approaches, which can be used for the improvement of legal service relations in the national security sphere of Ukraine:

1) improvement of the legal framework, which should provide for the differentiation between administrative and political positions in accordance with European principles. Adoption of a single codified legal act that would regulate legal service relations between all the categories of public servants; introduction of an open competition system for top-rank civil servants, depoliticisation of public service; development of uniform criteria for public servants' evaluation and promotion;

2) revision of the training programs for students of specific educational institutions (military and law enforcement) in order to expand practical training, probation at the future workplace for at least one year during the training period, which will allow to "avoid studying while fulfilling professional functions" and, to perform their duties effectively and on the proper level;

3) improvement of the operation of personnel departments of territorial bodies the security and defense sector, which implies the rigorous selection of candidates for public service (in military and law enforcement agencies) in order to avoid recruiting persons inclined to violation of service discipline, possible acts of corruption, other offenses, persons with low morale and psychological qualities;

4) fitness level differentiation for students in the process of education by dividing them into corresponding groups for an efficient physical load distribution, and also avoiding equal qualifying standards in physical training for different categories of students;

5) introduction of amendments to legal acts in the sphere of public service in terms of implementing provisions that will regulate gradual promotion of public servants in accordance with the hierarchical principle, in order to prevent non-experienced and non-professional persons from occupying executive positions.

## **Conclusion**

Since the current legislation regulating the conduct of public and other types of service is numerous and not properly systematized, usually regulated by bylaws, it is necessary, in our opinion, to develop and adopt a single normative act at the level of Ukrainian law that will regulate all aspects of public service. Such a law should include provisions on the specifics of civil service, service in local self-government bodies, military service and service in law enforcement agencies. In our opinion, it is quite important in this law to single out the peculiarities of service by subjects of the security and defense sector of Ukraine in comparison with the general civil service, namely to provide regulation of specifics of selection of candidates for service, their certification during service, special examination of candidates for service, features of promotion, retraining, advanced training of employees, termination of service.

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