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THE CIVIL SERVICE UNDER PRIVATE LAW AND UNDER PUBLIC LAW

The division of law into public (*jus publicum*) and private (*jus privatum*) was recognized in ancient Rome. Public law, according to the Roman jurist Ulpian, is that which belongs to the position of the Roman state; private law is that which belongs to individual persons. The criteria of attribution of law to private or public law were further clarified, but the recognition of the scientific and practical value of the division of law into public and private remained unchanged.

Public law is a subsystem of law consisting of rules governing the relations associated with the implementation of the functions of public authorities in the sphere of implementation of the interests of the state and local self-government (1, p. 178).

Public law is characterized by the following features:

- the public law regulates relations between unequal, legally subordinate entities;
- its rules are aimed at regulating relations in which entities satisfy a general (public, state) interest;
- the law is characterized by peculiarities of the subject composition (the main participant of public relations is always the state, and the private law entities are additional participants).

Public law covers spheres of public life, especially the establishment of government and power, the sphere of governance and self-governing organizations (2).

The method of regulation of public law is a totality of techniques that characterize the use in public-law sphere of that or other complex of legal mean (1, p. 178).

Private law is the right that protects private interests of an individual in relations with other individuals. It regulates the spheres of life of society, without direct intrusion into which the state is limited.

The regulation under private law is characterized by the following:

- legal equality of the subjects of legal relations;
- free will of the subjects in exercising their rights;
- self-responsibility for their duties and actions;
- widespread use of contractual regulation;
- guaranteed judicial protection;
- a strong focus on individual and corporate interests.

Scientists define the subject of private law as relations related to the realization of private interests. These relations often occur between individuals and / or legal entities (1, p. 178).

Private law covers areas such as civil law, family law, residential law, civil procedure, labor law, land law, international private law, commercial law (2).

For public administration, the relationship between the two categories of law in the interrelationship is more relevant. Thus, the activity of public servants is regulated by the institute of public law. According to paragraph 3 of Article 31 of the Law of Ukraine "On Public Service" № 889-VIII 10th of December, 2015 the decision about the appointment to the position of public service is taken by the appointing authority after the meeting with the candidate and signing with him/her the contract of public service (if it is arranged).

The order of appointment to public service positions with the signing of a contract of public service, in particular, determines the procedure:

1) conditions under which the appointment to the position of state service may be performed under the terms and conditions provided for in the contract;

- 2) the calculation of the term of performance of state service under the contract and the procedure for validity of the contract;
- 3) types and procedure of signing additional contractual conditions;
- 4) the procedure for concluding contracts;
- 5) responsibilities of the parties and the procedure for settling disputes;
- 6) the procedure for extending the term, changing the terms and conditions, termination and cancellation of the contract;
- 7) peculiarities of the conclusion of individual contracts.

However, according to Article 31-1 of the Law of Ukraine "On Public Service" the decision about the placement of the public service to the positions, appointment to which is carried out with the conclusion of the contract of public service, is made by the subject of appointment or the head of the public service before the contest is held.

By mutual agreement, the parties may agree on additional terms and conditions of a civil service contract for a period not exceeding three years.

The civil service contract shall be signed by the civil servant and the subject of the appointment or the head of the civil service and shall be an inseparable part of the act of appointment to the post.

In addition to the contract of public service with a civil servant, the act of appointment to the post may be arranged, which is accepted in the form of a decree, resolution, order (decree), decision, depending on the category of the post, in accordance with the legislation (3).

To analyze the service in local self-government bodies, according to article 10 of the Law of Ukraine "On Service in Local Self-Governance Bodies" № 2493-III of 7th June, 2001 during the period of absence (vacation) of the members of local self-government bodies (except for elective posts) for fulfillment of their duties can be taken into service individuals under fixed-term labor agreement (contract) (4).

Thus, when a person is appointed to public service or local self-government bodies, public legal relations are established in a subordinate "power-order" scheme, which implies that one of the subjects of legal relations has power and competence. In this case, the principles of private law do not apply, because the relevant rights and

obligations of the subjects of public law can be established only by the state. The main legal instrument is the positive obligations and prohibitions, which are regulated in binding regulations.

Among the types of public service, the patronage service is separately distinguished, the functional purpose of which is to perform advisory, advocacy, analytical and communication functions in order to support the activities of the executives of the state authorities and local self-government bodies. This type of public service is performed by the following positions: press secretary, advisor, consultant, assistant, referent (5, p. 48-52).

For foster care positions, supervisors have the right to independently recruit and accept individuals on a competitive basis. If necessary, supervisor may appoint persons who do not acquire the status of a civil servant on a contractual basis to the foster care positions (6). In this case, a private law action is carried out, as this relationship is related to the implementation of private interests and the involvement of the state is limited.

The Law of Ukraine "On Public Service" № 889-VIII of 10th December, 2015 separately identifies another group of employees of state bodies - service employees. This activity was legally regulated under the name "service functions" - the activity of employees of the state body, which does not involve the performance of duties directly related to the performance of tasks and functions of the state. This category is not covered by the Law "On Public Service" and is governed by the rules of private law.

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РОЛЬ ІНТЕЛЕКТУАЛЬНОЇ ЕЛІТИ У ФОРМУВАННІ ПОЛІТИЧНОГО ДИСКУРСУ ЗМІ

Національна система ЗМІ відіграє вирішальну роль у процесах розбудови держави, становленні демократичної політичної системи, в утвердженні її місця в європейському інформаційному просторі. Політичний дискурс, сформований інтелектуальною елітою та виражений у ЗМІ, стає важливим чинником суспільного і культурного життя нашої країни. Як зауважив відомий вчений Г. Почепцов, медіа-вплив на політику настільки серйозний, що можна стверджувати, що політика взагалі є результатом функціонування медіа (4, с. 127).

Варто відзначити, що самі ЗМІ, точніше окремі журналісти, також є частиною інтелектуальної еліти, до якої варто віднести творчу еліту, наукову еліту, інтелектуалів, що пояснюють соціальні, економічні, політичні та культурні процеси та явища (експертів, журналістів та ін.); діячів системи освіти (1, с. 7-8).

В Україні політичний дискурс ЗМІ набуває рис універсальності, оскільки в нашому часто політизованому суспільстві здійснює створення, трансляцію та обмін політичною інформацією, а також надає нового змісту культурному та