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ACTUAL PROBLEMS OF LEGAL REGULATION OF THE ACTIVITY OF THE CENTER FOR ADAPTATION OF THE CIVIL SERVICE OF UKRAINE TO THE STANDARDS OF THE EUROPEAN UNION

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SUMMARY

The article reveals the content and essence of the legal status of the Center for Adaptation of the Civil Service to the standards of the European Union as a direct entity providing information-analytical, expert and organizational support for the development of public administration, strengthening the institutional capacity of the public service in Ukraine and its adaptation to the standards of the European Union. It has been established that the legal status of the Center for Adaptation of the Civil Service to the Standards of the European Union is a complex category, which is characterized by universality and comprehensiveness, precise systemicity and stability.

The author concludes that the defining characteristics of the legal status of the Public Service Adaptation Center to the standards of the European Union are its competence, organizational support (features of creation, reorganization and liquidation), structural support (features of the system and structure) and functionality (features of the functional implementation of competence).

Key words: public service, public institution, public administration, institutional capacity, integration, competence, legal status, the Center for Adaptation of the Civil Service to European Union Standards.

АКТУАЛЬНІ ПРОБЛЕМИ ПРАВОВОГО РЕГУЛЮВАННЯ ДІЯЛЬНОСТІ ЦЕНТРУ АДАПТАЦІЇ ГРОМАДСЬКОЇ СЛУЖБИ УКРАЇНИ НА СТАНДАРТИ ЄВРОПЕЙСЬКОГО СОЮЗУ

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АНОТАЦІЯ

У статті розкрито зміст та сутність правового статусу Центру адаптації державної служби до стандартів Європейського союзу як безпосереднього суб'єкта забезпечення інформаційно-аналітичної, експертної та організаційної підтримки розвитку державного управління, посилення інституційної спроможності державної служби в Україні та її адаптації до стандартів Європейського Союзу. Встановлено, що правовий статус Центру адаптації державної служби до стандартів Європейського союзу є складною категорією, яка характеризується універсальністю та комплексністю, чіткою системністю та стабільністю.

Автор робить висновок, що визначальними характеристиками правового статусу Центру адаптації державної служби до стандартів Європейського союзу є його компетенція, організаційне забезпечення (особливості утворення, реорганізації та ліквідації), структурне забезпечення (особливості системи та структури) та функціональне забезпечення (особливості функціонального втілення компетенції).

Ключові слова: державна служба, державна установа, державне управління, інституційна спроможність, інтеграція, компетенція, правовий статус, Центр адаптації державної служби до стандартів Європейського союзу.

Problem statement. In the context of the modern conditions of globalization, the enhancement of a strategic nature of the integration processes, the specification of integration ideas, the improvement of integration efforts and the formation of modern concept of institutional development became a powerful driving force for the development of Ukraine as a legal state of European-style and the elaboration of its new geopolitical image. In this context, the issues of reinterpretation of the general problems of institutional capacity, enhancement of the efficiency of public administration as well as the development of the civil service in Ukraine and its adaptation to the standards of the European Union have assumed a particular importance. It is beyond dispute that a successful performance of tasks directly depends on the level

of activity management with the use of the EU instruments for institutional development in Ukraine.

It is not a secret that in more recent time (from the beginning of 2000 and until now) a number of important steps have been taken in relation to the development of qualitatively new and regulatory balanced approaches to Ukrainian integration into European political, economic, legal space and a radical modernization of the institutional development of our country, the new model of which should become a standard of transparency and quality of integration trends through the prism of Ukraine's interests towards further intensification of the integration processes.

Unfortunately, a range of problems concerning the development of ideally guided and efficiently capable system of

public administration is still unsolved in the modern conditions of state building. This state of affairs, to a greater extent, is conditioned by ignoring the approaches developed by legal doctrines and leading experts in implementing European principles and standards in the sphere of public administration of Ukraine, the lack of a profound analysis and study of the international experience of reforming the civil service and public administration, as well as special aspects of the implementation of advanced achievements of civilization in the process of modernization of the basic ideological principles of public administration under the conditions of a powerful influence of the EU.

Due to this fact, the issues of theoretical foundation, development of qualitatively new and regulatory balanced approaches to the definition of the legal status of the Center for Adaptation of the Civil Service of Ukraine to the Standards of the European Union as a direct subject for the provision of information-analytical, expert and organizational support for the development of public administration, enhancement of the institutional capacity of the civil service in Ukraine and its adaptation to the standards of the European Union are currently important and burning. Thus, the theoretical and practical importance of this research is beyond disputes.

The extent of problem development. At present, the legal status of the Center for Adaptation of the Civil Service of Ukraine to the Standards of the European Union has not properly considered in doctrinal sources. Scientific papers of V.B. Averianov, O.M. Bandurka, D.M. Bakhrahk, V.M. Bevenko, Yu. Bytiak, I.P. Holosnichenko, I.P. Zhyhalkin, S.V. Kiv-alov, N.M. Onishchenko, Yu.P. Orzikh, O.F. Skakun and others are substantive for the research. However, the problem of determination of the legal status of public institutions is very relevant taking into account the fact that such organizations, although they do not carry out activities on the management of external objects and are not intended to fulfill public-authoritative powers [18, p. 134-135], hold a special place in the mechanism of the state – thanks to their activities, the state realizes its external and internal tasks [16, p. 134].

The purpose of the article is to conduct a transparent monitoring of the legislation of Ukraine which consolidated the legal status of the Center for Adaptation of the Civil Service of Ukraine to the Standards of the European Union.

Presentation of the main material. First of all, it should be noted that the nature, structure and content of such phenomenon as the legal status have always been the subject matter both for scholars and practitioners. However, the modern legal science has not yet produced a unified approach to the comprehension of content and legal nature of the mentioned concept, and there are some approaches to the determination of a structure and place for the category “legal status” in the system of legal concepts. For this reason, in order to comprehend a legal status of the Center for Adaptation of the Civil Service of Ukraine to the Standards of the European Union adequately, we propose a brief theoretical review of the category “legal status” and its constituent elements.

The term “status” derives from the Latin “status” and means a state, condition [17, p. 547]. A legal encyclopedia edited by Yu.S. Shemshuchenko interprets the concept “status” as a legal position (collection of rights and obligations) of a natural or juridical person [26, p. 356].

The definition of “legal status” as the legal consolidation of a person in a society or the position of a particular subject in the legal reality, which is reflected in its relationship with society and the state, is the most widespread and most general [23, p. 198]. It is necessary to note that the mentioned definitions are quite abstract and don't permit to determine features and structural elements of the category “legal status” in a clear way.

Legal literature involves reasonable views of the interpretation of “legal status” as a system of rights, freedoms, legiti-

mate interests and obligations of the subject of social relations that are statutory consolidated and government-guaranteed [21, p. 366]. A.V. Malko has a more profound approach to the comprehension of this concept and characterizes the legal status as a complex integrated category which reflects the relationships of subjects of social interactions, person and society, citizen and state, individual and colleagues, as well as other social relations [19, p. 397].

V.M. Korelskyi considers the legal status as a multiple category that has a general, universal nature; includes statuses of different subjects of legal relations: state, society, individual etc.; reflects individual characteristics of the subjects and their actual state in the system of diverse social relations; cannot be realized without obligations that correspond to the rights, without legal liability in necessary cases, without legal guarantees; defines the rights and obligations of subjects in a system form, which enables to conduct a comparative analysis of the statuses of different subjects and find new ways for their improvement [20, p. 549].

Often enough, books on legal and specialized issues include the concept “legal status” which is considered as a means of statutory consolidation of the basic principles of interaction between an individual and the state, a system of standards, behaviour samples of subjects, which, on the one hand, are protected by the state and, on the another hand, are approved by a society [15, p. 409].

A.V. Panchyshyn characterizes the concept “legal status” as a multifaceted, complex, universal category with a clear stable structure, and establishes the nature and interaction principle of the subjects of social relations between themselves, as well as, by defining the rights, obligations and guarantees of their implementation, defines the place of the subject in the system legal relations [8, p. 95].

It is a quiet popular point of view according to which the legal status of subjects of law is considered through their legal personality, that is, through inclusion of role, tasks, functions, competences and powers, forms, methods and purposes of activities in the term “legal status” [1, p. 13-21].

Thus, the legal status, determining the position of a particular entity in legal reality, is filled with different elements and obtains a special content according to an entity. Within this context, one can claim that “legal status” is not only a multifaceted, but also multicomponent. In addition, the issue of definition of the structural elements of legal status should be considered in a balanced way.

Thus, according to A.M. Kolodiy and A.Iu. Oliinyk, among the structural elements of legal status it is necessary to mark as follows: status legal rules and relations; legal rights, freedoms and obligations; citizenship; law principles and legal guarantees; legitimate interests; legal personality; legal liability [5, p.149].

Some authors believe that the elements of legal status should be represented by legal rules defining the status (provisions of constitutional and current legislation, international treaties); fundamental rights and obligations; legal personality; legal principles; guarantees of the rights; legal liability; legal relation of the general (status) type [8, p. 96].

It is worth mentioning that an essential characteristic of the category “legal status” despite an open and controversial nature of the issue towards its meaningfulness permits to conclude that a correct definition of the legal status in a particular government or social institution is very important both theoretically and practically. Thus, a clear definition and regulatory consolidation of the legal status of all participants of social relations is a key to successive development of constitutional state.

Studying historiography of regulatory consolidation of the legal status of the Center for Adaptation of the Civil Service of Ukraine to the Standards of the European Union, it should

be noted that Center for Support of Civil Service Institutional Development established under the Chief Department of Civil Service of Ukraine [13], has passed a long-term modernization way. Finally, it adopted its name and functions in 2008 when it was renamed the Center for Adaptation of the Civil Service of Ukraine to the Standards of the European Union [9]. It should be pointed out that besides powers expansion, such changes were aimed at strengthening institutional reforms in the public sector, and first of all, it concerned administrative reform of the civil service and reform of human resource management by virtue of the adaptation of the civil service in Ukraine to EU standards.

A pivotal characteristic of the legal status of the Center for the Adaptation of the Civil Service to the Standards of the European Union is the organizational and legal form of functioning. Thus, the Center for Adaptation of the Civil Service of Ukraine to the Standards of the European Union, according to the organizational-legal form, is a state institution and belongs to management sphere of the National Agency of Ukraine on Civil Service [9, p. 2 of the Regulation].

It is impossible to skip that encyclopedia of law edited by Yu.S. Shemshuchenko renders the term “state institution” as a government organization that ensures the performance of state functions in social, cultural and other non-economic spheres [3, p. 162]. Some authors propound a somewhat broader notion: “state institutions” are state-owned economic entities, communication systems, state media, scientific, educational, medical and other socio-cultural institutions, which are not endowed with authoritative powers, are subordinated to the state apparatus [2, p. 13]. The lack of authoritative powers of state institutions [14, Art.2 para. 3] and activities on external entities management are the most important features that permit to identify their position in the state mechanism in a precise way.

The aforementioned information permits to conclude that the Center for Adaptation of the Civil Service of Ukraine to the Standards of the European Union is a type of state organization that has a specific organizational structure, strictly determined range of powers and carries out non-production activities using the resources of managerial nature which are provided by a competent state institution.

Taking into account the affiliation of the Center for Adaptation of the Civil Service of Ukraine to the Standards of the European Union to management sphere of the National Agency of Ukraine on Civil Service, the procedure of its establishment, liquidation or re-organization also has its special aspects. Thus, according to para. 18 p. 4 Art. 19 of the Law of Ukraine “On Central Executive Authorities”, the issues of establishment, liquidation or re-organization of enterprises, establishments, institutions belonging to management sphere of the central executive body, approval of their regulations (statutes), appointment to a post as established and dismissal of their leaders from a post are connected with the competence of head of the central executive body [14]. In connection with this fact, the resolution of issue on establishment, liquidation or re-organization of the Center for Adaptation of the Civil Service of Ukraine to the Standards of the European Union, approval of the regulation (its statute) is entrusted to Head of the National Agency of Ukraine on Civil Service [12, subpara. 19, para. 11].

At the same time, the Center for Adaptation of the Civil Service of Ukraine to the Standards of the European Union was established as a state institution by the Resolution of the Cabinet of Ministers of Ukraine dated 14.04.2004 No 485 [13], and regulation on its activities is approved the Resolution of the Cabinet of Ministers of Ukraine dated 04.06.2008 No 528 [9].

It is worth pointing out that under regulation activities of the legal status of the Center for Adaptation of the Civil Service of Ukraine to the Standards of the European Union, the legislator used the term “legal entity of public law” [9, para. 4

of Regulation] statutory use of which was initiated by the rules of Civil Code of Ukraine. In accordance with the provisions of Civil Code of Ukraine, the concept “legal entity of public law” is used as a catchall term for the identification of special aspects of the procedure for creation and legal status of this kind of legal entities [24, Art. 81].

It is necessary to place the emphasis on the fact that the term “legal entity of public law”, providing, first of all, the participation of public-law entities in civil matters, is currently actively used in other regulatory legal acts both at the level of laws and by-laws of other branches, including public ones. At the same time, a special nature of this type of legal entities involves the transparency of their legislative list that often leads to the problems of law enforcement practice [6, p. 4; 11, p. 47].

Legal literature involves a widespread point of view that the term “legal entity of public law” is an element, component part of legal personality (in this case, it is personality of the Center for Adaptation of the Civil Service of Ukraine to the Standards of the European Union) that determines a capacity to be a participant of property turnover. Actually, ownership of the rights of legal entity is an essential requirement for the legalization of engagement in property turnover, however usually the main activities of legal entities of public law don't stipulate their participation in civil turnover. For this reason, one can confirm that besides the status of legal entity, the mentioned state institution is empowered with the rights of a legal entity which are necessary for its participation in property turnover in order to perform entrusted functions in the public sphere and exercise delegated powers. Skipping a profound study of the relation between the categories “subject of public law” and “legal entity of public law” as well as concepts related to them, we note that this issue has been one of the most relevant and controversial theoretical issues.

Taking into account the analysis of the statutory component of activities of the Center for the Adaptation of the Civil Service of Ukraine to the Standards of the European Union, it is possible to distinguish the following essential features of this state institution as a legal entity of public law: 1) exclusively regulatory procedure of establishment and termination; 2) special nature of the procedure for acquiring the status of a legal entity (date of state registration – 14.04.2004; entry in the Unified State Register for the record on a legal entity dated October 28, 2004 [4]); the procedure of formation and legal status are established by the Constitution of Ukraine and the law (first of all, by acts of constitutional and administrative legislation) [24, par. 2, p. 3, Art. 81]; 4) special legal capacity (a scope of rights and obligations meets the purpose and tasks of activity); 5) functioning on the basis of a special regulatory act, which determines the scope of legal personality [9]; 6) constitutive significance of activity's objective – intensification of cooperation between Ukraine and the EU in the sphere of civil service and public administration, improvement of the mechanism for coordination of institutional guarantee of their adaptation to the EU standards, in particular through the activities on efficient use of the tools for institutional development in Ukraine such as Twinning, TAIEX, SIGMA, enhancement of professional level of civil servants and activities on informing of society about European integration issues [9, para. 1 of the Regulation]; 7) specificity of a legal regime of property – ownership, use and disposal of property is on the basis of operational management according the legislation [9, para. 12 of the Regulation].

Regarding the functional maintenance of activity of the Center for the Adaptation of the Civil Service of Ukraine to the Standards of the European Union, it should be noted that it has an autonomous balance sheet, accounts in bodies that carry out treasury service of budget funds, a stamp and forms with an image of the state coat of arms of Ukraine and its name, and also maintains accounting records and statistical

reporting in accordance with the law [9, para. 4, para. 17 of the Regulation].

The next defining characteristic of the legal status of the Center for Adaptation of the Civil Service of Ukraine to the Standards of the European Union is the competence. Although scholars express different views on certain elements in the structure of competence [7, p. 289; 10, p. 210; 22, p. 55; 25, p. 42; 27, p. 196], in our opinion, constituent elements of the competence of the Center for the Adaptation of the Civil Service of Ukraine to the Standards of the European Union are the sphere of activities, rights and responsibilities (powers), tasks, functions, nature of interrelations in the system, purpose and social nature.

Thus, the scope of activities of the Center for the Adaptation of the Civil Service of Ukraine to the Standards of the European Union is public service and public administration. The Center has the right to act in accordance with its legal status and purpose in the mentioned sphere. In addition, the Center for the Adaptation of the Civil Service to the Standards of the European Union uses the rights and responsibilities which help to resolve the national issues. In this case, it is the issue of improvement of the mechanism for coordination of institutional maintenance of adaptation the EU standards.

Concerning such an element of the competence of the Center for the Adaptation of the Civil Service of Ukraine to the Standards of the European Union as "purpose", it is necessary to stress that Centre's purpose is scientific, experts, information-analytical, methodological, organizational and other support for preparation and performance of programs and activities on the adaptation of Ukrainian civil service to the EU standards.

The next constituent element of the competence of the Center for the Adaptation of the Civil Service to the Standards of the European Union is tasks which are consolidated in para. 8 of the Regulation on the Center for the Adaptation of the Civil Service to the Standards of the European Union as follows:

participation in the elaboration of proposals for the formation of state policy and rule-making activities in the sphere of civil service and public administration, their adaptation to the EU standards, realization of administrative reform and development of state institutions in the context of European integration of Ukraine, use of institutional instruments in Ukraine; improvement of existing and promotion to the introduction of new standards and procedures for the work of civil servants and official of local self-government bodies, the activities of state authorities and local self-government bodies on the basis of best international practice;

participation in the implementation of modern information technologies in the activities of state authorities and local self-government bodies;

advisory support for state authorities and local self-government bodies, dissemination of legal, scientific and other information on civil service and public administration, their adaptation to the EU standards, administrative reform and development of state institutions in the context of European integration of Ukraine, in particular the use of institutional instruments in Ukraine; participation in the implementation of cooperation between Ukraine and the EU, consultation and methodological support and monitoring, within the scope of their powers, of the executive authorities in fulfilling the obligations undertaken by Ukraine towards the EU and international organizations;

assistance to the National Agency of Ukraine on Civil Service in fulfilling of its tasks and functions with the use of institutional instruments in Ukraine [9].

Speaking about the range of tasks which are performed by the Center for Adaptation of the Civil Service of Ukraine to the Standards of the European Union, they stipulate the competence only in general terms as emerge from the social goal, ac-

tivities of the Center for the Adaptation of the Civil Service of Ukraine to the Standards of the European Union are aimed at.

Assessing the progressiveness of the foundations, which are developed at the present stage, of civil service institute in Ukraine, it should be noted that competence as an independent legal phenomenon reveals its essence through the exercise of powers: rights and responsibilities. Whereas, the authority of the Center for Adaptation of the Civil Service of Ukraine to the Standards of the European Union is a system of regulated eligibilities, that is, a list of particular rights and obligations which are necessary for the realization of tasks and functions in the context of administrative reform and development of state institutions within the framework of Ukraine's European integration. Among them are as follows: 1) the right: to receive information from the state authorities and local self-government bodies in accordance with the procedure established by legislation; to form working groups, temporary scientific and creative collectives involving representatives of public authorities and local self-government bodies under the agreement with their leaders; to involve consultants, experts, including foreign ones, scientific institutions and consulting firms in their activities, in particular on the basis of concluded agreements; to receive grants and other international technical assistance from donor countries and international organizations in accordance with the procedure established by law; to act as the recipient of projects and international technical assistance programs [9, p. 10]; 2) obligation: to participate in the elaboration of projects of concepts, strategies, legislative and other statutory legal acts, preparation and implementation of state target and other programs, including international ones, projects and international technical assistance programs; to handle draft agreements between Ukraine and the EU on attracting external assistance, in particular through institutional instruments, with proposals on agreements approval to the National Agency of Ukraine on Civil Service; to organize practice of researches and applied developments; to organize workshops, trainings, conferences, exhibitions, other events, in particular of an international nature, etc. [9, para. 9].

As we see, "power" is the most important and indispensable but not the only element of the competence of the Center for the Adaptation of the Civil Service of Ukraine to the Standards of the European Union.

Consequently, the essential characteristic of legal status of the Center for Adaptation of the Civil Service of Ukraine to the Standards of the European Union, despite the openness and controversial nature of the issues concerning its filling, suggests that its competence, (peculiarities of establishment, re-organization and liquidation), structural support (features of the system and structure) and functional maintenance (peculiarities of the functional implementation of competence) are the main defining characteristics of legal status of the Center for Adaptation of the Civil Service of Ukraine to the Standards of the European Union.

Analyzed the above, one can conclude that the understanding of content of the legal status of the Center for the Adaptation of the Civil Service of Ukraine to the Standards of the European Union, as a direct subject providing information and analytical, expert and organizational support for the development of public administration, enhancement of the institutional capacity of the civil service in Ukraine and its adaptation to standards of the European Union, permits to overcome, in a certain way, the contradictions of integrated support and gaps in the legal regulation of organization and functioning of this state institution.

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