

The British Civil Service Reform and Its Importance for Ukraine

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Chapter 1. Introduction

1.1. The importance and topicality of using international experience in the reform of the state machinery in Ukraine.

The contemporary world is increasingly characterised by the processes of internationalisation. Integration process in Europe leads to further strengthening, deepening and widening of supra-national and trans-national institutions. The West is experiencing radical structural changes. Western patterns are strongly influencing political and social life in the former communist (socialist) countries. The countries with the long-established democratic traditions are capable to provide a valuable experience in functioning of the state and civil institutions. One of the values of a prime historical and political importance is the experience of the British Civil Service which has been widely used in the process of nation-building and/or national reconstruction in a number of countries.

Nevertheless, in reality, few countries are looking around the international horizon to seek radical improvements to their systems of public administration unless they are in a deep crisis, or there is a specific need to make changes (for example to comply with membership requirements of the Council of Europe, the European Union, or the NATO). The fact is that since the break-up of the Soviet Union and Independence, Ukraine (in line with a number of other post-Soviet countries) has been at such a historical turning point, and like Grand Prince Vladimir of Kievan Rus more than a millennium ago, the more enlightened people in charge of the nation (or ready to take such responsibilities) are sensibly looking at features of foreign models which offer Ukraine the opportunity of taking short cuts towards a system which is suitable for their own country, and promising better life to the people and a more worthy place in the world to the nation.

The post-Soviet countries provide a very diverse spectrum of experience in the sphere of nation-building and political reforms, with a variety of practical models of transformation of state institutions, ranging from the replacement of the old state bodies by totally new ones and introducing radical 'clear-outs' among the state employees, on one hand, to the preserving a de-facto intact state apparatus inherited from the Soviet times, on the other hand.

Ukraine represents an example of preserving an inefficient state machinery, which grants little respect for ordinary peoples' interests, is inactive, bulky, consuming excessive proportion of GNP, reluctant to reform itself.

The necessity of administrative reform (including the reform of the 'State Service'¹) in the contemporary Ukraine is clearly perceived by Ukraine's politicians and the general public, as well as by the international community of Ukraine's current donors - the international financial institutions (the World Bank, IMF), USA, EU and others, on whose financial 'life support', political and economic advice the present Ukrainian government is largely dependent.

The old-fashioned 'pure administrative' paradigm (logic) is still prevailing in Ukraine's official approaches to adapting the inherited state apparatus to the new economic and political conditions. Almost all the issues are looked at from the perspective of administrative control possessing state authority etc., and not from the perspective of providing unbiased professional guidance for various sectors of public life. Even though a number of legislative acts and regulations (moulded on the western pattern) were passed, and the concept papers and programmes (positively assessed by international experts) were drafted, actually there are few rea

¹ Ukraine's administrative practice and theory lack the term 'Civil Service.'

positive changes in the situation in the state apparatus. The lack of adequate material resources, political will and 'vision' destroys any declared good intentions and promising plans. The introduction of a national integrity scheme and implementation of the principles of Good Governance remain one of the main strategic tasks for those who wish to see the post-Soviet society a part of a civilised and developed world. The adequate methodology of the efficient use of international (foreign) experience in the sphere of Civil Service has to be one of the important components of the reform strategy in Ukraine.

1.2. The hypothesis - purpose, aims and the main issues of the present research.

The purpose of the present research is to look at the possibilities of introducing the major principles of Good Governance into a post-Soviet society through critical analysis of the best practices and problems of one particular example of an efficient and effective Civil Service with a long history of development and self-perfectioning - the British Civil Service.

The major aims of the present research are:

- to learn the British experience in creating and functioning of the Civil Service (its structure, functions, ways of self-reproduction etc.);
- to find out and compare similar and dissimilar components in the British Civil Service and in Ukraine's state machinery;
- to define possible approaches to the transfer of the British Civil Service experience to Ukraine.

The main issues of the present research:

1. The nature of the Civil Service, its composition, correlation with other professional services and its basic differences in comparison with the post-Soviet 'state apparatus' which has inherited the major structural features from the previous Soviet state machinery but at the same time is progressively impotent and demoralised by the advent of the elements of quite primitive ('wild') type of market relations, general lack of discipline, wide-spread irregularities, decline in quality of personnel.
2. The essence of the foundations of the contemporary British Civil Service organisation and culture laid down in the 'Northcote-Trevelyan Report' of 1853-1854 and the subsequent reforms (that took some decades), as well as the nature of the changes in the end of 1960s - beginning of 1970s and then in the 1990s (the 'management revolution') in the functions and structure of the British Civil Service, and the relevance of this experience to the actual and future changes in Ukraine's post-Soviet society
3. Possibilities and limitations for modelling the classical type of Civil Service system in Ukraine and the approaches to the reform of state machinery in Ukraine.

The aims of the present paper are narrower than those of the research in general: to serve as an initial base for the author's further publications (in Ukrainian), for a collective monograph on the issues of administrative reform in Ukraine, for organising a series of seminars on the problems of re-thinking the functions and structures of a post-Soviet state.

The current conditions in the machinery of government are totally different in Britain and Ukraine. They differ in their historical traditions, predominant ethos (especially in the attitude towards irregularities and inefficiencies, connections with business and political forces), organisational patterns, mechanisms of staff training and recruitment, payment system,

transparency and public control, decentralisation and deconcentration in the decision-making process etc. At the moment the British and Ukraine's systems of organisation of the state machinery may be viewed as examples of the opposite extremes on the scale of efficiency of public administration.

In order to introduce visible positive changes in general situation in Ukraine through radical improvements in Ukraine's machinery of state, an adequate methodology of organisational knowledge transfer should be elaborated (including the methodology of efficient consultancy in the sphere of use of other countries' experience). Being very valuable for Ukraine, the British Civil Service experience can not be directly implanted into a non-receptive post-Soviet state machinery.

An efficient transfer of the suitable British administrative institutions, norms and culture to Ukraine has to be based on the use of a comprehensive programme approach, project management techniques etc. One of the basic, initial elements in this process is a clear understanding of the principles of different types of public administration, and the principles of implementing reform which are capable to meet the envisaged objectives.

1.3. The notion of the Civil Service and the relevant accompanying concepts. The Civil Service and other types of professional service

In the most general way one may shortly define the Civil Service as a body of professional public servants. The contents and the scope of their functions, their corporate and personal status, organisational principles differ depending upon particular circumstance of place and time. The relevant terminology applied in particular countries and cultures is also diverse: the civil servant may be "referred to as *fonctionnaire*, *ambtenaar*, or *Beamter*"² etc., or sometimes - as *employee of the Public Service*"³ (even though internationally the term 'public service' is normally used in a wider sense than the term 'Civil Service'). Nevertheless due to the international influence of the English language, the total weight of the USA and the influence of British administrative traditions, the terms 'Civil Service' and 'civil servant' become now the general international terms.⁴

In British literature, there is a number of different definitions of a civil servant. One of such definitions was proposed in 1931 by the Tomlin Commission: "Servants of the Crown, other than holders of political or judicial offices, who are employed in a civil capacity and whose remuneration is paid wholly and directly out of money voted by Parliament"⁵. Later the similar ideas started to be repeated in the annual "Civil Service Statistics": "A servant of the Crown working in a civil capacity who is not: the holder of a political (or judicial) office; the holder of certain other offices in respect of whose tenure of office special provision has been made; a servant of the Crown in a personal capacity paid from the Civil List".⁶ In fact still "the term 'civ

² Auer, Astrid; Demke, Christoph; Polet, Robert, *Civil Service in the Europe of Fifteen: Current Situation and Prospects*. (European Institute of Public Administration: Maastricht, 1996.) - P. 25.

³ Constitution of the Marshall Islands. (Micronitor News & Printing Company: s.l., 1988.) - P. 36-41.

⁴ See e.g.: *Civil Service Systems in Comparative Perspective* / Edited by Hans A. G. M. Bekke, James L. Perry, and Theo A.J. Toonen. (Indiana University Press: Bloomington & Indianapolis, 1996.) - 346 p.

⁵ Cited from: *Drewry, Gavin; Butcher, Tony, The Civil Service Today*. (Blackwell: Oxford UK; Cambridge USA, 1995.) - P. 13.

⁶ *Civil Service Statistics*. (HMSO: London, 1987.) - P. 11.

servant' lacks precise definition, an ambiguity which is not just of academic significance,"⁷ meanwhile statistics ("Whom to consider being a civil servant?") depend upon the definition.

From the above-mentioned official definitions, four main general characteristics of the notion of a 'civil servant' may be identified:

- (1) performing the functions of a servant of a sovereign authority;
- (2) an individual civil contract regulating the relations between the servant and the authority (i.e. voluntary relations);
- (3) the remuneration of the work of a servant at the expense of the state;
- (4) distinguishing a civil servant from some other (officially specified) categories of professionals employed by the state (e.g. judges, political nominations etc.) These categories may vary depending on the circumstances of particular countries and time

The notion of the Civil Service may be elaborated by mentioning a more general phenomenon to which it may be referred to (as one of its particular kinds) and denoting peculiar characteristics of the analysed object:

The Civil Service is *a body of professional staff* (1) employed by the state, (2) performing public functions in the interests of the people (or sometimes - in the interests of the ruling elite), (3) responsible to the supreme authority, i.e. there is a clearly defined entity (sometime it may be rather a set of ideological directions) to whom a person serves (this is a symbolic component of the relations defining a particular object of the provided service), (4) possessing the spirit of duty towards the 'master' - the society, the people, or alternatively (in an autocratic regime) - towards an individual or collective ruler⁸ (this represents a spiritual element of the relations which may be also described as an 'active loyalty' to those whom one serves), (5) working on a contractual basis and therefore in a stable way receiving from the state a defined salary and other relevant payments, (6) meeting the requirements of a special training (that means the rejection of amateurish approaches towards employment policy), (7) functioning on the basis of the relevant legal regulations and within the legally established structures (these are the normative and an institutional components of the notion), (8) representing some particular part of the state machinery (apparatus) (it is an element of 'separateness') and being distinct from its 'other parts' with a different status, e.g. 'non civil' state military or police forces, as well as from the non-state (by their legal status) quasi-non-governmental institutions (quangos) and other components of an 'extended state' etc.

If necessary, some more detailed characteristics may be mentioned in the general definition of the term; whereas describing a certain 'national' or 'regional' kind of a Civil Service, a number of additional characteristics (peculiar to this particular kind) should be emphasised.

Besides taking into account general characteristics of any Civil Service, the elaboration of (or understanding) the notion of the British Civil Service presupposes mentioning some specific features of this 'national' kind of the Civil Service as well as separating it (in accordance with the

⁷ Greenwood, John; Wilson, David, *Public Administration in Britain Today*. (Routledge: London; New York, 1993.) - P. 86.

⁸ The term 'the Crown' which is widely officially used in contemporary Britain should not be necessarily associated with the existence of an autocratic regime (which is not the case in contemporary Britain). The Crown is a legal entity, a 'corporation' embodied by the Monarch who personally represents the Crown, but is distinct from it, including in the sphere of property rights. Under this corporation all affairs of the State are subsumed. In fact, loyalty to the Crown is a traditional denoting of the readiness to serve the general public interests which for historic and cultural reasons preserves the form of the loyalty to the Monarch.

British tradition and the theory and practice of public administration) from other types (and components) of professional service and state machinery.

As a specific type of Civil Service, the British one is characterised by permanence, political neutrality (impartiality), and anonymity⁹ whereas some other types of Civil Service (probably more precisely - the staff of the state machinery), e.g. in the societies with deeply-rooted Confucian or Islamic traditions may lack political neutrality, i.e. the adherence to some official ideology may be required.¹⁰ In some circumstances (especially in transitional societies) a significant part of the Civil Service may be in fact non permanent.

One of the “normal working definitions” officially used in Britain states that the “civil servants are the staff of all the central Government departments working for Ministers,”¹¹ thus the Civil Service ‘per se’ is openly separated from other components of the public sector employees. Meanwhile in some other countries, almost all public sector employees may have the status of civil servants. For example, in Japan, the current Civil Service system introduced at the time of occupation after the World War II considers all public employees as civil servants; and the personnel administration of national civil servants is performed by the central personnel agency the National Personnel Authority.¹² In Austria, all school teachers and employees of the State Railways have the status of civil servants. Taiwan’s official statistics provide information that there only 36 per cent of civil servants “work in the central government.”¹³

In Britain, the Civil Service ‘per se’ has a narrower and more specific range of responsibilities than its counterparts in many other countries. British civil servants, though nominally ‘servants of the Crown’, in practice report exclusively - if usually indirectly - to Ministers of the government of the day. Civil servants in Britain are clearly distinguished from:

(1) Ministers and MPs - “public servants who receive remuneration from public funds, but... are *political officers*”;

(2) members of the armed forces who “are Crown servants, but are not serving in a *civil capacity*”;

(3) judges and chairmen of administrative tribunals - “public servants whose independence from government is safeguarded by special rules and conventions”;

(4) employees of Parliament who “are not servants of the Crown”, even though “they may belong to civil service unions” and “recruited through the Civil Service Commission”;

(5) local government employees who are “public servants but... are not civil servants”;

(6) employees of public corporations being part of the still nationalised industries and services (these employees “are neither Crown servants nor civil servants”);

⁹ Greenwood, John; Wilson, David, *Public Administration in Britain Today*. - P. 87; Anthony H. Birch, *The British System of Government*. Ninth edition. (Routledge: London; New York, 1993.) - P. 141.

¹⁰ Nevertheless many other aspects of ‘neutrality’ are present in autocratic systems of government machinery. For example, in traditionalist Confucian China, “when an emperor was deposed, it mattered little who took his palace, since the Chinese bureaucratic system continued to function” (*The Republic of China Yearbook 1996*. (Government Information Office: Taipei, 1996.) - P. 43.

¹¹ Parliament, *Government and the Civil Service*. - In: *Governance in the UK. Finding your way round Whitehall and beyond*. (Cabinet Office: London, January 1998.) <http://www.britcoun.org/governance/hkgov/whitehall/index.htm>. - P. 4.

¹² *Handbook for Recruitment and Promotion System of Civil Servants in Japan*. (National Personnel Authority: Tokyo, July 1993.) - P. 1-3; *Handbook on Japan’s Civil Service Statistical Overview 1993-94*. (National Personnel Authority: Tokyo, 1994.) - P. 3-8.

¹³ *The Republic of China Yearbook 1996*. - P. 83.

(7) staff of quasi-governmental and quasi-non-governmental organisations.¹⁴

A theoretically interesting and practically important aspect in the distinguishing the British Civil Service from some other areas of public service is related to the sphere of political geography.

Firstly, it is necessary to clearly understand what precisely is 'Britain' (and therefore 'British'). (A.) This term may be used in a pure cultural sense (which is not applicable to the context of the present research). (B.) It may denote an area under the direct jurisdiction of the Parliament of the United Kingdom of Great Britain and Northern Ireland, and therefore comprises England, Wales, Scotland and Northern Ireland,¹⁵ and clearly excludes the Isle of Man and the Channel Islands (the Bailiwick of Jersey and the Bailiwick of Guernsey with the dependencies - Alderney and other small islands) which are under the sovereignty of the British Crown, but not the Parliament. Another specific issue is the status of some remaining British territories (and the relevant Civil Service) in the Atlantic, Pacific and Indian Oceans.

Secondly, Britain is a member of a number of international and supranational organisations and associations of states (e.g. NATO, EU etc.), and their professional staff is a kind of special Civil Service. Some of British professionals employed there are British civil servants seconded to work in these institutions working directly for Britain and thus remaining part of the British Civil Service; some others become civil servants of the respective institutions and are not (or cease to be) British civil servants.

Thus not the whole area of 'public service', 'public administration' and 'public sector' (e.g. NHS employees; teachers etc.) can be considered as the area of Civil Service.

The 20th Century history of the state machinery and the development of the theory of public administration in Ukraine (as well as in the rest of the post-Soviet countries) is characterised by a several decades-long diversion from the relevant world mainstream development. If accepting a general concept of evolution of Civil Service systems comprising four major phases: (1) civil servants as personal servants; (2) civil servants as state servants; (3) civil servants as public servants; (4) Civil Service as protected service; (5) Civil Service as professional service,¹⁶ one may acknowledge that Ukraine experiences the results of an 'uncompleted evolution'. The third, fourth and fifth (conventionally distinguished) phases are still to be 'gone through'. Even though a number of their (these three phases') features are already present in Ukraine, the second phase characteristics are still predominant, being combined with some peculiarities produced by the advent of such phenomenon as a post-Soviet 'survival state'.¹⁷

These historic factors have direct repercussions on the contents of the contemporary public administration theory in Ukraine.

In Ukraine, in the theory of administrative law related to the sphere of Civil Service, the term 'professional service' is used as the most general term, and it comprises: (a) the 'state service', and (b) the 'service in the non-state institutions'. In its turn, the state service is

¹⁴ *Drewry, Gavin; Butcher, Tony*, The Civil Service Today. - P. 15-17.

¹⁵ In one of the Foreign and Commonwealth Office publications, it is stated that "the term 'Britain' is used... to mean the United Kingdom of Great Britain and Northern Ireland: Great Britain comprises England, Wales and Scotland" (Britain's System of Government. (Foreign & Commonwealth Office: London, 1995.) - P. ii.)

¹⁶ *Raadschelders, Jos C. N.; Rutgers, Mark R.*, The Evolution of Civil Service Systems. - In: Civil Service Systems in Comparative Perspective / Edited by Hans A.G.M.Bekke, James L.Perry, and Theo A.J.Toonen. - P. 67-92.

¹⁷ The evolution of the State Service in Ukraine is described in Chapter 3 (the sub-chapter 3.2.)

differentiated into: (a) the ‘general service’, and (b) various ‘special services.’¹⁸ The basis for the later classification is the 1993 Law of Ukraine “On the State Service” (it will be described further below).

The practical observation of the activities of Ukraine’s State machinery allows to make some generalisations contrasting the features of contemporary Ukrainian State Service to those of the Civil Service as it is understood within the Western tradition depicted above:

(1). Employment by the state. From the formal legal point of view it is present, but in practice very often it means employment by the ‘boss’, ‘political patron’, who personally expects the signs of loyalty in return.

(2). Performing public functions in the interests of the people. In theory it is the case. Nevertheless usually in a ‘survival state’, various components of the state machinery are converted into a separate ‘enterprise for a group or clan survival’ vaguely connected with the general idea of a State and the theoretical (declared) purpose of serving the people. The de-facto ‘privatisation’ of the State functions (i.e. the use of state institutional resources in private interests of the State functionaries), a fraudulent personal use or an appropriation of the State funds or real estate, permanent illegal connections with businesses etc. - all that became a common practice nowadays.

(3). Responsibility to and loyalty to the supreme authority. In the situation of constant political and inter-personal conflicts between various ‘branches’ of the State power, and the still existing confusion in defining the ‘national idea’ and general aims of the State (following a strong psychological trauma for the vast strata of population after the collapse of the USSR), this symbolic component of the State Service in Ukraine is not yet finally formed.

(4). The predominance of the spirit of duty towards the ‘master’ - the society, the people, or an individual or collective ruler. The former ‘master’ - the Communist Party and ideology have been discredited or gone (as a ruler) anyway. The new formal political and real economic ‘masters’ are also discredited and commonly despised as selfish, short-sighted, unpatriotic, corrupt etc. Some people (with traditionalist values) employed in the public sector are still ready to serve the ‘master’, but there is none at the moment. The civil society is not yet ready to establish itself as a real master of the country.

(5). The contractual basis of work and a stable payment of salary. If you are not receiving your salary in time and are paid what you are entitled to only after long delays (and that is the usual and almost universal post-Soviet practice in Ukraine), you are for sure expected (openly or latently) to look for some alternative sources of means of subsistence, and therefore to turn into either a beggar (if not an extortioner), or a kind of entrepreneur to whom the State de-facto entrusts to ‘farm out’ in some particular spheres of public life activities.

(6). Meeting the requirements of an efficient special training. It is hardly achievable in the present situation at a large scale. There are a lot of ‘amateurs’ and just ‘strangers’ in the State Service, and many skilled professionals have left it (e.g. gone into business).

(7). Functioning within the relevant legal and institutional framework. There is a significant progress in creating such a framework (at least its formal components).

(8). Being distinct from other professional State services (e.g. military, attorneys etc.), the staff of quasi-non-governmental (for example, the National Academy of Sciences) and non-governmental organisations.

¹⁸ Koval, L. V., *Administratyvne pravo*. (Venturi: Kiev, 1998.) - P. 46-47.

All the above-mentioned allows to draw the conclusion that the State Service in Ukraine possesses some aspects of general characteristics of any Civil Service, and at the same time lacks some important features of those. Therefore it may be said that Ukraine's State Service can be considered only as a body of professional staff of the state apparatus characterised by some tendencies towards its transformation into the Civil Service, but preserving a number of features contrary to the essence of that institution.

Chapter 2. The information base of the present research

This paper is written on the basis of the research performed in the UK - collecting material on the British Civil Service and learning the practice of the British Civil Service in the UK and abroad (in Ukraine, some other countries and in European institutions), getting advice from British experts.

Some practical aspects of the process of internationalisation of the British Civil Servant were observed (during research in Kiev, Brussels, Madrid), and the British experience was compared to that of the European institutions, as well as to the practices of other states.

All that has been compared and contrasted to the post-Soviet practice of Ukrainian state apparatus.

The research was greatly assisted by the fact that it was possible to get acquainted with the activities of the following British institutions:

(1). The Ministries: the Department of Transport (European Division; Mobility Unit Transport Policy Unit; Strategy and Analysis Unit; Road Haulage Division; Personnel Management; Permanent Secretary); Department for Education and Employment; other state institutions such as: the Cabinet Office (Efficiency and Effectiveness Group); Office of the Government Legal Service (Lawyers Management Unit); Metropolitan Police Service; Immigration and Nationality Department; Inland Revenue (Special Compliance Office); HM Customs & Excise National Investigation Service, etc.

(2). Regional state authorities (Government Office for the Eastern Region in Cambridge), and local authorities (in Norwich and London).

(3). Non-governmental or quasi-non-governmental institutions dealing with the specific areas of national policy, e.g.: Higher Education Quality Council; University and Colleges Admissions Service (UCAS in Cheltenham); the Law Society; Business Link, Central and Southern Cambridgeshire; etc.

Assistance in the research was provided by the lecturers and the researchers of the University of East London; the University of London (the London School of Economics and Political Science; the School of Slavonic and East European Studies etc.); University of Cambridge (Sidney Sussex College), Liverpool John Moores University.

Especially valuable assistance was rendered by my major British advisors on the project - Peter Emms, a retired British senior Civil Servant and former resident Know How Fund advisor to the Cabinet of Ministers of Ukraine, and Rory O'Hara, a lecturer of the East London Business School, the University of East London, as well as by Andrew Wilson, a lecturer in Ukrainian Studies in the School of Slavonic and East European Studies at the University of London.

The work performed in Ukraine comprised comparing the British Civil Service theories and practice to those of the contemporary Ukraine, trying to find the spheres where the British

classical and contemporary experience can be adapted to the post-Soviet conditions, using British experience in teaching and advisory work.

The general methods used in the research were as follows: systemic-structural and systemic-functional analysis, historical, logical and comparative analysis. The method of observati (including 'a fly on the wall') and interviews was widely used.

Among the specialised literature related to the topic of the research, the following kinds of publications (books, booklets, articles, compilation of materials) in traditional printed form and in Internet format should be mentioned:

(1). The major central government policy documents and legal acts related to the Civil Service in Britain, such as "Northcote-Trevelyan Report" 1853-1854, "Fulton Report" 1968, "Improving Management in Government: The Next Steps. Report to the Prime Minister. 1988", "The Financing and Accountability of Next Steps Agencies. December 1989", "Making the Most of Next Steps: The Management of Ministers' Departments and their Executive Agencies. Report to the Prime Minister. May 1991", "Citizen's Charter. July 1991", "Continuity and Change, Civil Service White Paper. July 1994", "Open Government. Code of Practice on Access to Government Information. March 1994", "Civil Service Order in Council 1995", "Civil Service Commissioners' Recruitment Code. 1996", "Nolan Committee's Reports on Standards in Public Life" 1996 etc.

(2). Ministerial and other state institutions' official publications for the general public, providing description of the activities of relevant British Ministries, Agencies and their structural components, e.g.: "Lawyers in Government" (The Government Legal Service), "The Charter for Higher Education" (The Department for Education), "Mobility Unit Overview. 1996/1997" (The Department of Transport), "Road Safety Casualty Reduction - Targeting the Future" (The Department of Transport, the Scottish Office, the Welsh Office) etc.

(3). Ministerial internal documents on different issues, e.g.: "Diplomatic Service Filing Guide", "Performance Management, Development and Appraisal. Guidance Pack. The Department of Transport", "Personnel Management Principles. Staff Handbook. Vol. 1 & 2. The Department of Transport" etc.).

(4). Academic works and materials of political debate related to the issues of: (a) History of the British Civil Service, and (b) the general theory of the contemporary British Civil Service and public administration (including the analysis of the major trends within the general body of this theory) - various text-books and monographs on British Government and comparative government. Among this literature the articles and monographs of the following authors should be mentioned: Peter Aucoin, Norman Flynn, Anthony Birch, Robin Butler, David Chambers, Richard A. Chapman, Gavin Drewry and Tony Butcher, Patrick Dunleavy, Peter Gowan, Andrew Gray and Bill Jenkins, John Greenwood and David Wilson, Peter Hennessy, Paul Hoggett, Christopher Hood, Keith Hartley, Peter Jackson, Peter Kemp, Les Metcalfe and Sue Richards, Gillian Peele, John Stewart, Lord Hunt of Tanworth, Gerald Vinten, William Waldegrave etc.

(5). Reference literature describing the Structure of the British Civil Service and the Public Service in general: "The Civil Service Year Book"; "PMS Parliamentary Companion. United Kingdom and European Union"; "Vacher's Parliamentary Companion. A reference book for Parliament Departments of State, Senior Civil Servants and Public Offices"; Annual Reports of the Ministries and other state institutions.

(6). Relevant Ukrainian documents and literature related to the issues of public administration and administrative reform in Ukraine - laws and draft laws, state programmes,

monographs and articles (by O.F.Andriiko, V.D.Averianov, I.Derkach, S.Dubenko, I.P.Golosnichenko, V.M.Kampo, L.M.Kravchuk, L.V.Koval, G.Lelikov, V.Lugovyi, N.R.Nyzhnyk, S.Seriogin etc.)

Chapter 3. The evolution of the British Civil Service and the State Service in Ukraine.

3.1. The main phases of the modern British Civil Service development .

The method of periodisation is one of the important theoretical tools of comprehending the nature of social and political institutions. Herewith there may be distinguished the following three main general approaches: “(1) defining ‘historical landmarks’ as the boundaries between certain stages on the way of progress (or regress), or between different non-hierachysised stages (while these ‘landmarks’ are presented as the result of an impact of some really important factors, or factors of really small importance but being myphologysised...); (2) setting up the criteria o progress (or regress, if the development is assessed as being negative) that characterise the interna development of the analysed system; (3) singling out a set of possible ideal (‘pure’) qulitative states of the analysed object; (4) a combination in particular proportion of the elements of the several approaches mentioned above”¹⁹.

For the purposes of the present research, from among a variety of periodisations of history of British Civil Service, there may be used the one proposed by R.Buttler, who (on the basis of a mixture of a ‘landmark’ and a ‘qualitative state’ approaches) distinguishes the following four stages of that institution’s evolution: the formative stage (1854-1920s); the second phase (1930s-1960s); the third phase (from Fulton report to 1979); and the fourth phase from 1979 onwards (the ‘management revolution’).²⁰

Three of these phases (first, third and the fourth) start with specific Civil Service reforms, and only the second one is characterised by a pure evolutionary development: “a very substantial increase in the size of the service and the scope of its work”, emergence of “a fully comprehensive trade union structure”, “pressure for geographical dispersal” of functions.²¹ Within the framework of the objectives of the present research paper, the attention will be paid to three periods of reforms of Civil Service connected with: (1) Northcote-Trevelyan report (1853-1854); (2) Fulton report (1968); and (3) Mrs. Thatcher’s ‘management revolution’ (1979) and the further changes.

The first mordern profound reform of, and thus *the formative phase* of the modern British Civil Service started when a fundamental review of the Civil Service was completed by Sir Stafford Northcote and Sir Charles Trevelyan, and their “Report on the Organisation of the

¹⁹ *Yakushik, V.M.*, *Sovriemennoie gosudarstvo perehodnogo tipa (teorietichieskiie i mietodologichieskiie aspiekty)*. (Contemporary State of a Transitionals Type: Theoretical and Methodological Aspects.) (Academy of Sciences of Ukraine: Kiev, 1992.) - P. 32.

²⁰ *Buttler, R.*, *The Evolution of the Civil Service - A Progress Report*. - In: *Public Administration*. Vol. 71. Autumn 1993. - P. 394-406.

²¹ *Ibid.* - P. 396.

Permanent Civil Service” was laid before the parliament on 23 November 1853 and published in 1854.²²

The implementation of the subsequent reforms lasted several decades, and now the Civil Service remains very much on the lines laid down in the “Northcote-Trevelyan Report”. The “Northcote-Trevelyan Report” aimed to replace the old inefficient system where civil servants were appointed to office “by ministers acting for the Crown without regard to age or qualification in return for political support or out of personal interest”²³ and to create an organisation staffed by “an efficient body of permanent officers, occupying a position duly subordinate to that of the Ministers who are directly responsible to the Crown and to Parliament, yet possessing sufficient independence, character, ability and experience to be able to advise, assist, and to some extent, influence those who are from time to time set over them”.

The core of Northcote-Trevelyan reforms was that all appointments to the Civil Service, and all promotions within the Civil Service should be on merit, and all those appointed to the Civil Service have to satisfy certain educational qualifications, depending on the level for which they apply. The applicant for the higher levels of responsibility must go through an open public competition, and the civil servant’s progress to further higher levels within the Civil Service depends upon his/her personal abilities and achievements.

Those main features of the British Civil Service which were the result of that reform, are still characterising that institution at the present:

“- a permanent Civil Service recruited by competitive examination, and promotion by merit, rather than by patronage or political affiliation;

- a division between intellectual and mechanical work;

- clear separation of tenure, function and responsibilities between civil servants and politicians (i.e. ministers);- high standards of integrity based on a clear separation between public duty and private interest;

- an expectation that civil servants should be employed, subject to adequate performance, within the Civil Service until retirement and that the apprenticeship should start as early as possible...;

- a substantial degree of horizontal coherence across the service, including terms and conditions common as between one department and another, controlled as a part of government expenditure by the Treasury.”²⁴

The second reform (the second period of reconstruction) of the British Civil Service was a result of the critique of the government department model, of the Treasury’s failure in macro-economical management. The Prime Minister Harold Wilson set up the Fulton Committee which in 1966-1968 has prepared a report aimed at finding the answers to the “growing political and academic concern about whether a civil service imbued with powerful generalist and conservative traditions was equal to the tasks expected of it by a technically advanced and increasingly complex society.”²⁵

The Fulton Report (1968) contained the following main proposals:

²² Duggett M., The Evolution of the UK Civil Service, 1848-1997. <http://www.britcoun.org/governance/ukgov/civil/index.htm>. - P. 1.

²³ Anson, The Law and Custom of the Constitution. Volume II. 1935. - P. 236; Duggett M., The Evolution of the UK Civil Service, 1848-1997. - P. 1.

²⁴ Buttler, R., The Evolution of the Civil Service - A Progress Report. - P. 396.

²⁵ Drewry, Gavin; Butcher, Tony, The Civil Service Today. - P. 51.

(1) Establishing a single unified grading structure in the Home Civil Service. Nevertheless such grading was introduced only for the highest posts in the Service, and through changing nomenclature, classes (administrative, executive, clerical) were abolished or merged and called groups.

(2) Creating the Civil Service College to provide post-entry training for in management; encouraging greater professionalism. The existing training centre was re-named and expanded.

(3) Expanding of opportunities for late entry, for short-term appointments and for exchange between the service, the universities and the private sector.

(4) Creating a new department to manage the Civil Service - the Civil Service Department, and removing from the Treasury the function of central management of the Home Civil Service. Meanwhile the Treasury retained control over the expenditures of the Civil Service.

(5) Establishing a planning unit in each government department.

(6) Relaxing the rules regarding secrecy, and making administrative process more open to public knowledge and consultation.²⁶

The Fulton report was only partially implemented, nevertheless it initiated many changes in the Civil Service. Particularly important was “its emphasis on accountability, value for money and a more professional approach to management marked for the first time the beginning of systematic concern about *outputs*, in terms other than the speed and quality of policy advice, and an interest in the way that the Civil Service was *managed and structured*.”²⁷

On the basis of the 1970 White Paper on “The Reorganisation of Central Government”, the responsibilities of several major department were merged; the Government also established a small, multi-disciplinary, Central Policy Review Staff in the Cabinet Office.²⁸

The third reform (the third period of reconstruction) of the British Civil Service is connected with the transition “from public administration to public management”²⁹ initiated in 1979 by the Conservative Government led by Mrs. Thatcher. “The intention behind the changes of the 1980s was to make public sector management more “efficient” according to an ideology which regarded business values and business methods as the most productive and preferred typology.”³⁰

The Conservatives strengthening their party’s think tank, the Centre for Policy Studies, abolished the Central Policy Review Staff in the Cabinet Office which tried to pursue a non-part approach, but continued the Prime Minister’s Policy Unit (created by Harold Wilson).³¹

Mrs. Thatcher and her new right supporters had two basic critiques of the Civil Service: (1) the idea mirrored on the similar idea of the new left that the departmental views are biased, because the bureaucrats are locked in their own experience; (2) cultural biases (left, centre-left, liberal) within the Civil Service, in part because the Civil Service was not in touch with the

²⁶ Birch Anthony H., *The British System of Government*. (Routledge: L.; N.Y., 1993). - P. 148-149; Fry, Geoffrey K., Great Britain. In: *Civil Service Systems in Comparative Perspective*. <http://www.indiana.edu/~csrc/fry1.html>.

²⁷ Butler, Robin, *The Evolution of the Civil Service - A Progress Report*. - In: *Public Administration*. Vol. 71. Autumn 1993. - P. 396.

²⁸ Chapman, Richard A., *Concepts and Issues in Public Sector Reform: the Experience of the United Kingdom in the 1980s*. - In: *Public Policy and Administration*. Vol. 6. No. 2. Summer 1991. - P. 2-3.

²⁹ Gray, Andrew; Jenkins, Bill, *From Public Administration to Public Management: Reassessing a Revolution?* - In: *Public Administration*. Vol. 73. Spring 1995. - P. 75-99.

³⁰ Chapman, Richard A., *Concepts and Issues in Public Sector Reform: the Experience of the United Kingdom in the 1980s*. - P. 3.

³¹ *Ibid.* - P. 3.

business culture, individual service, customer service. Traditionally civil servants would think that the public service is a good thing and would rather prefer it to the 'rampant commercialism'.

The new right critique of bureaucracy draws on almost econometric ways of analysis, people are considered to be 'homo economicus'. The new right paradigm is always of rational individual self-interest, by using this theory and applying it to the Civil Service the new right developed the idea that the bureaucracy is aggrandising what is reflected in: (1) budget maximising; (2) growth of the structures; (3) maximising bureaucrats' own powers. And this was the reason due to which the size of the state was growing (the so called 'ratchet effect' - there is always movement up (in stages, but never down). The 'management revolution' was aimed at "breaking the vicious circle of growth" of the state structures.

There were proposed two main solutions: (1) importing business culture; (2) devising effective mechanisms of accountability in which the public sector (and thus the Civil Service) would have to be exposed to the environment of market competition. Mrs. Thatcher wanted to devise substitutes for price (profit and loss) mechanisms for that sphere. You are not buying bureaucrats' services directly (not paying them directly). The problem is how to incentive civil servants to render good quality services.

Privatisation was proposed as a remedy. A lot of semi-autonomous agencies were created. (But if you move to the system with only one type of mechanisms, you can sometimes get into trouble: quite often the semi-privatised institutions function as "the worst of the two worlds" - the public and the private.)

Summarising the key elements of Civil Service reforms implemented after 1979, there should be mentioned:

(1) The privatisation of a significant part of the public sector, and the creation of 'quasi-autonomous non-governmental bodies' ('quangos'), executive agencies.

(2) The creation (in 1979) of the Prime Minister's Efficiency Unit (reporting to the Prime Minister on the achievement of defined efficiency targets), and the Next Steps Team (assisting the Government in identifying and setting up agencies). The 1988 Report to the Prime Minister from the Efficiency Unit "Improving Management in Government: The Next Steps" recommended "that 'agencies' should be established to carry out the executive functions of government within a policy and resources framework set by a department".³²

(3) The introduction by the "Financial Management Initiative" (1982) of an integrated financial management system which presupposes ensuring to and by managers: (a) delegated budgets; (b) information systems; (c) setting of clear objectives and performance indicators to each civil servant.

(4) The introduction of transparent personnel policy (with regular appraisal and clear arrangements for handling disputes).

(5) Ensuring better possibilities for recruitment to the Civil Service at all stages of a person's career.

(6) A systematic review of all government functions.³³

³² Improving Management in Government: The Next Steps. Report to the Prime Minister by *Kate Jenkins, Karen Caines, Andrew Jackson*. (Efficiency Unit; HMSO: London, 1988.) - P. 9.

³³ Public Sector Reform in Britain: Briefing Notes. Council publications in governance. (The British Council: s.l., s.a.) <http://www.britcoun.org/governance/publications/reform/htm>.

A new Civil Service Management Code (1993) concentrated on laying down major principles, and the departments and agencies specify to their staff particular terms of work in their organisation.

The Citizen's Charter - a national programme operating since 1991 - has become one of the most significant tools of public control over the services delivered by the state bodies and quangos (agencies) in the areas of general interest. The main principles of the Citizen's Charter are as follows:

Standards: each service has to set explicit standards; these are then monitored and results published.

Information and openness: full and accurate information should be readily available in plain language about how public services are run, what they cost, how well they perform and who is in charge.

Choice and consultation: the provision of choice wherever practicable; regular consultation with the users of a service.

Courtesy and helpfulness: services should be run to suit the convenience of users, not staff.

Putting things right: the encouragement of public services to see complaints as an opportunity to find out how to improve their service.

Value for money: efficient and economic delivery of public services within the resources that the nation can afford.

The implementation of the Citizen's Charter is the responsibility of departments, agencies and other bodies which deliver services to the public. For example, in a state hospital in Britain, there is a Patient's Charter describing the rights and obligations. Usually it would be a mistake to be too specific about civil servants (or other public servants) obligations. You can not be too didactic what they can and can not do, but a prompt and friendly service, and clear procedures (just for visiting) have to be regularised. An open and regular access to the services have to be guaranteed. It helps if the citizens are aware of their rights and can use that awareness in their contacts with the state officials.

The control and supervision of the Charter programme execution, coordination of the related activities (including the Charter Mark Awards Scheme, and filing reports on the progress) is exercised by the Citizen's Charter Unit based in the Office of Public Service at the Cabinet Office. The Charter Mark Awards Scheme awards organisations demonstrating that they are providing an excellent service.

In the main in relation to the Civil Service as a state institution, the Labour Government formed after the parliamentary elections in May 1997 continues the major policies of the previous Conservative Government. There are no signs of transition to a new stage (phase) in the evolution of the British Civil Service; the stage that started in 1979 continues with the introduction of some minor re-arrangements.

Certainly, the analysis of each period of Civil Service reforms in the United Kingdom provides valuable experience for the post-Soviet countries, and Ukraine in particular. Meanwhile it seems that the most important document among all mentioned above is the report by Northcote and Trevelyan elaborated about 145 years ago which still forms the basis of the British Civil Service organisation and culture. Moreover, it was commissioned to deal with just the sort of problems which face the Ukrainian State Service now, such as corruption, nepotism, incompetence, and lack of purpose. This genuinely is a seminal document, whereas so much of the recent reform of the British Civil Service is just tinkering with the machinery (and the recent

British reforms are probably less relevant to Ukraine in current conditions). Nevertheless, the reforms of the 1980s - 1990s in Britain are of great interest to Ukraine as to the system promotion of the civil servants, ministries internal practices, legitimate connections between economic (business) interests and the state institutions, internationalisation of the Civil Service, public access to the departmental information and security measures for protecting sensitive information, and in many other areas.

3.2. The evolution of the State Service in Ukraine.

The study of the history of the State Service in Ukraine should start from the history of this institution in Russia, taking into consideration that for quite a long period Ukraine was part of the Russian Empire (first - the Moscow State).

In the Russian State (14th - early 18th centuries) the persons working in the State Service were called 'service people'. From the 16th century the 'service people' were divided into: 'service people by origin' ('po otechestvu') - 'boyars', gentry, boyars' children - who owned the land with peasants, possessed legally secured privileges and held management positions in the army and the State administration and 'service people by conscription' ('po pryboru') - 'strelets' (soldiers, shooters), gunners, city Cossacks etc. - recruited from the peasants and functionaries. Service people received remuneration in the form of money and bread, were exempt from taxes and other public duties.³⁴

Russian czar Peter the Great made a reform of the State Service which particularly resulted in separation of the Civilian State Service as such from the military and court service. On 24 January 1722 Peter the Great issued so-called "Table of Ranks" - a piece of legislation by which:

- such a separation was legalised,
- the state service ('civil service') procedures were established for the functionaries,
- a single system of ranks was established, as well as their nomenclature and hierarchy. The functionaries were divided into two groups: the higher and the lower one; fourteen ranks (classes, class ranks; of which the highest was the first) were established for the higher group of functionaries.

The said legislative act was cancelled by Bolsheviks after the 1917 October Revolution in the 20th century.³⁵

In czarist Russia the State Service meant the activity 'as subordinate administration of the State', i.e. administration of public affairs carried out by the functionaries. State Service had two features: system of functionary's powers (subjective feature) and activity of the functionary as such, carried out within the public administration system (objective feature).

The 'appointment to the service' was performed on behalf of the czar (by the czar decrees - only for the functionaries of the first three ranks); for life as a rule. Persons admitted to be state servants took their oaths.

³⁴ Sovetskiy enciclopedicheskiy slovar. (Soviet Encyclopaedic Dictionary.) (Soviet Encyclopaedia: Moscow, 1985.) - P. 1220.

³⁵ Starilov Yu. N., Sluzhebnoie pravo. (Service Law.) (Bek: Moscow, 1996.) - P. 63.

Russian (in a wide sense, taking into account that Russia was an Empire) functionaries were characterised by red-tape, unequal possibilities in filling the vacant positions, protectionism and class qualification at the time of hiring, absence of democratic grounds and social control over their activity, subordination to representative bodies.³⁶

In 1918, after the October Revolution the ranks of the state servants were cancelled. In 1922 a legislative act regulating service in the public institutions was issued.³⁷

The term 'state servant' ('derzhavnyi sluzhbovet', in Ukrainian) started to gradually disappear. Instead, a general term "functionary" (sluzhbovet, in Ukrainian) was introduced, i.e. an employee involved in a non-physical or intellectual work who receives a fixed salary.³⁸ Functionaries were divided into several big groups: administrative and management staff, engineer and technical staff (ETS), scientific workers, teachers etc.

A specific feature of the status of functionaries (especially those holding the management positions) was the imposition by special normative acts of some additional restrictions (or privileges) for the implementation of their rights (additional as compared to the grounds for disciplinary responsibility³⁹ envisaged by the labour legislation, prohibition to bring an action to the court to appeal the dismissal order⁴⁰ etc.)

On 9 September 1967 the "Single Nomenclature of Positions of Functionaries" was adopted. These normative legal acts regulated the status of functionaries including the ones whom we now call 'state servants'. There was no special law neither at the Federal (i.e. the USSR in general), nor at the republican level.

The status of functionaries of the times of the Soviet Union can be characterised as follows: influence of the Party bodies, absence of special normative legal acts (the regulation of the labour and social security relations was carried out by the general labour legislation acts), lack of professionalism ('people's servants' instead of qualified functionaries), discriminatory norm (prohibition to appeal to the court in case of dismissal)⁴¹ and system of privileges (special 'distribution points', special 'closed' social infrastructure etc.)

Starting from 1917 up until the middle 50's there were practically no academic works dedicated to the Civil (State) Service and legal status of state servants (even in the absence of the term applied, taking into consideration only its sense). In the later period, only the publications of Belsky and manuals on administrative law can be mentioned among the academic works. (During the Soviet times a question of whether the State Service should be considered in the framework of the administrative or public law which was a ground for discussions in the pre-revolution times, was finally settled, in favour of the of the latter).⁴²

³⁶ Ibid. - P. 62.

³⁷ Vremennyye pravila o sluzhbie v gosudarstvennykh uchrezhdeniyah i predpriyatiyah, utverzhdionnyye Dekretom SNK RSFSR ot 21 dekabria 1922 goda. (Temporary rules on service in the public institutions and enterprises adopted by the Decree the Council of People's Commissars (SNK) of RSFSR dated 21 December 1922.)

³⁸ Sovetskiy enciclopedicheskiy slovar. (Soviet Encyclopaedic Dictionary.) - P. 1219.

³⁹ Postanovlenie VTSIK i SNK ot 20 marta 1932 goda "O distsiplinarnoi otvetstvennosti v poriadke podchinennosti". (Resolution of VTSIK and SNK dated 20 March 1932 "On disciplinary responsibility b subordination".) (Cancelled in 1991.)

⁴⁰ Prilozheniia (Perechni No. 1 i No. 2) k Polozheniiu o poriadke rassmotreniia trudovykh sporov. Annexes (Lists No. 1 and No. 2) to the Regulation on procedure of consideration of the labour disputes - the list of persons who are not entitled to appeal a dismissal order in the court.

⁴¹ Starilov Yu. N., Sluzhebnoie pravo. (Service Law.) - P. 63.

⁴² Sovetskoie administrativnoie pravo: Gosudarstvennoie upravleniie i administrativnoie pravo. (Soviet Administrative Law: Public Administration and Administrative Law.) - (Moscow, 1978.) - P. 133-161; Sovetskoie

The Law “On State Service”⁴³ was adopted only after the independence of Ukraine. In particular, this law introduces the institution of the State Service and defines it as follows: “The State Service in Ukraine is the professional occupation of persons holding positions in the public bodies and their administration for the purpose of practical performance of tasks and functions of the state in return for pay from government funds” (in the literally wording: “receiving salary at the expense of the state finance”).

In the Law “On State Service” a differentiation of the legal status of state servants was introduced according to the procedure of its regulation. Article 9 of the said law states that the legal status of the President of Ukraine, Speaker of the Supreme Rada of Ukraine and his deputies, Heads of Committees of the Supreme Rada of Ukraine, people's deputies of Ukraine, Prime-Minister of Ukraine, members of the Cabinet of Ministers of Ukraine, the Chairman (Head) and members of the Constitutional Court of Ukraine, Chairman (Head) and judges of the Supreme Court of Ukraine, Chairman (Head) and judges of the Highest Arbitration Court of Ukraine, Prosecutor General of Ukraine and his deputies is regulated by the Constitution of Ukraine and special laws.

In what concerns the legal status of state servants working in the departments of the prosecutor's office, courts, diplomatic service, customs control, security, internal affairs etc., these are regulated by the Law “On State Service” unless otherwise is prescribed by the laws of Ukraine.⁴⁴

Thus, it can be stated that there is a general State Service (regulated by the law of Ukraine “On State Service) and a specialised State Service in Ukraine (particularities are defined by the separate special legislative acts).

Taking into consideration the variety of functions of the state fulfilled by its bodies (as well as individual state servants) and according to the role and place of a public body in the hierarch of “power pyramid”, the following system of contemporary state service in Ukraine can be distinguished (on the theoretical level while considering the State Service in its institutional sense):

administrativnoie pravo / Pod red. *Yu.M.Kozlova*. (Soviet Administrative Law / Edited b *Yu.M. Kozlov*.) (Moscow, 1985.) - P. 91-92.

⁴³ Zakon Ukrainy vid 16 grudnia 1993 roku “Pro Derzhavnu Sluzhbu”. (Law of Ukraine dated 16 December 1993 “On State Service”). - In: *Uriadovyi Kurier*. 1994, 4 January.

⁴⁴ It should be noted that the development of legislation on regulation of the status of state servants took a form of adoption of special laws for their specific categories by the type of professional activity. Thus, for instance the legal status of judges (of all levels of judicial system in Ukraine and not only the Supreme Court) is defined by the Constitution of Ukraine, Laws of Ukraine, Laws of Ukraine “On Status of Judges”, “On qualification commissions, qualification assessment and disciplinary responsibility of judges of the courts of Ukraine”, “On court self-government bodies”, “On State protection of the employees of the courts and legal protection bodies” etc. Particularities of the legal status of judges of the Constitutional Court of Ukraine are defined by the Law of Ukraine “On Constitutional Court of Ukraine”; judges of the arbitration courts – by the Law of Ukraine “On Arbitration Court”. Particularities of regulation of the status of security service, prosecutor’s office and militia (i.e. police) employees are also regulated by the special Laws of Ukraine “On Prosecutor’s Office”, “On Security Service of Ukraine”, “On Militia” (these particularities are related to the special procedure of filling the positions, qualification requirements, presence of class ranks not envisaged by the Law “On State Service”; but all of them perform the State Service (at least in the framework of a definition given by the Law “On State Service”), since they are fulfilling the state functions within their competence and receive financing from the state funds. This is envisaged in the first part of Article 16 of the Law of Ukraine “On Militia” dated 20 December 1990: the employees perform the “State Service” in the militia regiments).

- political and public level (President, Prime-Minister, Vice-Prime-Minister, Speaker of the Supreme Rada and his deputies, Chairmen (Heads) of the Constitutional, Supreme and Highest Arbitration Courts, Ministers, Heads of the Chamber of Auditors, National Bank of Ukraine, Anti Monopoly Committee, State Property Fund, State TV and Radio Committee, State Securities and Stock Exchange Committee, Prosecutor General);
- coordination and provision level (Administration of the President of Ukraine and the Cabinet of Ministers, administration of the Supreme Rada of Ukraine, administration of the Constitutional, Supreme and Highest Arbitration Courts of Ukraine, patronage services);
- administrative and state level (administration of the Ministries and other central executive bodies as well as the Court of Auditors, National Bank of Ukraine, Anti-Monopoly Committee, State Property Fund, State Securities and Stock Exchange Commission);
- administrative and territorial level (regional and district state administrations);
- administrative and representative level (deputies and administrations of 'self-government', i.e. local government, bodies).

Taking into consideration the real difference between the status of state servants that belong to different elements of the above-mentioned system and their roles, the following problems of their legal provision can be distinguished:

1. The necessity to ensure the differentiation of the State Service by the following criteria: political activity - State Service; according to the territory covered by the relevant body - State Service - municipal service.

2. The ways of legal provision, which are very closely connected with the concept of the State Service (admissibility and necessity of separation of positions of state servants from political posts; separate regulation of municipal service (or as an option, regulation by a separate normative legal act only the service in local government, - 'self-government' - bodies):

- through the adoption of separate special laws;⁴⁵
- through the introduction of a coordinated system of normative legal acts. The basic thing in this system will be the State Service Code "which will bring together the legislative and normative documents related to legal regulation of State Service in the bodies of all branches of power, local government ('self-government') bodies, issues of status of the State Service and their particularities in the courts, prosecutor's office, national security, internal affairs, tax and customs service bodies as well as other specialised state structures."⁴⁶

Should any of these ways be chosen, there should be obligatorily defined the status of:

1. Persons holding political posts;
2. Persons whose positions are not related to political posts but are close to them by the nature of duties executed. Legal status of state servants of this category is different from the status of both the state servants and status of political posts;⁴⁷
3. Functionaries of patronage service;
4. Functionaries of municipal service and/or local government ('self-government').

⁴⁵ *Dubenko, S.*, Stan i perspektivy rozvytku derzhavnoi sluzhby v Ukraini. (Status and Prospects of Development of the State Service in Ukraine.) - In: *Parlamentar. (Parliamentarian.)* - (Kiev.) No. 3. 1998. - P. 23.

⁴⁶ *Lelikov, G.; Obolenskyi O.*, Derzhavna sluzhba: konstitutsiyni zasady, zadachi ta pryncypy. (State Service: Constitutional Grounds, Tasks and Principles.) - In: *Parlamentar. (Parliamentarian.)* (Kiev.) No. 3. 1998. - P. 11.

⁴⁷ *Dubenko, S.*, Stan i perspektivy rozvytku derzhavnoi sluzhby v Ukraini. (Status and Prospects of Development of the State Service in Ukraine.) - P. 21.

Today the norm of the Law “On State Service” envisaging the creation of a relevant body of management of State Service is implemented. By the Resolution of the Cabinet of Ministers of Ukraine dated 2 April 1994 No. 209⁴⁸ in accordance with Article 6 of the said Law, the Chief Department of State Service (usually referred in Ukrainian as an acronym ‘Golovderzhsluzhba’) was created under the Cabinet of Ministers of Ukraine.⁴⁹

According to par. 3 of the Regulation on Chief Department of State Service Golovderzhsluzhba, its main tasks are:

- to ensure (together with other state bodies) the realisation of main guidelines of state policy in the sphere of State Service in the central and local state executive bodies, in the local councils of people’s deputies and their bodies;
- to ensure the functional management of the State Service;
- to elaborate current, long-term forecasts and plans of personnel demand of the central and local state executive bodies, local councils of people’s deputies and their bodies;
- to prepare measures to be taken to increase the effectiveness of the State Service in the central and local state executive bodies, local councils of people’s deputies and their bodies, coordination and control over their implementation;
- to implement methodological management of the selection of state servants in keeping with the due competitive procedure in the central and local state executive bodies, local councils of people’s deputies and their bodies;
- to organise education and professional training of state servants;
- to organise, coordinate and set up the grounds for the extension of academic research related to the State Service;
- to control the conditions of implementation by the citizens of Ukraine of their right to the State Service envisaged in the Law of Ukraine “On State Service.”

The Law “On State Service” was unable to start a new phase in the development of Ukraine’s machinery of state (as to its essence), it only introduced some minor modifications in the administrative structures. In fact, there were two main phases in the development of the modern Ukrainian State Service (as it was moulded in the Soviet times):

(1) The period of existence of a “dual system” (till 1991), when the Party (the ruling Communist Party) was performing the task allocation function, while the apparatus of the ministries and other state agencies was acting as a quite disciplined, pure administrative mechanism to implement the tasks stated by the Party. It was the time when the existing elaborate system of staff training, selection and promotion perfectly suited functioning of the autocratic system of the day. Vertical ties totally dominated within the system of state management.

⁴⁸ Changes and additions to this resolution were introduced by the Resolution of the Cabinet of Ministers of Ukraine dated 7 September 1995, No. 719.

⁴⁹ Regulation on Chief Department of State Service of the Cabinet of Ministers was adopted by the Resolution of the Cabinet of Ministers of Ukraine dated 8 September 1994, No. 631. “On the adoption of Regulation on Chief Department of State Service of the Cabinet of Ministers” (Pro zatverdzhennia polozhennia pro golovne upravlinnia derzhavnoi sluzhby pry Kabineti Ministriv Ukrainy). This resolution also envisages that the Coordination Council on the State Service (interministerial advisory body intended to set out the ways, means and forms of realisation of the main guidelines of the state policy in the field of State Service, uniting all public bodies’ endeavours to increase the effectiveness of the State Service) is presided by the Minister of the Cabinet of Ministers of Ukraine who carries out operational management of the Chief Department of State Service of the Cabinet of Ministers of Ukraine.

(2) The period (after 1991) of dismantling the Party structures in the situation of the a lack of coherent administrative structures and discipline. There are no efficient vertical and horizontal ties within the machinery of state, and the remnants of the traditional Soviet administrative structures are functioning without major conceptual and organisational changes (as to the essence of their institutional nature) in a totally different economic and cultural environment. Sometime the whole system of State Service is close to the state of anarchisation and decay.

For sure, it is imminent that the third period in the development of the state apparatus is about to commence. No social system (not even politically and economically dependent ones) can survive for a long time without a sort of an 'efficient' machinery of state ('efficient' meaning a least 'adequate to the expected social tasks'). The choice would be between various types of efficiency and different types of administration. Those possible systems of administration may range from a some kind of 'self-sufficient' authoritarian, autocratic type (to which a Saddam Hussein's system is an extreme example) to a 'relaxed', cosmopolitan, 'open', 'foreign capital - friendly' 'neo-colonial' one (some such extreme examples exist in the Tropical Africa area). In the present situation no 'solution' can theoretically be excluded, even though the dominant Ukraine's public opinion would prefer European-type approaches.

In order to make transition to the third period along the lines of the policy of europeanisation (including in the sphere of state machinery functioning), there is little use of general 'reformist' rhetoric, and it is not enough just to draft plans of Administrative Reform.⁵⁰ A strong political will be needed combined with the correct organisation and the orientation to the interests of the nation as a whole, not only at the interests of politically and economically dominant clans and other privileged strata. The accumulation of the adequate knowledge and skills in the social sphere (including the knowledge and skills related to the efficient use of international experience, in particular through technical assistance programmes) is a prerequisite of successful reforms.

Chapter 4. The Structure and functions of the British Civil Service and their relevance to Ukraine

The role of civil servants is to give their Ministers independent expert advice, and to efficiently and economically implement the policy approved by Parliament. Civil servants are also responsible for helping their Ministers to defend their policies before Parliament and before the public. It may be said that besides performing day-to-day (routine) functions, the role of the Civil Service in relation to political figures in the ministries is 'to advise, encourage, warn', while the ultimate political responsibility for the results of the decisions taken rests with the political staff of the ministries.

Traditionally, the Civil Service has been divided into four categories:

(1) **administrative** (Grade 1 - Grade 7) that consists of policy advisors to Ministers and of senior managers,

⁵⁰ Ukaz Prezidenta Ukrainy No. 810/98 "Pro zahody shchodo vprovadzhennia Kontseptsii administratyvnoi reformy v Ukraini. In: Uriadovi kurier, 1998, 25 July, p. 5; Concept Paper on Administrative Law Reform in Ukraine. (Ukrainian Cabinet of Ministers' Working Group on the Preparation of the Concept paper on Administrative Law Reform and Draft Administrative Code: Kyiv, 1998).

(2) **professional** that consists of specialists who provide advice within their own discipline (lawyers, economists, librarians, information officers, statisticians, scientists, research officers, technologists and similar, graphics officers, marine services, trainers, curators and conservationists, police group, specialist support services);

(3) **executive** and (4) **clerical** that are responsible for implementing the Government decisions and for providing general support (Senior Executive Officer, Higher Executive Officer, Executive Officer, Administrative Officer, Administrative Assistant, Secretaries and Typists, Social Security Officers, Other Specialist Staff).⁵¹

“The reforms of the last few years have swept away nearly all the traditional Civil Service service-wide job titles and ‘grades’ apart from Permanent Secretary”.⁵²

The government departments, by its structure and division of responsibilities correspond to the Cabinet ministerial responsibilities. Some exceptions exist, when one Cabinet minister is supported by more than one Government department, and vice versa.

The Cabinet Office has a tripartite structure:

The Cabinet Secretariat supports ministers collectively in the conduct of Cabinet business;⁵³

The Office of Public Service is responsible for Citizen’s Charter, Next Steps Programme, duties and standards in the Civil Service, promoting and supporting Good Government, provision of effective and efficient public services; it is connected with the Executive Agencies: Central Office of Information (COI), Central Computer and Telecommunications Agency (CCTA), Civil Service College, Government Car and Dispatch Agency, Property Advisers to the Civil Estate (PACE), Security Facilities Executive (SAFE), The Buying Agency (TBA);

The Establishment Officer’s Group provides central services to the whole of the Cabinet Office.

There are the following ministries and departments in the UK now:

- Ministry of Agriculture, Fisheries and Food (MAFF) and the Executive Agencies: ADAS, Central Science Laboratory, Central Veterinary Laboratory, Intervention Board, Meat Hygiene Service, Pesticides Safety Directorate, Veterinary Medicines Directorate.

- Department for Culture, Media and Sports (DCMS) and two Executive Agencies, 44 Non-Departmental Public Bodies and five public corporations.

- Ministry of Defence (MOD) and a number of Executive Agencies responsible for maintaining the military bases, preparing a qualified staff for the Armed Forces, delivering analytical and research services etc.

- Department for Education and Employment (DFEE).

- Department of the Environment, Transport and the Regions (DETR).

- Foreign and Commonwealth Office (FCO).

- Department of Health (DH) and Health and Safety Commission.

- Home Office (HO).

- Crown Prosecution Service (CPS).

⁵¹ Civil Service Statistics. (HMSO: London, 1993.) - Table 4; The Civil Service Year Book. 1995. (HMSO: London, 1995.) - Table II. - P. xiv.

⁵² Finding Your Way Round Whitehall and Beyond. Cabinet Office: January 1998. - <http://www.britcoun.org/governance/ukgov/whitehall/htm>.

⁵³ Ibid.

- Lord Chancellor's Department (LCD) and Separate Departments: HM Land Registry (LR), Public Record Office, Northern Ireland Court Service, and Executive Agencies: the Cour Service and the Public Trust Office.

- Northern Ireland Office's (NIO) (the Department cooperates with the Head of the Northern Ireland Civil Service, Central Secretariat and the Northern Ireland Departments to ensure a coordinated and coherent approach to all aspects of Government policy in Northern Ireland).

- Department for International Development (DFID).

- Office for National Statistics.

- the Scottish Office and separate departments: the Scottish Office Agriculture, Environment and Fisheries Department, the Scottish Office Education and Industry Department (SOEID), the Scottish Office Home Department (SOHD), the Scottish Office Department of Health (SODOH), the Scottish Courts Administration; the General Register Office for Scotland, the Scottish Record Office, Registers of Scotland; and Executive Agencies: the Scottish Fisheries Protection Agency, Fisheries Research Services and the Scottish Agricultural Science Agency, the Student Awards Agency for Scotland and the Scottish Office Pensions Agency, Historic Scotland; the Scottish Court Service.

- Department of Social Security (DSS) and Executive Agencies: the Benefits Agency, the Contributions Agency, the Child Support Agency, the War Pensions Agency, the Informati Technology Services Agency.

- Department of Trade and Industry and Executive Agencies: the Radiocommunications Agency, National Weights and Measures Laboratory, Employment Tribunals Service, Companies House, Insolvency Service, Patent Office and seven scientific Research Councils.

- Her Majesty's Treasury (HMT).

- Board of Inland Revenue (IR) which - a non-ministerial department ⁵⁴

- HM Customs and Excise (C&E).

- Office of Fair Trading (OFT) - a non-ministerial department.

- Welsh Office.

Internal structure of Governmental Department and Agencies are characterised by a strong and clear subordination.

The top level of administration in the department is represented by two different categories:

(1) Ministerial team which does not belong the Civil Service:

(a) Government Ministers who are under the control of Minister responsible to the Parliament for the conduct of his department;

(b) junior ministers who assist Ministers, having particular duties delegated to each of them.

(2) Top civil servants:

(a) Permanent secretary (or a permanent under-secretary of the state) who (being the head of the Civil Service in the Department) performs the functions of minister's immediate adviser on policy, manager of the day-to-day work of the department, responsible for staffing and organisation of the department, accounting officer with the direct responsibility to Parliament for the legality and efficiency of departmental expenditures;

⁵⁴ PMS Parliamentary Companion. United Kingdom and European Union. Issue No. 26 - January 1996. (PMS Publications Ltd: London, 1996.) - P. 115.

(b) second permanent secretaries, who are responsible for long-term planning and assistance to the permanent secretary (these posts are created in the departments delivering services not to the public, but to other, e.g.: the Treasury);

(c) deputy secretaries, assisting a permanent secretary.

The next level:

(a) under secretaries are heads of branches;

(b) assistant secretaries are heads of divisions (they are senior civil servants directly concerned with policy advice);

(c) principals are heads sections (parts of divisions).

Professional assistance is performed by specialists.

The entry procedures for joining to civil service, the framework for selection are set by the Civil Service Commissioners' Recruitment Code. Department and agencies are responsible for staff recruitment, and have to observe these regulations. The selection for a special 'fast-stream' graduate career is coordinated by the Office of Public Service and carried out by the Recruitment and Assessment Services Agency. Within the 'fast-stream' graduate employment skilled graduates are promoted to responsible positions through a specific training programme after entering the civil service.⁵⁵

Now in the UK there is no official age limit for joining the Civil Service. Departments act as an equal opportunities employer, i.e. conducts recruitment tests, competitions, interviews regardless of gender, ethnic origins, disability, marital status etc., and guarantees fair treatment for different categories of staff.

There are three main types of appointments in Departments: (a) established appointments; (b) conditional appointments; (c) casual appointments (for short term needs).

Specialists (lawyers, accountants etc.) are recruited by the Civil Service Commission through special selection competition; executive and clerical staff are often recruited directly by local offices. The departments and agencies themselves are responsible for recruitment up to Grade 5. For Grade 5 and higher, they organise recruitment under the supervision of the independent Civil Service Commissioners. The recruitment may be organised: (a) by departments and agencies themselves; (b) by a public agency of the Cabinet Office - the Recruitment and Assessment Service Agency; (c) by private recruitment agencies.

All full-time British civil servants above clerical level, "may be required to move within the United Kingdom and some may be required to move to posts overseas".⁵⁶

May the British model of Cabinet Government and the executive accountability through Cabinet be appropriate to Ukraine? In Britain there is no separation between the executive and the legislature. As Walter Bagehot said in the 1860s, 'the Cabinet is the efficient secret of the British Constitution: it is the hyphen that joins, the buckle which fastens the executive part of the state to the legislative part of the state'.

At the moment such system can not be used in Ukraine for at least three reasons: (1) still there is no structured majority in Parliament (Supreme Rada); (2) the Cabinet of Ministers is not a homogenous entity dominated by one party (formally it may be said that it is dominated by the pro-presidential NDP, but in fact the Cabinet of Ministers is more amorphous than); (3) the key

⁵⁵ *Auer, Astrid; Demke, Christoph; Polet, Robert*, Civil Service in the Europe of Fifteen: Current Situation and Prospects. - P. 39.

⁵⁶ *Ibid.* - P. 52.

norms of the Constitution envisage that the composition of the Cabinet of Ministers (jointly formed by the President and the Prime-Minister) does not necessarily reflect the composition of the Parliament

The March 1998 parliamentary elections in Ukraine produced some clearer lines of accountability, because there are the party list votes, and there is a relatively small number of successful parties. The party factions are formed in the Parliament. Nevertheless still there is no further progress in the creation of lines of responsibility of the Government: the Prime-Minister can continue in office even if his party gets very low percentage of votes at parliamentary elections.

In more general terms the Ukraine's constitutional model is semi-presidential, and may be it is more appropriate for Ukraine to have a more American-type system where the President is able to appoint not only his presidential administration, but also the leading officials of the ministries. In such case the President should be more accountable for the results of the ministerial work, and not just blame the inefficiency of the Prime-Minister and accuse the Parliament of "obstructing the President's reform activities". When the lines of accountability are blurred, it is in the interests of those who just want to personally profit from the positions of authority which they hold.

It is of a very big importance for Ukraine the dominant in Britain paradigm of meritocratic pyramidal 'Weberian' structure - idea of a 'distilled rationality', that the people are employed in the Civil Service on the basis of expertise, that the experience bring them on the top. The promotions are determined by the structure of the Civil Service itself, but not by the political masters. It is a kind of a 'self-generating' system, under which the ministry is applying the general principle; and as a rule (within the general paradigm) the appointments and promotions are not the result of political decisions.

Fulton report in Britain and later the 'management revolution' has led to the conclusion that may be 'parachuting' experts is a good idea (thus undermining the myths of the 'Weberian' system). It may have validity for Ukraine as well, but at the moment Ukraine is so far in the opposite direction: it needs a clearer distinction between (1) what is political (e.g. party political activities), (2) what is administrative (ministerial activity), and (3) what is private business, and a clear answer to the question what is permissible in each of these spheres.

American or French system may be more attractive for Ukraine. Under such system within the Ministerial Cabinet there is more insertion of experts brought from outside the Civil Service to the higher positions in the state machinery: a Minister brings with him political and economic advisors, press officers, speech writers. Britain is finally beginning to move in this direction. It became a much stronger trend in Labour after their parliamentary victory in May 1997, may be because the Labour have spent too much time in the opposition and accustomed to have their own advisors. In any case, alternative (from outside the Civil Service) source of advice may be very important. In Ukraine it is often necessary to be less dependent on the traditional state servants lacking innovative approaches, but there is a danger that one may start ignoring them at all.

It seems that in Ukraine, a very interesting, innovative approach to the fusion of strength of both the state servants and the experts from outside the state apparatus, is represented now by the practice of the team of the Deputy Prime Minister Sergii Tygipko. The Secretariat of the Inter-Institutional Council for the Implementation of the Programme of Economic Reform ⁵⁷

⁵⁷ Polozhennia pro Mizhvidomchu radu z vprovadzhennia programy ekonomichnyh reform. - In: Kabinet Ministriv Ukrainy. Postanova vid 17 travnia 1997 r. No. 455.

(functioning within the Office of the Deputy Prime Minister) is mainly staffed by the outside experts working under the leadership and guidance of the top state servants, within the reform programmes supported (financed and in other way assisted) by the United Nations, the British Know-How Fund and other foreign donor organisations.

Availability of prompt and comprehensive information is one of the features of British machinery of government, and is an important factor defining the work style of civil servants. Meanwhile in Ukraine you often can not even find the text of a necessary law or (what is more usual) a by-law or a regulation. A number of law firms and information companies closely connected with state servants get good incomes from the ability to promptly provide to the customers legal information which circulation is limited due to the lack of the necessary state information institutions and established procedures of dissemination. An effective official state publishing house similar to the British institution of Her Majesty's Stationary Office (HMSO) is expedient for Ukraine. Some progress achieved in the development of private systems of computerised legal information in Ukraine can not substitute the role of a HMSO-type institution.

Quite ironically, the Ministry of Foreign Affairs of Ukraine can not itself systematise and publish the text of Ukraine's international economic treaties, and the relevant assistance will be granted by the EU within the TACIS project "The Ukrainian - European Policy and Legal Advice Centre" (UEPLAC). Situation in a number of other ministries is much worse.

Britain provides its civil servants decent salaries, and it has positive social results as to stability of staff. (Though in fact, the British state obtained a lot of public servants 'at a discount' - at low salaries, e.g. in the universities - that sector was rather neglected by Mrs. Thatcher.) The situation in Ukraine is much worse: there is a haemorrhage of talent and expertise, because the salaries are pitiful.

Ukraine has still to go a long way leading from a 'Gogolian' paradigm (vividly described by the great Russian and Ukrainian writer N.V.Gogol in the 'Revisor') to 'Weber' one - the road to europeanisation, departing from the state where you often have to bribe the officials even to perform their duties; the arbitrary, personalised system reluctant to work according to rules; the system in which state servants are very regimented, strictly determined in theory, but in practice when you get to a particular central state institution or to a town distant from the centre, everything becomes personalised, where there are very few signs of acting according to rules.

Chapter 5. Current attempts to reform the state apparatus in Ukraine and the possible mechanisms of adaptation of British experience

5.1. A general overview of the present situation in the State Service in Ukraine.

In what concerns the realisation of the right to State Service, filling the vacancies, conditions and procedure of the State Service, social and pension security of the state servants,⁵⁸ the right to State Service is vested in citizens of Ukraine regardless of their origin, social and property status, racial or national belonging, sex, political affiliation, creed, place of residence, provided they have an appropriate education and professional training, and are selected in keeping with due

⁵⁸ The analysis that follows will relate mainly to the general State Service, the legal grounds of which were set by the Law of Ukraine "On State Service". The analysis of the special normative acts (related to the above-mentioned Law) requires a much bigger scope.

competitive or other procedures stipulated by the Cabinet of Ministers of Ukraine. Article 12 of the Law “On State Service” imposes restrictions on admission to the State Service: “the following persons shall not be elected or appointed to a position in public body and its administration: when proclaimed legally incapable in keeping with set procedures; having a criminal record, this being incompatible with holding a state servant rank; bound to be subordinated to, when employed, or otherwise dependent on close relatives or in-laws (this list is not exhaustive). Other cases of restriction can be envisaged by the laws of Ukraine.”

A person seeking to take up the position of a state servant of the third - seventh category⁵⁹ has to submit information about his income and financial liabilities to the place of his future service about himself and his family; a person seeking to take up the position of a state servant of the first and second category - has also to submit the information about his/her real estate and movable property having a stated value, deposits in the banks and securities.⁶⁰

The employment of persons seeking to take up positions that belong to the third - seventh category by the law is carried out in keeping with a due competitive procedure.⁶¹ The procedure and conditions of the competitive procedure are set by the Cabinet of Ministers of Ukraine.⁶²

A trial period of up to six months can be set at the time of employment for the State Service.⁶³ (Usually the trial period is that of a maximum. For comparison: parts 1 and 2 of Article 27 of the Code of Laws on Labour in Ukraine, the trial period for the workers is limited to one month, for other categories of employees - up to three months; and only in exceptional cases by agreement with trade union committee - up to six months.)

According to Article 19 of the Law of Ukraine “On State Service”, state servants and persons seeking these positions can have a traineeship period. A person that have completed the traineeship has a priority right to fill the vacancy of a state servant during the competitive procedure (state servant that have completed the traineeship can be promoted to a higher position without competitive procedure, exclusively on the basis of a manager’s decision).⁶⁴ A priority right

⁵⁹ The classification of ranks of state servants according to part 1 of Article 25 of the Law of Ukraine “On State Service” is done by organisational and legal level of the body employing them, scope and nature of the competence for a specific position, role and place in the structure of a public body. On the basis of implementation of the above-mentioned criteria, seven categories of the state servants are defined. State servants ranks correspond to a certain category (Article 26 of the Law “On State Service”). The assignment of the next rank within one category takes place after two years of successful work at the position or for performance of very responsible tasks. Transfer to the position which belongs to lower category does not deprive oneself of the right to the rank already assigned in compliance with the law (the rank is similarly preserved if a functionary leaves the State Service and returns later.) State Servant’s deprivation of a rank by the state body that have assigned the rank, is possible only by the court’s decision.

⁶⁰ A person seeking to take up the position of a state servant has to submit a declaration of an established form together with the job application or a form certifying the participation in the competition procedure to fill the vacancy, and the state servants have to submit a declaration for the previous year annually before 15 April at the place of their work (Resolution of the Cabinet of Ministers of Ukraine dated 11 August 1995 No. 641 “On implementation of Article 13 of the Law of Ukraine “On State Service”).

⁶¹ In line with that, the President of Ukraine, the Speaker of the Supreme Rada of Ukraine, members of the Government of Ukraine and heads of local state administrations are entitled to select and hire persons to the patronage service individually, at their discretion.

⁶² Resolution of the Cabinet of Ministers of Ukraine dated 4 October 1995 No. 782 “On approval of Resolution on carrying out due competitive procedure to fill the vacancies of state servants”.

⁶³ Article 18 of the Law of Ukraine “On State Service”.

⁶⁴ Resolution of the Cabinet of Ministers of Ukraine dated 1 December 1994 No. 804 “On approval of resolution on procedure of traineeship in the public bodies”.

during the competitive procedure to fill the vacancy of a state servant is given to a person from the State Service “personnel reserve”, envisaged by Article 28 of the Law “On State Service”.⁶⁵

The following data can be presented: about 75% of state servants are employed through the competitive procedure, about 5% - through internal transfers and traineeships, more than 20% after six-months traineeship. Administration of the Cabinet of Ministers of Ukraine now has 45% of appointments done directly without competitive procedures and trials. (It should be mentioned that the administration of the Cabinet of Ministers of Ukraine has positions falling under first - fourth categories and to fill the highest two the competitive procedure is established.)⁶⁶ Probably it is connected with frequent changes in the Government and, as we have got accustomed to, and also with frequent changes of teams. If there is a lack of time (as it is considered to be), the goal justifies the means.

The age limit (the law can usually envisage the exceptions) for the State Service is 60 years for men and 55 years for women.

The legislation sets out additional grounds for the termination of the State Service (it means that the employment in the State Service presumes the existence of labour relations with a public body, the abrogation of the employment agreement with a state servant, i.e. an actual termination of the State Service; and the main grounds for the abrogation of the employment agreement are envisaged by the Code of Laws on Labour in Ukraine - that is why Article 30 of the Law “On State Service” envisages additional grounds for termination of the State Service):

- breaching the terms of realisation of the right to the State Service;
- failing to comply with the requirements related to the State Service (Article 16 of the Law);
- reaching the age limit of the State Service by the state servant;
- the dismissal of state servants holding positions of the first or second category;
- the disclosure or presence of circumstances that are hampering the employment of a state servant in the State Service (Article 12 of the Law);
- the refusal of a state servant to take the oath or violation of it;
- failing to submit or submitting the false information about the income by the state servant.

Certain restrictions are understood as the requirements related to employment in the State Service (Article 16 of the Law). In particular, a state servant is not entitled to take actions envisaged by Articles 1 and 5 of the law of Ukraine “On Combating Corruption”,⁶⁷ participate in strikes and other actions interfering with the activities of a public body. Other restrictions as to performance of State Service related to certain categories of functionaries can also be envisaged, but these restrictions are established only by the legislative acts of Ukraine.

In what concerns the dismissal as grounds for the termination of the State Service, it should be noted that this relates only to state servants whose positions fall within the first or second category. Article 31 of the Law “On State Service” defines the grounds for the dismissal.

⁶⁵ Resolution of the Cabinet of Ministers of Ukraine dated 19 December 1994 No. 853 “On resolution on creation of personnel reserve for the State Service” (with changes and additions).

⁶⁶ *Kravchuk, L.*, *Administrativna reforma v Ukaiini: stan i perspektyvy.* (Administrative Reform in Ukraine: Status and Prospects.) - In: *Visnyk Ukrainiskoi Akademii derzhavnogo upravlinnia pry Prezydentovi Ukrainy.* (Bulletin of the Ukrainian Academy of State Administration under the President of Ukraine.) No. 1. 1998. - P. 20-21.

⁶⁷ Part 1 of Article 16 can be found in Law of Ukraine (in the wording of 5 October 1995 No. 358/95-VR) “On changes and additions to certain legislative acts of Ukraine in connection with the adoption of the Law of Ukraine “On Combating Corruption”.

In general, the issue of termination of the State Service is very interesting from the point of view of its regulation, as well as (even more) from the point of view of the application of the relevant norms. The shifts in the heads of the Ministries and other state institutions (that were mentioned above) entail the replacement of their deputies and the “retinue”.

Since usually there is a lack of legal grounds for such changes, the not really legal grounds are used quite actively. That includes the unnecessary reorganisations implemented with the sole aim to create some reason for the reshuffling of the personnel, the elimination of a position (and it reintroduction some time later, especially for a “close” person), mass dismissal at the boss’ “own” discretion (the persons being dismissed are motivated very easily: it is better to be dismissed at one’s own request than due to some official reason) etc. Unfortunately, such practice exists in Ukraine, and it was vividly demonstrated by the changes in the Government in the summer of 1997; and (as it have become clear later) only on the basis of one criterion: ‘fellow - stranger’, whose ‘camp’ one belong to, the state servants have been dismissed without real legal grounds, and have been in vain placing their hope to the court protection. Besides that, a constant budge deficit and the references on different levels to the ‘bulge’ of the state machinery initiated “a radical decision” - the announcement of a total reduction of personnel of public bodies by 25-30%. (This figure has appeared back in the 60’s and has not yet been changed.) Such reductions have not taken place lately but the possibility itself is a kind of a “sword of Damocles” hanging over every person in question, especially the one in respect of whom the ground for dismissal may not be found.

The issue of independence of functionaries should be considered in a wider sense. The dependence on political orientation of the manager (managers) was described above. This dependence manifests itself not only as a possibility to loose the job when the management i changed; such things lead to the policy of timeserving and lowering the level of the initiative and activity of state servants.

The thesis of a subjective dependence on the management can be illustrated by presenting the data on results of a poll of state servants in Dnepropertovsk. The poll included the factor affecting the promotion at service. The first place was given to the factor of personal and professional traits of the applicant (48%), the second place (31,1%) was given to the factor o subjective influence exerted by the manager of an institution on the due competitive procedure as well as on the promotion (i.e. the influence over the results of the competition or other procedure envisaged for filling the vacancy).⁶⁸

It is not possible to ensure the independence of state servant during performance of his duties without the appropriate material provision. The Law “On State Service” states that the remuneration for the work carried out by the state servants shall guarantee sufficient materia conditions for the independent performance of duties, promote staffing of public bodies with the competent and experienced personnel, stimulate their faithful and initiative work.⁶⁹

The salary of state servants consists of the official pay, bonuses, additional payments for the ranks, bonuses for the length of performing the State Service and other bonuses.

The bonus for the length of service is paid to state servants every month counted in percentage to the official salary taking into consideration the bonus for the rank and depending on

⁶⁸ *Seriogin, S.*, Kadrovi problemy administratyvnoii reformy. (Personnel Issues of the Administrative Reform.) - In: Visnyk Ukrainiskoi Akademii derzhavnogo upravlinnia pry Prezydentovi Ukrainy. (Bulletin of the Ukrainian Academy of State Administration under the President of Ukraine.) No. 1. 1998. - P. 101.

⁶⁹ Part 1 of Article 33 of the Law of Ukraine “On State Service”.

the length of service: more than 3 years - 10%, more than 5 years - 15%, more than 10 years - 20%, more than 15 years - 25%, more than 20 years - 30%, more than 25 years - 40%.

State servants can have bonuses for high working achievements and performance of very important work, bonuses for temporary performance of duties of absent employees and other bonuses and additional payments, as well as material assistance to settle social and domestic issues.

Shortening of budgetary appropriations cannot be a basis for the reduction of official salaries, bonuses to them and financing of other guarantees, privileges and compensations envisaged by the law.

It is very well declared, but in 1997 the official monthly salary of the 9th rank functionary (level of deputy head of a department in the Ministry) was 111 hryvnias (around \$ US 55 at the exchange rate of that time). Together with the bonus for the rank (in the absence of the length of service) an average monthly salary was around 160 hryvnias (\$ US 80). For comparison: an average rent of an apartment in Kiev varies from 45 to 90 hryvnias depending on the size). But the expenditures are not limited only to the rent of an apartment, or payments for the accompanying services.

Thus a question arises: will a state servant work faithfully under such conditions, will he be able to refrain from breaching the anti-corruption legislation or from illegal connections with business etc. And finally, will a real specialist come to the State Service

In what concerns the professional level of state servants, the issue is being gradually solved, but very slowly. 75% of managers and their deputies in local executive bodies and mayors of the cities under a region ('oblast') subordination have higher technical or agricultural education, only 8.5% have economic education, and 3.5% - higher lawyers' education. So, the prevailing part of the management is more prepared for the production and economic processes provision rather than for the managerial activity.⁷⁰

What has been already done in this respect? The Academy of State Administration under the President of Ukraine was created, the system of training and re-training of personnel has been established.⁷¹ But in 1996 only 11% of the management (about 50% of what is needed) have improved their qualification).

The State Service is not attractive in today's Ukraine by many reasons, especially for the young who prefer the business with its self-realisation possibilities and high salaries outside the strict subordination framework.

State servants cannot be proud of their salaries, but we can say that the State took care of them in terms of pensions (in comparison with other categories of population). To the right to receive the state servant's pension are entitled those persons who have reached the retirement (pension) age, specified by the legislation of Ukraine, with the total length of service for men - not less than 25 years, and for women - not less than 20 years, including the length of State Service

⁷⁰ *Lugovy, V., Reformuvannya systemy pidgotovky upravlynskyh kadrov. (Reform of the system of preparation of management personnel.) - In: : Visnyk Ukrainiskoi Akademii derzhavnogo upravlinnia pry Prezydentovi Ukrainy. (Bulletin of the Ukrainian Academy of State Administration under the President of Ukraine.) No. 1. 1998. - P. 25.*

⁷¹ Decree of the President of Ukraine dated 30 March 1995 No. 398/95 "On system of training, re-training and qualification improvement of state servants"; Resolution of the Cabinet of Ministers of Ukraine dated 28 Jul 1995, No. 560 "On measures related to qualification improvement of state servants of the state executive power bodies" ("Pro zahody shchodo pidvyshchennia kvalifikatsii derzhavnyh sluzhbovtziv organiv derzhavnoii vykonavchoii vlady".)

not less than 10 years. The above-mentioned persons receive pensions amounting to 80% of the sum of their official (effective) salary with the bonuses envisaged by this law without establishing the limits for the upper amount of the pension.

For every year of work over 10 years in the State Service, the pension is increased by one percent of the salary, but not more than 90% of the official (effective) salary with bonuses envisaged by this law without limiting the total amount of the pension.

A special attention was given to the pensions of persons whose positions fell under the first and the second categories, including the case of their dismissal. Persons who did not have 10 years experience in public bodies or local government ('self-government') bodies at the time of their retirement were not forgotten as well

State servants also have privileges related to annual vacations. The term of these vacations is 30 calendar days (and not 24 days as envisaged by the Law of Ukraine "On Vacations").⁷² Nevertheless wherever is necessary at the request of the manager, the state servant may be called back from the vacations; at the manager's request he must work during the weekends and holidays (with the relevant compensation).

State servants in principle individually plan their working day (within the performance of the task assigned to them by the manager). The work in the organisation is built on a strict principle of subordination. The task is assigned by the highest manager to the lower one, the latter, in his turn, organises its performance in the department subordinated to him. The personal responsibility is put to the chief of the department and the immediate executor.

The circulation of documents is organised in compliance with the state standard, adopted in the Soviet times by the Soviet Derzhstandard (the State Standardisation Committee).⁷³

Usually the chief of a public body is a person who has to organise the work of that institution and is responsible for the results. All outgoing correspondence is signed by the chief (or in some cases, like, for instance, answers to the citizens letters or correspondence with the lower structural divisions, by his deputy).

According to Ukrainian experts assessments, still at the moment, "no mechanism has ever been created to hire personnel for civil service on a contractual basis. Little attention is paid to their career development based on their personal achievements, and no criteria to evaluate the results of their activities have been defined. There is an urgent need to separate the political positions from those of civil servants. The presidential Academy of State Administration carries out training of insignificant number of civil servants, and this cannot meet the needs of the state power bodies."⁷⁴

5.2. Current programmes of administrative reform in Ukraine.

With the assistance of international advisors some draft of legislation related to the issues of State Service were prepared, among them a draft Law "On Civil Service at State Organs and

⁷² Part 1 of Article 35 of the Law of Ukraine "On State Service".

⁷³ See e.g.: Unifitsyrovannyye sistemy dokumentatsii. Sistema organizatsionno-rasporiaditelnoi dokumentatsii. Tribovaniia k oformlieniuiu dokumentov. GOST 6.38 — 90. (Gosudarstviennyi Komitet SSSR po upravleniiu kachestvom produktsii i standartam: Moscow, 1990.)

⁷⁴ *Derkach, I.*, Problems of Administrative Law in Ukraine: an Overview. - In: Ukrainian Law Review. No. 1. Vol. 1. 1998. P. 25.

Offices” (prepared by the Committee on Legal Policy and Judicial and Legal Reform with the assistance of the US ARD / Checchi Rule of Law Consortium (in 1997).

In the current situation when the ‘apparatus’ of the Cabinet of Ministers often substitutes the role of the Ministers and Ministries’ state servants, it is very important to use the best international patterns to define the role of the Cabinet of Ministers. Foreign donor organisations (the World Bank in particular) are paying special attention in their advisory work in Ukraine. Nevertheless, the legal status of the Cabinet of Ministers is still to be defined in accordance with the Ukraine’s 1996 Constitution, the Law “On the Cabinet of Ministers of Ukraine” was vetoed by the President

The Ministry of Justice of Ukraine has created a working group to draft the Code of State Servant Behaviour. In 1998 on the basis of generalisation of the relevant normative acts of other countries (including Britain) and the needs of Ukraine’s State Service, that working group has prepared the draft “Code of General Rules of Behaviour of State Servant” which comprises the following sections and chapters:

Section I. General provisions.

Section II. The main requirements to a state servant and his behaviour.

Chapter 1. The requirements to the professional training of a state servant.

Chapter 2. Requirements to the implementation of legality in the activities of a state servant.

Chapter 3. The ethic requirements to a state servant behaviour.

Chapter 4. The anti-corruption requirements to the activities of a state servant.

Chapter 5. The requirements to the rational organisation of a state servant work.

Chapter 6. The procedures of implementation by a state servant of his rights to which he is entitled by the legislation of Ukraine on the State Service.

Section III. The implementation of requirements to the state servant behaviour in various spheres of his activities.

Chapter 1. The state servant behaviour standards in the internal organisational relations.

Chapter 2. The state servant behaviour standards in the relations with citizens.

Chapter 3. The state servant behaviour standards as to keeping of state secrets and non-disclosure of confidential information.

Chapter 4. The state servant behaviour standards with respect to his financial and property issues.

Chapter 5. The state servant behaviour standards in the relations with citizens’ associations and religious organisations.

Chapter 6. The state servant behaviour standards in the relations with international organisations, foreign institutions and citizens.

Section IV. The incentives for and disciplinary responsibility of state servants.

Chapter 1. The state servants effective work incentives.

Chapter 2. General provisions with respect to the state servants disciplinary responsibility

Chapter 3. Responsibility for state servants disciplinary offences.

Chapter 4. Proceedings in state servants disciplinary cases.

Section V. Final provisions.⁷⁵

There is quite a lot of confusion in relation to what state institutions or the *ad hoc* bodies are responsible for the elaboration of particular pieces of draft legislation. For some reason, in Ukraine

⁷⁵ Kodeks zagalnyh pravyl povedinky derzhavnogo sluzhbovtsia. (Ministry of Justice of Ukraine: Kiev, 1998.)

there are two different bodies (nevertheless comprising a number of the same persons) entitled to draft proposals for the administrative reform:

(1). On the initiative of the Ministry of Justice of Ukraine a working group (a different one from the mentioned above) was formed by the Order of the Cabinet of Ministers of 12 May 1997, to prepare the Concept of Administrative Law Reform and draft the Administrative Code of Ukraine.

(2). And on 7 July 1997, the President of Ukraine issued the Decree on State Committee for Conduct of Administrative Reform in Ukraine. That Committee was formed under the chairmanship of Ukraine's former President Leonid Kravchuk.

The task of the reform is to drastically change the system of state governance in all the spheres of public life, to develop the structure and functions of the executive bodies gradually shifting from the sectorial principle of Ministries arrangement over to the functional one, introduce an effective state control system, rearrange the state financial system, deregulate and simplicate managerial services, improve the legislative basis of administrative relations, and reform the managerial training and re-training system.⁷⁶

The Concept Paper on Administrative Law Reform was completed in May 1998, its Chapter 9 deals with the issues of development of the Law on State Service. Meanwhile on the 22 of July 1998, the Concept of the Administrative Reform in Ukraine was approved by the Decree of the President of Ukraine No. 810/98.⁷⁷ (Chapter 3 of the Concept refers to the issues of organisation of State Service.)

The way how that Concept was published is very symptomatic and reveals the predominance of the old Soviet patterns in legislative drafting and in the relations between the state institutions and the public. The above-mentioned Decree states: "The main provisions of the Concept of Administrative Reform in Ukraine (worked out by the State Committee for Conduct of Administrative Reform in Ukraine shall be the basis of the implementation of the reform of the state administration system." After the words "Concept of Administrative Reform in Ukraine" there is a footnote reference in the text of the Decree: "*enclosed to the original*". This interesting and ambiguous phrase concealed a simple fact that apart from a very limited number of top officials almost nobody could have got hold of that "original". Various drafts were circulating in the state apparatus, but the "basis for the reform implementation" de-facto remained a document of a very limited circulation. Ironically enough, for the author of this research paper, the World Bank was the only reliable source to obtain the real text of the officially approved Concept being somehow "enclosed to the original" Decree of the President of Ukraine.

Assessing the type of that document, it is possible to say that in its present form, the Concept of Administrative Reform in Ukraine is not at all a 'concept', and certainly not a 'concept of reform'. It is only a description of an 'ideal model' of optimising administrative structures and procedures.

All the stages of reforms of the British Civil Service (those subsequent to the Nothcote - Trevelyan report of 1853-1854; those introduced by the Fulton report of 1968; and those initiated

⁷⁶ Derkach, I., Problems of Administrative Law in Ukraine: an Overview. - In: Ukrainian Law Review. No. 1. Vol. 1. 1998. - P., 24-25.

⁷⁷ Concept Paper on Administrative Law Reform in Ukraine. (Ukrainian Cabinet of Ministers' Working Group on the Preparation of the Concept paper on Administrative Law Reform and Draft Administrative Code: Kyiv, 1998); Ukaz Prezidenta Ukrainy No. 810/98 "Pro zahodyshchodo vprovadzhennia Kontseptsii administratyvnoii reformy v Ukraini. In: Uriadovyi kurier, 1998, 25 July, p. 5; The Concept of the Administrative Reform in Ukraine. (State Commission for Administrative Reform in Ukraine: Kyiv, 1998).

by Mrs. Thatcher's Government in 1979 and later continued in a partially modified form by the present Labour Government) provide methodological tools to define what is the reform of the State machinery, how such reforms can (technically) be implemented and how they should rather not be implemented.

A reform presupposes a vision of

- (a) the existing situation and the difficulties (problems) characterising it;
- (b) the aims: what is intended to be changed (and it is important that the scope of the proposed changes should be relatively narrow in order to be feasible);
- (c) the means which will be used to introduce changes.

The present 'Concept' is a kind of a 'wish list' where you mostly find just good intentions (something like: "How good it would be if all state servants were persons of integrity, well educated and patriots!") The authors of the 'Concept' do not specify the problems which they try to resolve, and what they are intended to do. No concrete steps are described (even though there are some 'general considerations' on the stages of administrative reform and development of the State Service.⁷⁸ In fact, only 'ideal schemes' are proposed.

A concept of reform can not be all-embracing, it must be aimed at something particular. It is not possible to reform everything. A reform must point out a particular key target and a mechanism through which step by step the changes in other spheres would be achieved. (By the way, the relevant documents of the World Bank⁷⁹ provide the necessary elements of organisational approaches to work out a type of a document which may be considered a concept of reform.)

Some of the most common features of the 'tragedy' of those, who in the predominant post-Soviet culture of Ukrainian society are trying to propose a reform, may be summarised in the following way:

(1). The 'reformers' consider that the reforms should start from the law: first an ideal model is created, and then this model would be imposed by some means (mechanisms) which are not clear.

(2). The 'switching on' of the mechanism of reform (of an 'ideal model') does not presuppose the initial pilot elaboration of the details of practical mechanisms. There is not much room left for a real experiment. Stages may be theoretically mentioned, but not practically elaborated.

(3). The plans do not envisage a real re-distribution of functions between the state and various types of corporations (business structures, trade-unions and other professional bodies, local communities). For example, it is not clear why the state in Ukraine has to manage the sphere of science. Who decides which Academies of Sciences are state ones (like the Academy of Legal Sciences, or the Academy of Medical Sciences), and which ones are just social organisations - NGOs (like the Academy of Political Sciences, the Academy of City-Construction etc.) Who is deciding that type of questions? It remains unclear.

It is expedient to conduct discussion and analysis of and take decision on the policy areas (spheres of political involvement) in which the Ukrainian state should: (a) maintain its involvement; (b) reform or reduce its involvement; (c) withdraw from its involvement. If the

⁷⁸ The Concept of the Administrative Reform in Ukraine. (State Commission for Administrative Reform in Ukraine: Kyiv, 1998). - P. 5-6, 34-35.

⁷⁹ Ukraine: Civil Service Transition. Document of the World Bank. Volume I: Main Report & Volume II: Annexes. (Public Sector Management Group, Poverty Reduction / Economic Management Europe and Central Asia Region: s.l., s.a. [1997].)

Government (in a wider sense of this term) is to be reformed and cut, it is necessary to define how feasible are such plans: (a) financially feasible; (b) administratively feasible.

(4). There is no feasible personnel development component. (Where from the adequate required personnel will come, how it will be trained?)

In Ukraine there is no general strategy of the nation's development (no real answer to a question: "Where are we going?"); and in such situation of a vacuum of a viable national idea, the decisions concerning 'the reforms' are taken on the basis of 'general considerations'. Foreign experts may explain how particular policies are drafted and implemented in their countries, but the post-Soviet context is different. Meanwhile international experts due to their professional knowledge and skills (including due to their multi-cultural exposure), and in particular British actual and retired civil servants and academics can provide an extremely valuable assistance to Ukraine in drafting and monitoring the implementation of specific reform programmes in various spheres, especially in the sphere of reforming the machinery of the state.

5.3. The forms and methods of organisational knowledge transfer to a post-Soviet society (in the sphere of public administration).

Generally speaking, all well known forms of the knowledge transfer are and should be used in order to assist Ukraine in creating a modern-type Civil Service system:

(1). Publication of the existing experience, and making it available to the relevant institutions, specialists and the wide public.

(2). Specialists exchange programmes.

(3). Analytical, project designing and research work.

(4). Training and re-training of specialists.

(5). General education work.

A number of foreign countries' embassies and representative offices of international organisations, foundations etc. are somehow involved in all these kinds of activities.

For example, Canadian Bureau of International Education, German Government through the German Academy for Civil Servants, the Hans Seidel Foundation and the Karl Duesberg Fund, the French Government and the United States of America provide support for internships, visiting lecturers, other kinds of support for training activities.⁸⁰ Within the EU TACIS programme there are projects in Ukraine aimed at reforming Ukraine's State Service. In 1993-1996 there was a project "Reform and Strengthening of Public Administration". Currently there is a project "Institutional Building of Public Administration and Organisation of Vocational Training for Civil Servants".⁸¹ One of the main tasks of another EU TACIS project in Ukraine "The Ukrainian-European Policy and Legal Advice Centre" is to provide advice to Ukraine's State institutions on the administrative reform.⁸² It happens so that the most of European advisors working within these

⁸⁰ Ukraine: Civil Service Transition. Document of the World Bank. Volume I: Main Report. - P. 16-17.

⁸¹ EU TACIS 1996 Technical Assistance Programme for Human Resources Development. Terms of Reference. Institutional Building of Public Administration and Organisation of Vocational Training for Civil Servants. (EU TACIS: Brussels, 1996.) - 29 p.

⁸² See: *Watts, Julyan*, Introduction to the First Issue of the Ukrainian Law Review by the Executive Director. - In: Ukrainian Law Review. No. 1. Vol. 1. 1998. - P. 3-4.

TACIS projects are Germans, and first of all the German experience is used by them. Nevertheless, British and other countries' experience is certainly taken into account.

During several years, the British Government Know How Fund (together with the relevant Ukrainian State institutions) has run a "Project on Machinery of Government in Ukraine". Even though there is a lot of disappointment connected with the results of that project (due to the lack of readiness on the Ukraine's part to effectively use the proposed technical assistance), it has produced some important theoretical and practical results. Now the Know How Fund has decided to concentrate its technical assistance (in the sphere of administrative reform) on the local and regional government issues.

A promising channel for the active use of the British Civil Service experience is provided by the arrangement done by the Academy of State Administration under the President of Ukraine in cooperation with the relevant British institutions. In particular, this Academy is not only jointly teaching its students but also jointly awarding its graduates the Master degrees in Public Administration together with the University of North London (UK).

The University of 'Kiev-Mohyla Academy' (UKMA) has obtained a large Know How Fund grant for the development of the Law Faculty, and there is hope that partially these available resources will be used to train lawyers within the specialisation "Public Administration and Law". Currently some units within this future specialisation (at the level of a Master degree course) is being developed in the UKMA together with the University of East London (UK) under the British Council REAP programme.

For sure, there should be a more efficient coordination of foreign and international donors' technical assistance to Ukraine. The USAID is trying to promote the process of coordination. Nevertheless, in the final analysis, basically everything depends upon the seriousness and professionalism of the Ukrainian top officials and institutions entitled to coordinate and better use of international technical assistance. In this sphere the institutional and legal arrangements of some 'Third World' countries may be of a great help. Besides, the World Bank's Economic Development Institute may be very useful for those in Ukraine who are drafting and implementing the administrative reform, because this international institution has accumulated a valuable information on the global experience in this sphere. And the British experience in developing its Civil Service deserves the most serious attention of all those who are interested in creating an efficient and effective democratic machinery of government in Ukraine. There is a vivid evidence that the British Government and the British experts are ready to cooperate with and assist Ukraine.

The following stages in the changing attitudes in Ukraine (as in the rest of the ex-USSR before 1991) towards the use of Western organisational experience may be singled out:

- (1) 1920s - the orientation towards a direct adoption of Western technical-organisational schemes;
- (2) 1930s - the adoption of technical aspects and the rejection of those called 'ideological' ones;
- (3) 1940 - beginning of 1950s - total rejection of Western experience;
- (4) the second half of 1950s - 1970s (like in the 1930s) - adoption of technical aspects of Western experience, attempts to 'critically learn' it;
- (5) 1980s - decline in the effectiveness of the system of learning Western experience (to a large extent due to the use in the USSR of classifications, typologies etc. dissimilar to the international ones);

(6) 1990s - attempts of direct assimilation of Western patterns. This was not at all successful, even though there were some signs of positive results.

There always is a danger that rendering technical assistance to a post-Soviet country may be corrupted, as this process takes place in a predominantly corrupt environment of a survival state. Meanwhile any technical assistance project could hardly be free from an element of a 'narrow self-interest' of those who draft and/or directly implement it on both sides. It is just natural. The crucial in this respect (to limit irregularities and mistakes) is the attitude of the recipient state. In order to be able to fully utilise the enormous possibilities of international technical assistance, a new independent nation must have the adequate state structures, capable to organise and guide this process. With the real reform of Ukraine's machinery of the state, there is hope that the country would soon enter into a new (the 7th, according to the above-mentioned periodisation) stage of adaptation of international experience in social sphere - a formation of a rationally planned, supported by the state, comprehensive system of learning and critical application of the world best patterns (in accordance with the methodological principles of organisational knowledge transfer).

6. Conclusions

The current conditions in the machinery of government are totally distinct in Britain and Ukraine. Ukraine lacks historical traditions of politically neutral, impartial, anonymous and highly skilled Civil Service. Unlike in Britain, the predominant bureaucratic ethos in Ukraine is quite tolerant towards irregularities and inefficiencies, allows illegal or semi-legal connections with business and political forces. Britain differs from Ukraine by good organisational patterns, efficient mechanisms of staff training and recruitment, quite fair payment system, transparency and public control, promising programmes in decentralisation and deconcentration in the decision-making process, well balanced distribution of functions between the state, professional bodies, NGOs etc.

There are different typologies of states and political systems. One of possible and topical (for contemporary post-Soviet societies) major typologies is based on the characteristics of the state machinery (apparatus) and in particular on the availability of efficient impartial professional Civil Service. There are different types of public administration, regulation of social and political life. Among them the 'extremes' are represented by the relations between: (a) the 'responsive government' and 'conscious and active citizens' (in the civil society), and (b) the 'pure administrative state authority' and 'subordinate population'. There are (a) societies with the predominance of institutions of 'Good Governance', and (b) societies with irregularities inbuilt into the core of the state and political system in general, where the 'National Integrity Systems'⁸³ still have to be elaborated and institutionalised. There are (a) societies relying on professionals, and (b) societies where unprofessional approaches and irresponsibility are predominant.

Britain represents the first type, and its rich experience should be used by those who wish to get rid of the vestiges of undemocratic institutions and procedures, and to create a modern society with a responsible and responsive (both internally and internationally) state machinery. The British Civil Service is one of the world's cultural values whose experience should be widely used in transitional societies. The role of civil servants in Britain is to give their ministers independent and

⁸³ See e.g.: Ukraine National Integrity System. Awareness Raising and Planning Workshops I and II / Edited by Petter Langseth and Geoff Dubrow. (The Government of Ukraine: Kiev, 1997.) - 73 p.

expert advice and to efficiently and economically implement the policies approved by Parliament. Civil servants serve the elected government of the day and are politically neutral.

The nature and the reform of the Civil Service in contemporary Britain provides valuable material for the critical analysis and use by other countries, especially in the spheres of: enhancing efficiency of Civil Service (e.g. as to 'internal' departmental practices, inter-departmental coordination, connection with the customers, especially with the business community, ordinary citizens and the society in general or its territorial communities); bringing the services provided by the state closer to the people's needs; utilising advanced methods in managing public affairs - creating a 'smaller' but more receptive state, privatising and decentralising a number of state services; promoting principles of competition in the public sector (e.g. by using the method of tender allocation of state-funded regional and sectoral development programmes), overcoming an old-fashioned rigid administrative structuralist approach and switching to a programme approach to the regulation of social affairs etc.

In Britain there are certainly difficulties and problems in devising and implementing the reform of the state, meanwhile even these problems themselves provide extremely valuable material as to (1) understanding the essence, contents and objective necessity of reforms of the contemporary state (i.e. a general culturally valuable component), and (2) distinguishing a pure ideological component of the proposed and implemented reforms.

The present situation in Ukraine is in a number of aspects close to that in Britain on the eve of Northcote-Trevelyan reform which was implemented when there was only limited democracy in Britain. But there were main structures in place. In Ukraine the democracy is also embryonic. What the Northcote-Trevelyan report did was not to change the lines of accountability, but to change the culture.

Ukraine has to change the lines of accountability and the culture what will lead towards the 'Weberian'-type system. It is necessary to emphasise the division of responsibilities. The 'Chinese walls' between what the civil servant can do and what he can not do must be in place. In Ukraine you can expect a lot of irregularities in this respect (e.g. as to connections with business, specific 'boss culture' etc. - which is not in the traditional British paradigm now).

In Northcote-Trevelyan reforms it was stated that the regulators and the regulated must be kept apart. But then it was a 'small state'. Later there was a danger in Mrs. Thatcher's reforms in that respect, reflected for example in the fact of civil servants becoming bosses in industry and the reverse - in 'parachuting' managers - taking them from business to Civil Service and backwards. In Ukraine as in Britain depending upon the circumstances, it may lead sometimes to negative, sometimes to positive results (as to the influence on the efficiency of the Civil Service).

The critics of Mrs. Thatcher's reforms often argue that her reforms were controversial, ideologised, and that they have done a lot of damage for Northcote-Trevelyan system. The Conservative Government expected from the senior civil servants political support and adherence to (right-wing) business culture.

During the 'management revolution' in Britain, there were cases of cheap buy-outs by some civil servants of the privatised segments of the public sector. But these were only irregularities. In Ukraine the appropriation (often in a disguised, indirect form) by managers and corrupt civil servants is a common practice, and is the basic element of the process of privatisation.

Americans like to talk about 'iron triangles': Civil Service, politicians, big business (commercial companies). It is really the problems in today's Ukraine. The issue of excess o

business influence, the lack of the 'Chinese walls' has to be resolved. The members of the executive must not be employed (in any form) in business.

It is a very important for Ukraine to implement the principles of the dominant in Britain paradigm of meritocratic pyramidal 'Weberian' structure under which the expertise is a basis for employed in the Civil Service, and the appointments and promotions are determined by the structure of the Civil Service itself, and are not the result of political decisions.

Ukraine can take quite a lot of valuable ideas from the Next Steps programme and the Citizen's Charter as to the relations between the citizens and bureaucrats. The state structures in Ukraine are too often arbitrary, too much bribery is needed even to gain what in theory is your right, there is too much personalisation (just the opposite to the 'Weberian' paradigm within which administration must act according to rules). The old Russian 'Gogolian' paradigm (vividly described by N.V. Gogol in the 'Revisor') in which the administration is personalised, has still to be overcome. Of the same high priority as the task of sorting out relations between the bureaucrats, politicians and business, is the task of establishing clear principles of Good Governance in the relations between the bureaucrats and the citizens.

In the situation when the citizens in Ukraine do not have reliable channels of control over the bureaucracy, the 'Citizen's Charter' ideas may gradually be adapted through the public contract system under which a list of bureaucrats' goals, duties or obligations is published, and posted in every office. In Britain there are relevant official notices, booklets (publications come in a variety of form), and it helps in an actual situation when you can point out what a bureaucrat is obliged to do. It is a form of empowering the citizen in the relations with bureaucrats.

The Citizen's Charter envisages a right to proper treatment, for compensation, of redress etc. It is a big problem in Ukraine that there is the extra-legal state harassment for private companies.

Ukrainians have an appellative culture (if there is a particular grievance, you appeal), in Britain citizens are more generally empowered. A citizen warns the bureaucrat, and it usually works. It may well work in Ukraine as well in some time.

The Citizen's Charter is still there in Britain, the Labour promise to be more accountable. Hopefully Ukraine can also go along that road.

The ideas of 'value for money' and 'rolling back the frontiers of the state' are quite valid. The privatisation is one of the tools, because thus the services may be provided in a more customer-friendly way. Besides the complete privatisation of functions, there may be contracting-out (semi-privatisation) and creating a quasi-autonomous non-governmental agency (decentralising).

Introduction of business/commercial service culture (good service to the citizens) in public sector, in the Civil Service is a very valuable idea, even though it may be subject to absolutisation (which is dangerous and counterproductive). The new right are correctly saying that the aggrandisement of the state is always threatening the society unless there are mechanisms of control.

The ideologised 'remedies' may be very dangerous, meanwhile the understanding of the logic of reforms and various tools of social engineering is very important. In any case, the rationalisation of the state structures and political accountability (in two aspects: collective responsibility of the Cabinet, and ministerial responsibility of each civil servant) are the key ideas of any viable reform programme in Ukraine.

Ukraine is gradually adopting some elements of European forms of organisation of the state, borrowing models from the West (it is reflected in the legislation and in institution-building). Nevertheless basically this process touches only the form, not the essence of the state. In a difficult and complex process of change of the type of its political system,⁸⁴ Ukraine is undertaking significant steps to reform itself, but the old and newly created socially conservative (ochlocratic and oligarchic) structures are hampering the process of modernisation.

Ukrainian state on all levels (national/central, regional, local and micro-institutional) lacks rational organisation, including organisation of proper intellectual process. Primarily due to that fact (not only because of the lack of material resources), a number of functions which are performed by 'normal' (i.e. properly organised and managed) states, are lacking in Ukraine. Some of intellectual functions are not performed at all in Ukraine, some are substituted by the activities of foreign and international donor organisations.

Assessing the mechanisms of technical assistance to Ukraine, one must admit that the West was sincere and quite generous in allocated its significant resources to the programmes of institutional development of this country (even though it is obvious and natural that almost any assistance contains some kind of self-interest). Unfortunately, the major barriers to a successful adaptation of organisational knowledge (which has to be transferred from the West) are still connected (in Ukraine itself) with the lack of real political will and the predominance of vested interests which are contrary to the cause of implementing principles of Good Governance. Excellent draft programmes elaborated with foreign advice (and even adopted programmes) often degenerate into a mere rhetoric, a lip-service to fashionable catch-words aimed at pleasing international financial donors and the naive strata of local public.

In future because of that, the donors may face unpleasant side-effects when 'ungrateful' recipients start blaming the donors for their own (the recipient's) deficiencies and inability to use the rendered or proposed assistance.

Any serious concept of reform must clearly specify: (a) the problems to be settled; (b) what particularly has to be changed in order that the defined problem is resolved; (c) the mechanisms of problem resolution (including specifying the necessary stages); (d) one, two or three concrete "directions of the attack" (not more than that; otherwise the reforms become hardly manageable). Time-bound activity plans must envisage: (a) what has to be achieved; (b) when; (c) who will do it; (d) in what form, etc. Unfortunately, the predominant administrative culture in Ukraine often ignores these basic principles.

The post-Soviet countries need to use the available Western patterns in reforming their State machinery. Nevertheless the application of foreign experience should be critical and creative, must not be limited mostly to imitating the formal aspects of legal and organisational framework while ignoring essential aspects of normative regulation (especially customary), informal structures and procedures, psychological and other types of specific 'national' and 'regional' environment. Serious theoretical and practical work should be done both in the sphere of re-thinking the functions and structures of the state in a post-Soviet transitional society, and in the elaboration of effective methodology of the use of Western experience.

⁸⁴ See: *Yakushik, Valentin*, Change of the Type of Political System (Ukrainian Case). (Institute of International and Cultural Studies, Tsuda College: Tokyo, 1995.) - P. 12-19; Post-Communist Ukraine: Contradictions and Prospects for Socio-Political Development. - In: Political Thought. Ukrainian Scientific Journal. No. 1. 1993. - P. 117-120.

The British Civil Service experience can not be directly implanted in a post-Soviet state machinery, there should be elaborated an adequate methodology of organisational knowledge transfer, methodology of efficient consultancy in the sphere of use international experience. Such methodology still has to be worked out within the process of constructing of a 'communicati space' for different Ukrainian state institutions and social organisations, and actors of international technical assistance to Ukraine.

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