TOPICAL ISSUES OF THE DEVELOPMENT OF LEGAL CULTURE AND PROFESSIONAL COMPETENCE OF CIVIL SERVANTS: THE PRACTICE OF THE EUROPEAN UNION AND WAYS OF IMPROVEMENT IN UKRAINE

[a]VIKTORIIA FILIPPOVA, [b]VALENTYNA KARLOVA, [c]IHOR SHPEKTORENKO, [d]LARYSA GAIEVSKA, [e]NATALIIA VASIUK, [f]VADYM TORCHYNYUK

[a]*Kherson National Technical University, 24, Berislavskoye Shosse, 24, 73008, Kherson, Ukraine*
[b,d,e]*Taras Shevchenko National University of Kyiv, 12/2, A.Romodanova Str., 04050, Kyiv, Ukraine*
[c,f]*Dnipropetrovsk Regional Institute of Public Administration, National Academy of Public Administration under the President of Ukraine, 29, Gogol Str., 49044, Dnipro, Ukraine*
email: [a]filippova_vdd@ukr.net, [b]kvv_20177@ukr.net, [c]igorr3101@ukr.net, [d]laurabeestt@ukr.net, [e]kafheealth@gmail.com, [f]v.torchynyyuk1@dridy.dp.ua

Abstract: The article aims to reveal contemporary issues and provisions on the subject of legal culture and professional competence of civil servants. Professional culture is aimed at creating a positive moral and psychological climate in a state body, which would allow a civil servant, regardless of the level of the position being replaced, to develop as a person and a professional, to reveal his creative potential, to feel his significance and involvement in solving priority tasks facing the state body. In order to provide methodological and practical assistance to the heads of state bodies and personnel services in the formation and development of professional culture, this study was carried out. The materials of the article can be used to form a professional culture common for several state bodies united by common goals and objectives, or state bodies of a subject of the country. It is also recommended to take into account the provisions of the proposed methods in the municipal service for the formation of a professional culture in local governments.

Keywords: Civil servant, Development of Ukraine, Legal culture, Practice of the European Union, Professional culture, Professional competence.

1 Introduction

The legal culture and professional competence of the organization is formed under the influence of various factors, among which the most significant are the influence of the management as the initiator of changes and the personnel department. Modern experience shows that the professional culture of an organization, developed and maintained on a systematic basis, allows you to achieve high results in performing the necessary tasks and functions at the lowest cost by defining clear guidelines for the activities of employees using the values and mission, creating a favorable environment in the team that motivates responsibility and initiative [10].

In order to improve public administration, effectively implement the tasks and functions of state bodies, develop the professional potential of civil servants, increase the effectiveness of their activities, this experience can be applied in the civil service. The introduction of professional culture in the civil service is carried out taking into account the specifics of the legal status of state bodies that are part of the unified system of state administration.

Unlike the professional culture of an organization that can develop separately, the professional culture of a specific state body is formed based on its special constitutional and legal nature and is based on regulatory legal acts that determine the status, tasks and functions of a state body, as well as the requirements for civil servants.

The professional culture of a state body is a set of values, mission, principles and rules of conduct established in a state body, adherence to which contributes to the effective implementation of the tasks and functions of a state body by civil servants [21]. Legal culture and professional competence affects the image of a state body and is aimed at increasing the prestige of the civil service, the cohesion of civil servants committed to common values, and is also a means of forming and monitoring the observance of principles and rules of conduct by civil servants [33, 43, 46, 53].

Professional legal culture will improve:

- Motivation and involvement of civil servants, and, as a consequence, the effectiveness of their professional service activities;
- Mutual understanding between civil servants, as well as the formation and maintenance of a friendly environment in the team, which helps to reduce the costs of implementing the tasks and functions of the state body;
- The effectiveness of preventive measures in the field of combating corruption;
- The satisfaction of civil servants with the conditions of service in a government agency [25].

2 Literature Review

The rule of law is a universal principle. The need for universal provision and observance of the rule of law both at the national and international levels was recognized by all UN member states in 2005 in the World Summit Outcome Document (§ 134). As stated in the Preamble and in Article 2 of the Treaty on European Union (TEU), the rule of law is one of the basic values shared by the European Union and its members [25].

The rule of law is associated not only with human rights, but also with democracy, i.e. with the third core value of the Council of Europe. Democracy means involving people in the decision-making process; the purpose of human rights is to protect people from arbitrary and undue encroachment on their rights and freedoms, and to protect their human dignity. The rule of law focuses on the limitation of power and independent control over the activities of state bodies. The rule of law contributes to the development of democracy by establishing the accountability of those in power and upholding human rights designed to protect minorities from the arbitrary rule of the majority.

The rule of law has become a “global ideal and aspiration”, the basic principles of which are valid around the world. This, however, does not mean that its implementation should be the same everywhere, regardless of specific legal, historical, political, social and geographical conditions [20]. While the basic components or “ingredients” of the rule of law remain unchanged, the specific ways in which it is implemented in different countries may differ depending on local conditions, in particular, the constitutional order and traditions of the country in question. These conditions can also determine the relationship between the various components of the rule of law.

Historically, the rule of law has evolved as a means of limiting the power of the state (government). Human rights were seen as a means of protection against encroachments on the part of the holders of this power (“negative rights”). Over time, the understanding of human rights in many states and in European international law has undergone changes. Despite the differences in details, there is a general trend towards expanding the scope of civil and political rights, especially in the field of recognizing the positive obligations of the state to ensure legal protection of human rights from encroachments by private sector entities. Relevant terms are “positive obligations to protect”, “horizontal effect of fundamental rights” or “Drittwirkung der Grundrechte” [61].

The European Court of Human Rights has recognized the existence of positive obligations in several areas, for example in relation to Article 8 of the ECHR. In some of its decisions, the Court has established specific positive obligations, linking Article 8 of the ECHR to the rule of law. Despite the fact that in the cases considered by the court, positive obligations to protect could not be derived solely from the concept of the rule of law, the principle of the rule of law creates additional obligations for the state to ensure that citizens under its jurisdiction have access to effective legal remedies to protect their rights, in particular, in situations where their rights are violated by private sector actors

[1-8]. Thus, the rule of law creates a criteria for assessing the quality of laws protecting human rights: legal provisions in this area (as well as in others) must, among other things, be clear, predictable and non-discriminatory, and they must be applied by independent courts and with the same procedural guarantees that are applied in resolving conflicts related to the violation of human rights by public authorities [18].

One of the most important elements of the context in which the rule of law is implemented is the legal system as a whole [11]. The sources of law that create legal norms and thus provide legal certainty differ from country to country: some states, except in special cases, use mainly statutory law, while others adhere to a common law system based on jurisprudence.

Different states may also use different criminal justice procedures, for example, with regard to the principle of a fair trial (adversarial system or investigative system, jury system or judges deciding criminal cases) [61]. Tangibles that are instrumental in ensuring a fair trial, such as legal and other assistance, can also take many forms.

The distribution of powers between different government bodies can also influence the context in which the checklist is applied. It must be well balanced with a system of controls and counterweights [16, 17, 19]. The exercise of the functions of the legislature and the executive should be subject to constitutional and legal review by an independent and impartial judicial body. The smooth functioning of the judiciary, whose decisions are effectively implemented, is essential to maintaining and expanding the rule of law.

At the international level, the requirements and application of the rule of law reflect the state of the international legal system. In many respects, this system is much less developed than national constitutional and legal systems [21]. With the exception of specific regional systems such as the European Union system, international systems lack a permanent legislature and, in most cases, a judicial system with compulsory jurisdiction, while democratic decision-making is still very weak [15].

The supranational character of the European Union prompted it to develop the concept of the rule of law as a general legal principle applicable to its own legal system. In accordance with the established jurisprudence of the Court of Justice of the European Union, the rule of law includes the primacy of law, institutional balance, judicial review, fundamental (procedural) rights including the right to judicial protection, as well as the principles of equality and proportionality.

The contextual elements of the rule of law are not limited to legal factors alone. The presence (or absence) of a common legal culture in a society, as well as how this culture relates to the existing legal system, help determine to what extent and to what extent certain elements of the rule of law should be unequivocally spelled out in laws [22, 26, 29]. For example, national traditions in the field of dispute and conflict resolution should influence what specific guarantees of a fair trial are given in a given country. It is very important that in each state a strong political and legal culture stands behind specific mechanisms and procedures of the rule of law, which must be constantly monitored, changed and improved.

The rule of law can only be successfully exercised in a country whose people feel collectively responsible for implementing this principle and want to make it an integral part of their legal, political and social culture.

In Ukraine, traditionally, in comparative studies, there is a contrast between eastern and western legal cultures, which are due to various characteristics. At the same time, the differences lie not only in geographical, but also in cultural-historical, political-legal, socio-economic, religious, intellectual and spiritual factors [54]. From all this totality, the vector is formed and formed, in which the direction of the experiences, worldviews, assessments and responses to the objects of state-legal reality, that is, the legal mentality, is traced. Legal culture and professional competence have been studied by foreign and domestic scientists for a long time [65]. Despite the presence of a large number of studies, there are a lot of unresolved issues, one of which is the influence of Western and Eastern legal traditions on the Ukrainian legal mentality and culture.

Legal culture and professional competence are formed within the framework of legal traditions determined by different civilizations. When assessing legal development, one should take into account the differences in socio-cultural worlds with specific ideas about the universe, man, the conditions of his being and the forms of social life associated with him [32, 35]. This is primarily about the differences between East and West as separate civilizations. Despite the active dialogue between them, their value paradigms diverge significantly. The features of the Eastern legal mentality are the following features:

- Conservatism and traditionalism, which is associated with the historical formation of fundamental values, the inadmissibility of the inclusion of innovations in rule-making and legal traditions;
- An indifferent attitude towards subjective rights and freedoms, collectivism and the manifestation of their characteristics not in favor of the individual, but in favor of society;
- Religiousness, which contributes to the unification of people within the framework of spiritual laws, at the same time, legal regulation only structures society [18].

The features of the Western legal mentality can be considered as follows:

- Belief in law, legal norms, which in turn ensure public order and justice; autonomy of law, its isolation from other systems of social regulation (religion, morality, customs);
- The law recognizes the supremacy in relation to politics and state power; the state protects the rights and freedoms of the individual, the need for changes in connection with the development of social society;
- Rationalism - the predominance of reason as a source of true knowledge; the predominance of personality over society;
- Dualism of natural and positive law; transparency of legislative and judicial processes;
- Stability and continuity of decisions of state bodies and departments; legal literacy of the population;
- Being a law-abiding citizen;
- Full confidence of citizens in the institutions of state power [31].

The Eastern legal tradition is not based on the law, the legal consciousness of the East is a consequence of the foundation of law on morality, on actions, procedures, ceremonies, and here people rely on the wisdom of the ruler [23]. The Western legal tradition is based on rationalism and policy, and the system-forming role belongs to the ideas of freedom, civil society, law and natural human rights. In a political context, law acts as a principle and means of limiting power and violence, and the idea of freedom is a direct expression of the political nature of Western society. Western European culture is based on the idea of a positive law, which in turn is identified by it with freedom. If we talk about the law as an idea that characterizes the system of legal culture, then it is considered as the essence of social life, a condition for the equality of people, a guarantee of legal relations [38-40, 42]. Throughout almost the entire history of its existence, Ukraine has been at the crossroads between the West and the East. At the same time, a feature of Ukrainian cultural contacts is the fact that these contacts were mediated [13].

Since in Kyivan Rus they did not know the Greek language well, the Byzantine sources were mostly perceived through Bulgaria. The culture of Catholicism and counter-reformation – through Poland, classicism – through Russia [9]. At the same time, one should pay attention to the fact that the situation was complicated by the fact that “the so-called West, East and South

are represented by countries that are themselves marginal entities with rather vague historical realities. Russia cannot be considered the classic East, just as Turkey is the South and Poland is the West [12]. We can only talk about certain general guidelines and structural elements. But each of the massifs has significant potential and great ambitions for the political, cultural, economic assimilation of Ukraine or its part [49, 50, 55]. All this could not but leave an imprint on the formation of the Ukrainian legal mentality. Ukrainian legal culture has absorbed elements of both Eastern and Western legal traditions. Both those and other determinants of the Ukrainian legal mentality received their own original "reading", their content, their views on their perspective location and significance in relation to each other.

3 Materials and Methods

This methodology provides for the following concepts for use in its application:

Values – moral, ethical and moral guidelines for the activities of civil servants, aimed at achieving goals, objectives and implementing the mission of a state body.

Mission is the highest goal of a state body, defined succinctly and at the same time briefly, motivating civil servants to achieve the goals and objectives of a state body and meet the needs of citizens, organizations and society.

A unified model of values and mission of a state body, professional and personal qualities (competencies) – a set of components of professional culture, including the values and mission of a state body, reflecting the ideas and beliefs of civil servants to meet the needs of citizens, organizations and society, and the corresponding professional and personal qualities (competencies) [13, 21, 28, 52, 61, 65].

Instruction on the professional interaction of civil servants is a methodological document that summarizes the rules for the interaction of civil servants based on the principles of legality, honesty, morality and aimed at the worthy performance of their official duties, as well as at increasing the trust and respect of citizens, organizations, society to the activities of a state body [58].

4 Results

The formation of a professional legal culture of a state body consists in defining its main components, such as values, mission, principles and rules of conduct for civil servants, fixing them in legal (instructive) documents of a state body and carrying out a set of measures that ensure the commitment of the entire team to them [14].

The special public-legal status of civil servants, due to the exercise of the powers of state bodies, imposes on this category of persons a number of obligations established by federal laws to comply with restrictions, fulfill obligations and requirements for official conduct.

Taking into account that the components of professional competence form common guidelines for the entire team of conscientious performance by civil servants of official duties, it is recommended to include the values and mission of the state body in the code of ethics of the state body [24].

It is fundamentally important to involve the maximum possible number of civil servants of a state body in the discussion of the components of professional culture [59, 60, 62]. Approval of the components of professional culture at a general meeting in a state body and formalizing a decision in a protocol can significantly increase the commitment to professional culture by civil servants who feel their importance and involvement in solving priority tasks facing the state body.

In the future, it is recommended to regularly conduct anonymous surveys of civil servants in order to assess their level of commitment to the professional culture of the state body. If a low level of adherence to the professional culture of a state body is revealed, it is advisable to pay attention to the need to intensify the implementation of relevant activities.

A civil servant, ensuring the execution of the powers of a state body, must always remember that the recognition, observance and protection of the rights and freedoms of a person, a citizen is his fundamental constitutional obligation, in his behavior and decisions made to confirm adherence to the highest value [27].

The highest value predetermines the following basic values inherent in civil servants:

- Professionalism and competence of civil servants [64];
- Honesty and impartiality in the performance of official duties by civil servants [58].

Values in conjunction with the powers of a state body make it possible to define the mission of a state body.

The content of the mission allows to reveal the essence of the activities of a state body, answering questions about its purpose, to bring to civil servants in a concise and accessible form the significance for society of their professional service, to form a clear idea among citizens, organizations and society about the priority areas and results of the activities of the state body.

When defining a mission, it is necessary to analyze:

- The regulation on the state body, containing the main tasks and functions of the state body;
- The area (s) and type (s) of professional service activity (hereinafter referred to as the area and type of activity) carried out by civil servants;
- The history of the creation and development of a state body, including its traditions;
- The needs and expectations of citizens, organizations and society from the activities of a state body;
- Availability of resources of the state body to implement the mission of the state body.

Fundamental questions, the answers to which should be considered when forming a mission are:

1. To meet what needs and expectations is the activity of the state body directed?
2. What values are civil servants guided by in carrying out their activities?
3. What is the desired result of the activity of the state body should be achieved in the future?

The content of the mission is recommended to be updated at least once every five years, as well as the necessary results are achieved and taking into account significant changes in the powers, priority goals and objectives of the state body [57].

It is advisable for the head of the state body to approve the specified components of professional culture in a single model of values and mission of the state body, as well as professional and personal qualities (competencies) [25], which must be guided by a civil servant in the implementation of professional service activities.

In order to disseminate ideas and beliefs in the state body provided for by the values and mission of the state body, to develop the commitment of civil servants to them, it is advisable for the head of the state body, together with the personnel service, to provide:

- Publication in a state body of information and educational materials (brochures, memos, posters) describing the importance of observing the specified values and mission in the performance of official duties by civil servants (hereinafter – information and educational materials);

- The creation of symbols, slogans with the values and mission of the state body, their distribution in public places (conference rooms, assembly halls of a state body, a canteen), in the offices of the head of a state body, heads of structural divisions and their deputies, as well as ensuring familiarization with them, both civil servants and visitors to a government agency [56].

These documents are drawn up in short and accessible form and can be used to inform citizens when entering the civil service.

It is also important to raise awareness of professional culture through positioning the values and mission of the state body, established principles and rules of conduct for civil servants on the official website of the state body, other information resources, in the media, as well as at official events (meetings, competitions, conferences).

5 Discussion

Despite the fact that the majority of domestic researchers attribute Ukraine to the Romano-Germanic legal family, it should be noted that in addition to purely formal signs, there is also the so-called "living law", which clearly illustrates that the Ukrainian legal culture, according to M. Smolensky, “Did not create the preconditions for the perception, together with Christianity, of the rational foundations of Roman law and separated the Orthodox culture, based on moral law and belief in the value of the transcendental, spiritual life, from the pragmatic and materialized Catholic and Protestant culture, where the values of the individual, individual achievements, labor is a divine service on Earth [54]. Without going into the discussion of the question of whether such a difference creates the possibility of perceiving the legal values of Western legal culture, let us note the fundamental differences between the Western legal tradition and the Ukrainian one through the prism of mentality [28]. The western legal tradition is based on individualism, that is, it is focused on a person who is seen as a primary and priority value. The individual here is not absorbed by the social totality, but stands out from it and, to a certain extent, opposes it.

The inalienable attributes of such a person are equality and freedom. Freedom is understood as the inherent ability of a person to make a conscious choice and implement one or another variant of behavior. Freedom is a quality that identifies a person; it is equally inherent in all people and distinguishes them from the world of other living beings. Freedom is a universal attribute of human beings, moreover, the most universal or, rather, the most important among the universal attributes [30].

Freedom presupposes the equality of its carriers, that is, their mutual recognition and respect for each other as persons endowed with freedom and formally having equal opportunities for their realization. The relations of such free and formally equal individuals acquire the character of mutual equivalent exchange, and the main way of ordering them is a contract. Most researchers believe that one of the main characteristic features of the Ukrainian legal mentality, like the Western European one, is individualism [63, 66-70]. However, Ukrainian individualism differs from Western European one. And the point here is not only that in the Ukrainian state and legal reality a person is not perceived as a primary and priority value is endowed with freedom and equality only on paper, the difference lies in the choice of ways to achieve their own success. Individualism in the minds of a representative of Western legal culture is a disposition to achieve personal success or high social status in honest and legitimate ways with the help of one's own abilities, hard work and purposefulness [51]. Only when such conditions exist does a person achieve social recognition. In the Ukrainian version, the formation of the individual principle is somewhat different from the Western European one.

The individualism of a Ukrainian is characterized by a focus on his own feelings and experiences, aloofness from solving problems of society and the state. The Ukrainian is only interested in his immediate entourage; strangers, other people are not important to him, they can be used to achieve their own benefit or manipulate them. The main thing for a Ukrainian is not to be disturbed. The individualism of the Ukrainian people is anti-state, which manifests itself in the rejection of formal institutional relations, primarily legal ones, as well as in political infantilism.

5.1 On Reforming the Civil Service in Ukraine

The working group of the civil service of Ukraine submitted to the Cabinet of Ministers the draft Law of Ukraine "On the civil service". The bill is based on a new European understanding of the professional civil service, which presupposes its objectivity, fairness, impartiality in the preparation of political decisions, independence of the professional position from the influence of political or private interests, loyalty to the state and its legitimate political leadership [13].

The draft law provides for a number of innovations in comparison with the current Law of Ukraine "On Civil Service". In particular, the changes will affect the definition of the status of a civil servant and the peculiarities of the performance of his powers, social guarantees for civil servants. Issues of responsibility of officials will also be settled [13].

The civil service is proposed to be defined as public-law relations arising between persons holding civil servants positions in public authorities and the state, while these persons carry out activities on a professional basis for the implementation of state and political powers with the receipt of salaries for this from the State budget. Compared with the current Law, the concept of "public-legal relations" is new, which more accurately characterizes this institution and generally meets the trends in the development of Ukrainian legislation, based on the general rules of rule-making [23].

Clear criteria for assigning posts to civil service will be determined. In particular, the President of Ukraine, members of the Cabinet of Ministers and their deputies, people's deputies, judges and prosecutors are not civil servants. Employees of patronage services, employees of government bodies performing auxiliary functions, employees of state enterprises and institutions, as well as persons who are in other specialized service (diplomatic, military) are also not civil servants. Their status is determined by special laws.

It is planned to change the structure of the civil service, introducing five instead of seven categories. There will be a separate category of political positions, the appointment to which will take place without a competition. These are the positions of the head of the Supreme Council Administration, the Head of the Presidential Secretariat, heads of central government bodies who are not members of the Cabinet of Ministers, heads of local state administrations, members of collegial state bodies. All other positions will be divided between the remaining four categories ("A", "B", "C", "D"). Just as in the current law, the Draft law provides for the relationship between the category of the civil service position and the rank of a civil servant. But the proposed system of ranks is more flexible, which creates additional incentives for the civil servant [52].

Certification and personnel reserve of civil servants will be abolished due to their inefficiency. But at the same time, the institution of disciplinary responsibility of officials will be introduced.

The draft law provides for the formation of a fully valid civil service management system, the creation of a vertical of management bodies: the Cabinet of Ministers – a specially authorized central executive body (Main Department of Civil Service of Ukraine) – heads of civil service in executive authorities – personnel services of executive authorities. A separate section of the Draft law is devoted to regulating the powers of the central executive body that manages the civil service [23].

The draft law provides for the possibility of equal access to the civil service. Appointments are made based on the results of a mandatory competition. And only for political appointments, an appointment without competition is possible [31]. Knowledge of the Constitution and laws of Ukraine, fluency in the state language will appear among the mandatory requirements for a candidate. Also, the authors of the draft law made sure that the civil servant was healthy – which will need to be confirmed by a certificate of health [54].

Among the mandatory requirements for a candidate for a civil servant position, a complete higher education is also provided. That is, persons with a bachelor's educational level will not be able to become civil servants. In addition, it is provision is made for creating the necessary conditions for professional training and retraining of specialists. In particular, based on the results of the annual assessment of the activities of the civil servant, an individual training program will be drawn up, which includes professional training, internship and self-education of the official. It is envisaged to allocate special time for these purposes within the framework of office hours. The law will establish that a civil servant is obliged to improve his qualifications at least once every five years.

The fight against nepotism will be intensified. An official can be dismissed if he does not report on the occurrence of relations of direct subordination of close relatives during his civil service.

The civil service, according to the draft law, is apolitical. Civil servants should not publicly demonstrate their political views or in any other way show their attitude towards certain political forces. Civil servants will be prohibited from creating political parties and blocs, as well as being members of political parties during their civil service positions [52]. They will also be banned from taking part in strikes, civil disobedience actions and campaigning.

Civil servants will not be subject to the provisions of the Labor Code of Ukraine. Issues related to the labor activity of officials will be regulated through a service contract – a public law agreement between a representative of the employer and a person who enters the civil service or a civil servant on the passage of civil service and holding a position in the civil service. Among the prerequisites of an employment contract are the title of the civil service position, the duration of the civil service (the beginning of the civil service is mandatory, the end date is only for fixed-term service contracts), the rights and obligations of the civil servant, the rights and obligations of the employer, working hours and rest time, the size of the official salary, a probationary period when joining the civil service [34]. The person signing the contract will be obliged to remove all obstacles to the passage of public service, in particular, to leave a political party, stop doing business or participate in the work of supervisory bodies and governing bodies of business organizations.

The service contract will provide for the conditions of responsibility of a civil servant for non-performance or improper performance of official duties. It is forbidden to demand from a civil servant the performance of duties not stipulated by the service contract. The contract will be in writing only. Making any changes is possible only with the consent of the parties. The standard form of a service contract must be approved by the Cabinet of Ministers.

One of the important innovations of the Draft law is the consolidation of the disciplinary responsibility of civil servants. An official can be brought to disciplinary responsibility if he commits a disciplinary offense – violation of the requirements of the legislation on the civil service, in particular, non-fulfillment or improper performance of official duties, non-compliance with the requirements for incompatibility of the civil service with other types of activities, or committing actions that discredit the civil service [13]. Specific types of disciplinary sanctions and the conditions for their imposition will be established.

5.2 On the Practice of the European Union

The main requirement of the rule of law is the definition by law of the powers of public authorities. To the extent that the concept of legality defines the actions of public officials, it also requires that the law allows these actions, and that they then act within the limits of their powers, respecting the rules of procedural law and substantive law. Similar guarantees should be established by law for all cases where government powers are delegated to private sector entities. Especially, but not exclusively, this applies to coercive rights. In addition, public authorities must actively defend basic individual human rights against encroachment by private sector actors. The term “Law” includes not only the constitution, international law and regulations, but also, where applicable, laws made by judges, such as binding common law. Any law must be accessible and predictable.

The actions of the state must be carried out by competent specialists in accordance with the law and be authorized by them. While the need for judicial control over the actions and decisions of the executive branch and other actors performing government tasks is universally recognized, national practice on how to ensure compliance of legislation with the constitution is very different. While judicial review is an effective means of achieving this, there may be other means to guarantee the proper implementation of the constitution in order to enforce the rule of law, such as prior review by a special committee.

In international law, the principle of pacta sunt servanda (agreements must be respected) is an expression of the principle of legality. It does not define how international customary law or treaty law is implemented in the domestic legal system, however, a state “is not entitled to invoke its domestic law to justify its failure to comply with a treaty” or failure to comply with customary international law.

The rule of law does not dictate the choice between monism and dualism, but the principle of pacta sunt servanda applies regardless of the national approach to the relationship between international and domestic norms. Either way, full domestic compliance with international law is a key criterion. When international law is an integral part of domestic law, it is binding. This does not mean, however, that it should always have supremacy over the constitution or customary law.

Unlimited powers of the executive, de jure or de facto, are the main feature of absolutist and dictatorial systems. Modern constitutionalism was created to combat such systems, and therefore it guarantees the rule of the legislature.

The security of the state and its democratic institutions, as well as the security of its representatives and population, are vital interests that deserve protection, which can result in temporary derogations from certain human rights and in an extraordinary separation of powers. However, authoritarian governments have repeatedly abused emergency powers in order to maintain their power, silence opposition and restrict human rights in general. In this regard, it is of paramount importance to strictly limit the duration, circumstances and scope of such powers. State and public security can be effectively ensured only in a democracy that fully implements the rule of law [36].

To avoid abuse, parliamentary and judicial scrutiny is required on the existence and duration of a declared emergency.

The relevant provisions of the International Covenant on Civil and Political Rights, the European Convention on Human Rights and the American Convention on Human Rights are similar [51].

They provide for the possibility of derogation (not to be confused with the limitation of guaranteed rights) only in extremely exceptional circumstances. Among other things, no derogation from the so-called absolute rights: the right to life, the prohibition of the use of torture and inhuman or degrading treatment or punishment, as well as slavery and derogation from the principle *nullum crimen, nulla poena* is possible.

Despite the fact that the full application of the rule of law is possible only in rare cases, the basic requirement of the principle of the rule of law is respect for the law. In particular, this means that public authorities must effectively implement laws. The very essence of the rule of law would be called into question if the law existed only in books, but was not applied and enforced in an effective way [37].

The duty to comply with the law consists of three elements, implying the observance of the law by individuals, the duty of reasonably enforcing the law by the state, and the duty of public officials to act within the scope of their powers.

Obstacles to the effective implementation of the law can arise not only as a result of illegal or negligent actions of the authorities, but also because the quality of the legislation makes it difficult to implement it [41]. Therefore, it is so important to assess how the law is enforceable in practice, before its adoption, as well as to check a posteriori whether it can be effectively implemented and whether it is actually being implemented. This means that, from a rule of law perspective, legislation must be assessed ex ante and ex post.

The proper implementation of the law can also be impeded by the lack of adequate sanctions (*lex imperfecta*), as well as insufficient or selective enforcement of appropriate sanctions [44].

The instability and inconsistency of laws or regulations of the executive branch can affect the ability of citizens to plan their actions. Stability, however, is not a goal in itself: legislation must be able to adapt to changing circumstances. The law can be changed, but only after public comment and notice, and so that there is no violation of the principle of legitimate expectations.

5.3 On the Development of Legal Culture and Professional Competence of a State Body

A civil servant assuming a leadership position, by his personal example, forms the principles and rules of behavior for subordinates.

The behavior of a civil servant assuming a leadership position, his ability to manage subordinates, conduct explanatory work and create a moral and psychological climate in the team, contributes to the development of trust and initiative of civil servants, their involvement in the achievements of the entire team and, as a result, to increase the efficiency and effectiveness of their professional service activities [48].

It is important for a civil servant assuming a leadership position in his activities to maintain a relationship with his subordinates, which involves:

- An individual approach to each civil servant, taking into account the characteristics of his character, qualifications and attitude to business;
- Maintaining emotional calm in relation to subordinates;
- Rendering assistance to civil servants in solving assigned tasks, allowing them to independently implement them;
- Gratitude for the good work of subordinates;
- Constant maintenance of the interest of subordinates in the results of their activities;
- Careful discussion of comments and suggestions of subordinates;
- Self-criticism, admission of their mistakes when making decisions;
- Joint analysis of performance results, including the reasons for failure;
- Determination of the prospects for the career development of civil servants, their "strengths" and "weaknesses" in professional performance [47].

The creation of a moral and psychological climate in a team is possible only when a civil servant replacing a managerial position, in accordance with the hierarchy, takes care of subordinates, motivates and controls their responsibility for the quality and timely execution of tasks, and also encourages the enthusiasm and efficiency of civil servants [34].

6 Conclusion

The principle of legitimate expectations is part of the general principle of legal certainty in European Union law, which is derived from national laws. It also expresses the idea that public authorities must comply not only with the law, but also with their promises and the expectations they generate. Under the doctrine of legitimate expectations, those acting in good faith under the law (as it is) should not be deceived into their legitimate expectations. However, in exceptional cases, new situations that have arisen may justify changes in legislation that lead to deceiving legitimate expectations. This doctrine is applicable not only to legislation, but also to individual decisions of political power [13, 54].

Citizens should be warned in advance of the consequences of their actions. This implies predictability and non-retroactivity, especially in criminal law [41]. In civil and administrative law, retroactive force can have a negative impact on rights and legitimate interests.

However, outside the field of criminal law, restricting the rights of citizens or imposing new duties on them as a result of a reverse action (including temporary) may be permissible, but only in the interests of society and in accordance with the principle of proportionality. The legislator should not interfere with the application of existing laws by the courts.

Exercising powers that lead to manifestly unfair, unjustified, unreasonable or repressive decisions is a violation of the rule of law. Unrestricted powers of the executive bodies are contrary to the principle of the rule of law. Therefore, in order to protect against arbitrariness, the law should determine the extent of any such powers. The abuse of discretionary power should be subject to judicial or other independent scrutiny. Existing remedies should be clearly spelled out and available.

Unlike Europe, where law occupies the highest place in the value hierarchy, Ukraine has historically developed a peculiar attitude towards law. Some authors wrote in this regard, that we look down on the law with contempt. We are entirely in the highest areas of ethics, in the world of the absolute, and we do not care about that highly relative and imperfect order of human society, which is law. The Ukrainian people are characterized by a more striving for justice than for legality, for truth than for law, since there is a belief that it is justice and truth that have the potential that is necessary to ensure the normal functioning of society. In Ukraine, historically, it so happened that the law was assessed through the category of justice, since in our minds law is not capable of becoming a moral ideal, in contrast to the truth. Ukrainian legal culture is sociocentric. It is based on solidarity, responsibility, duty in relation to society, group or collective.

The components of legal culture and professional competence are effective tools for organizing and managing the personnel processes of a state body [52]. The directions of personnel work should be based on the components of professional culture, ensuring the embodiment in the practical activities of the state body of such values as professionalism and competence, honesty and impartiality of civil servants through their observance of the principles and rules of conduct established in the state body.

Literature:

1. Akimova, L., Akimov, O., & Liakhovich, O. (2017). State regulation of foreign economic activity. *Scientific Bulletin of Polissia*, 4(12), P. 1, 98-103. DOI: 10.25140/2410-9576-2017-1-4(12)-98-103.
2. Akimova, L., Akimov, O., Mihus, I., Koval, Y., & Dmitrenko, V. (2020). Improvement of the methodological approach to assessing the impact of public governance on ensuring the economic security of the state. *Financial and Credit*

Activity-Problems of Theory and Practice, 4(35), 180-190. DOI: https://doi.org/10.18371/fcaptp.v4i35.221969.
3. Akimova, L., Levytska, S., Pavlov, C., Kupchak, V., & Karpa, M. (2019). The role of accounting in providing sustainable development and national safety of Ukraine. *Financial and credit activity: problems of theory and practice,* 30 (3), 64-70. DOI: 10.18371/FCAPTP.V3I30.179501.
4. Akimova, L., Osadcha, O., & Akimov, O. (2018). Improving accounting management via benchmarking technology. *Financial and Credit Activity-Problems of Theory and Practice,* 1(24), 64-70. DOI: 10.18371/FCAPTP.V1I2 4.128340.
5. Akimova, L., Osadcha, O., Bashtannyk, V., Kondratska, N., & Fedyna, C. (2020). Formation of the system of financial-information support of environmentally-oriented management of the enterprise. *Financial and credit activity: problems of theory and practice,* 32(1), 434–443. DOI: 10.18371/FCAPTP.V1I 32.200606.
6. Akimova, L., Reinska, V., Akimov, O., & Karpa, M. (2018). Tax preferences and their influence on the investment in Ukraine. *Financial and Credit Activity-Problems of Theory and Practice,* 3(26), 91-101. DOI: 10.18371/FCAPTP.V3I26.1441 17.
7. Akimova, N., & Akimova, Al. (2018). Text Understanding as a Special Kind of Understanding. *Psycholinguistics,* 24(1), 27-46. DOI: https://doi.org/10.31470/2309-1797-2018-24-1-27-46.
8. Andros, S., Akimova, L., & Butkevich, O. (2020). Innovations in management of banks deposit portfolio: structure of customer deposit. *Marketing and Management of Innovations,* 2, 206-220. DOI: 10.21272/MMI.2020.2-15.
9. Averintsev, S. (1998). Byzantium and Kievan Rus: two types of spirituality. *New world*. 7(8), 226–231.
10. Backer, I. (2018). *Styrket nordisk lovsamarbeid: muligheter og Utfordringer*. Report to the Nordic Council of Ministers, København.
11. Bashtannyk, A., Akimova, L., Kveliashvili, I., Yevdokymov, V., Kotviakovskyi, Y., & Akimov, O. (2021). Legal bases and features of public administration in the budget sphere in Ukraine and foreign countries. *Ad Alta: Journal of interdisciplinary research*, 1(1), XVIII, 63-68.
12. Bauman, Z. (2006). *Freedom*. M.: New Publishing, 132.
13. Behruz, H. (2010). Special aspects of the eastern legal mentality. *Comparative jurisprudence: current status and prospects for development*: *collection of scientific articles by Y.U. Shemshuchenko and O. Kresina*. K.: Logos, 378–380.
14. Bell, J. (2001). *French legal cultures.* Butterworths, London.
15. Bell, J. (2006). *Judiciaries within Europe.* Cambridge University Press, Cambridge.
16. Bilan, S., Mishchuk, H., Bilan, Y., & Mishchuk, V. (2019). *Empirical Study of Migration Caused by Well-being in Living and Working Environment.* Paper presented at the Proceedings of the 34th International Business Information Management Association Conference, IBIMA 2020: Vision 2025: Education Excellence and Management of Innovations through Sustainable Economic Competitive Advantage, 11159-11169.
17. Bilan, S., Mishchuk, H., Samoliuk, N., & Ostasz, G. (2019). *Effectiveness of Social Dialogue in the System of Sustainable Economic Development Factors.* Paper presented at the Proceedings of the 34th International Business Information Management Association Conference, IBIMA 2020: Vision 2025: Education Excellence and Management of Innovations through Sustainable Economic Competitive Advantage, 13303-13313.
18. Björne, L. (2007). *Realism og Skadinavisk realism: Den nordiske rättsvetenskapens historia Del IV: 1911–1950.* Institutet for rättshistorisk forskning, Lund.
19. Bobrovska O.Y., Lysachok A.V., Kravchenko T.A., Akimova LM., & Akimov O.O. (2021). The current state of investment security in Ukraine in the context of covid-19 and its impact on the financial and economic situation of the state. *Collection of scientific papers Financial and Credit Activity-Problems of Theory and Practice,* 1(36), 233-242. DOI: 10.18 371/FCAPTP.V1I36.227770.
20. Brøndrun-Nielsen, J., & Jørgensen, P. (Eds.) (1933). Danmar*ks gamle landskapslove med kirkeloverne, vol II: Jyske Lov*. Gyldendalske boghandel, Copenhagen.
21. Cotterrell, R. (2019). *Comparative law and legal culture*. In Reimann M. and Zimmermann R. (Eds.). The Oxford handbook of comparative law. Oxford University Press, Oxford, 710–733.
22. Denysov, O., Litvin, N., Lotariev, A., Yegorova-Gudkova, T., Akimova, L., & Akimov, O. (2021) Management of state financial policy in the context of the Covid-19 pandemic. *Ad Alta: Journal of interdisciplinary research*, 11(2), XX, 52-57.
23. Dudchenko, L. (2015). Typology of forms of legal mentality. *History of state and law*, 22, 57–60.
24. Dyumon, L. (1997). *Essays on Individualism*. Dubna: Phoenix, 195.
25. European Commission for the Efficiency of Justice. (2018). *European judicial systems: Efficiency and quality of justice.* Council of Europe, Strasbourg.
26. Harafonova, O., Zhosan, G., & Akimova, L. (2017) The substantiation of the strategy of social responsibility of the enterprise with the aim of providing efficiency of its activities. *Marketing and Management of Innovations,* 3, 267 – 279. DOI: 10.21272/MMI.2017.3-25.
27. Helem, F. (2004). Historical and legal problems East. West. *Forum of Contemporary Eastern European History and Culture*, 1. DOI: http://www1.ku-eichstaett.de/ZIMOS/forum/inhal truss1.htm.
28. Hjort, M.A. (2021). *Sources of inspiration of Nordic procedural law: Choices and objectives of the legal reforms*. In Ervo L., et al. (Eds.). Rethinking Nordic courts, Springer, Cham.
29. Isaieva, N., Akimova, Al., & Akimova, A. (2020). Categorization of Personality Traumatic Experience in Chinese Women's Diary Narrative: The Frame-Scenario Model. *Psycholinguistics,* 28(2), 56-81. DOI: 10.31470/2309-1797-2020-28-2-56-81.
30. Iversen, F. (2013). Concilium and Pagus: Revisiting the Early Germanic Thing System of Northern Europe. *Journal of the North Atlantic*, 5, 5–17.
31. Iversen, F. (2016). *Huseby and the Scandinavian taxation model.* In Anne Pedersen, Lisbeth Eilersgaard Christensen & Thorsten Lemm (Eds.). Husebyer – status quo, open questions and perspectives. University Press of Southern Denmark, 121–138.
32. Kalyayev, A., Efimov, G., Motornyy, V., Dzianyy, R. & Akimova, L. (2019). *Global Security Governance: Conceptual Approaches and Practical Imperatives.* Proceedings of the 33rd International Business Information Management Association Conference, IBIMA 2019: Education Excellence and Innovation Management through Vision 2020, 10-11 April 2019, Spain, Granada, 4484-4495.
33. Karpa, M., Akimova, L., Akimov, O., Serohina, N., Oleshko, O., & Lipovska, N. (2021). Public administration as a systemic phenomenon in society. *Ad Alta: Journal of interdisciplinary research*, 11(1), XV, 56-62.
34. Korpiola, M. (2018). *High and late medieval Scandinavia: codified vernacular law and learned legal influences.* In Pihlajamäki H., et al. (Eds.). The Oxford handbook of European legal history. Oxford University Press, Oxford, 378–404.
35. Kostiukevych, R., Mishchuk, H., Zhidebekkyzy, A., Nakonieczny, J., & Akimov, O. (2020). The impact of European integration processes on the investment potential and institutional maturity of rural communities. *Economics and Sociology*, 13(3), 46-63. DOI:10.14254/2071-789X.2020/13-3/3.
36. Kovler, A. (2002). *Anthropology of Law: [textbook for universities]*. M.: Norma, 467.
37. Kvam, B. (2010). *Communication and technology as agents of legal change*. In Sunde, J.Ø., Skodvin, K.E. (Eds.). Rendezvous of European legal cultures. Fagbokforlaget, Bergen, 183–193.
38. Levytska, S., Krynychnay, I., Akimova, A., & Kuzmin, O. (2018). Analysis of business entities' financial and operational performance under sustainable development *Financial and credit activity: problems of theory and practice,* 25(2), 122–127. DOI: 10.18371/FCAPTP.V2I25.136476.
39. Levytska, S.O., Akimova, L.M., Zaiachkivska, O.V., Karpa, M.I., & Gupta, S.K. (2020). Modern analytical instruments for controlling the enterprise financial performance. *Financial and*

Credit Activity-Problems of Theory and Practice, 2(33), 314-323. DOI: 10.18371/FCAPTP.V2I33.206967.
40. Liubkina, O., Murovana, T., Magomedova, A., Siskos, E., & Akimova, L. (2019). Financial instruments of stimulating innovative activities of enterprises and its improvements. *Marketing and Management of Innovations,* 4, 336-352. DOI: 10.21272/MMI.2019.4-26.
41. Lutskyi, I. (2011). Differences between the Byzantine philosophical and legal tradition from the Western Roman. *Law of Ukraine*, 1, 188–195.
42. Lyulyov, O., Pimonenko, T., Kwilinski, A., Us, Y., Arefieva, O., Akimov, O., & Pudryk, D. (2020). Government Policy on Macroeconomic Stability: Case for Low-and Middle-Income Economies. *Proceedings of the 36th International Business Information Management Association (IBIMA).* ISBN: 978-0-9998551-5-7. Dated on November, 4-5, 2020. Granada, Spain, 8087-8101.
43. Marchenko, A., Akimova, L., & Akimov O. (2021) The current state of ensuring the effectiveness of coordination of anticorruption reform. *Ad Alta: Journal of interdisciplinary research*, 11(2), XX, 78-83.
44. Mattila, H. (2006). *Comparative legal linguistics*. Ashgate Publishing, Aldershot
45. Mishchuk, H., Bilan, S., Yurchyk, H., Akimova, L., & Navickas, M. (2020). Impact of the shadow economy on social safety: The experience of Ukraine. *Economics and Sociology,* 13(2), 289-303. DOI:10.14254/2071-789X.2020/13-2/19.
46. Mordvinov, O., Kravchenko, T., Vahonova, O., Bolduiev, M., Romaniuk, N., & Akimov, O. (2021). Innovative tools for public management of the development of territorial communities. *Ad Alta: Journal of interdisciplinary research*, 11(1), XVII, 33-37.
47. Nersesyants, V. (2005). *Philosophy of law: [textbook for universities]*. M.: Norma, 656.
48. Nylund, A., & Sunde, J. (2019). Courts and court proceedings. In Letto-Vanamo P., et al. (Eds*.). Nordic law in European context*. Springer, Cham, 202–213.
49. Oliinyk, O., Bilan, Y., Mishchuk, H., Akimov, O., & Vasa, L. (2021). The Impact of Migration of Highly Skilled Workers on The Country's Competitiveness and Economic Growth. *Montenegrin Journal of Economics*, 17, 3, 7-19. DOI: 10.14254/1800-5845/2021.17-3.1.
50. Osadcha, O.O., Akimova, A.O., Hbur, Z.V., & Krylova, I.I. (2018). Implementation of accounting processes as an alternative method for organizing accounting. *Financial and credit activity: problems of theory and practice,* 27(4), 193–200. DOI: 10.18371/FCAPTP.V4I27.154194.
51. Sassen, S. (2006). *Territory, Authority, Rights. From Medieval to Global Assemblages*. Princeton University Press, Princeton N.J.
52. Shevchenko, I. (2001). *Ukraine between east and west (essays on the history of culture to the beginning of the eighteenth century).* Translated from English by M. Gablevich, edited by A. Yasinovskyi. Lviv: Institute of Church History of the Lviv Theological Academy, 250.
53. Shpektorenko, I., Vasylevska, T., Bashtannyk, A., Piatkivskyi, R., Palamarchuk, T., & Akimov, O. (2021). Legal bases of public administration in the context of European integration of Ukraine: questions of formation of a personnel reserve. *Ad Alta: Journal of interdisciplinary research*, 11(1), XVIII, 76-81.
54. Smolenskiy, M. (2002). *Legal culture: experience of sociocultural analysis: [monograph]*. Rostov-on-Don: SKNTS VSh, 224.
55. Smyrnova, I., Akimov, O., Krasivskyy, O., Shykerynets, V., Kurovska, I., Hrusheva, A., & Babych, A. (2021). Analysis of The Application of Information and Innovation Experience in The Training of Public Administration Specialists. *IJCSNS International Journal of Computer Science and Network Security,* 21, 3, March 2021, 120-126.
56. Sunde, J.O. (2011). *Legal cultural changes in Europe: Teaching future prospects on the basis of legal history and comparative law.* In Modéer K. and Nilsén P. (Eds.). How to teach European comparative legal history. Lund University Press, Lund, 47–57.
57. Sunde, J.O. (2014). *Live and let die—an essay concerning legal-cultural understanding*. In Adams M. and Hairbaut D. (Eds.). The method and culture of comparative law –essays in honour of Mark van Hoecke. Oxford University Press, Oxford, 221–234.
58. Sunde, J.O. (2019). *Aldeles berøvet Forstandens brug: Konedrap i Møllendal i 1798 og psykisk sjuke i norsk rettshistorie*. In Matningsdal M. and Strandbakken A. (Eds.). Integritet og ære: Festskrift til Henry John Mæland. Gyldendal, Oslo, 143–157.
59. Sysoieva, I., Poznyakovska, N., Balaziuk, O., Miklukha, O., Akimova, L., & Pohrishchuk, B. (2021). Social innovations in the educational space as a driver of economic development of modern society. *Financial and Credit Activity: Problems of Theory and Practice*, *3*(38), 538–548. DOI: https://doi.org/10.18371/fcaptp.v3i38.237486
60. Tamm, D. (2021). *Courts, law, language and culture*. In Ervo L., et al. (Eds.). Rethinking Nordic courts. Springer, Cham.
61. Tumanov, V. (1993). Legal nihilism in a historical and ideological perspective. *State and law*, 3, 53–61.
62. Uygun, S.V., & Gupta, S.K. (2020). Leadership and accountability for social development: intellectual leadership and rectors. *International Journal of Indian Culture and Business Management*, 21(2), 171-180. DOI: 10.1504 / IJICBM.2020.109750.
63. Vorobei, O., Akimova, A., & Akimova, A. (2021). Metaphorical Conceptualization of WAR in Chinese Sports Discourse. *Psycholinguistics*, 29(2), 25-45. DOI: https://doi.org/ 10.31470/2309-1797-2021-29-2-25-45.
64. Wieacker, F. (1990). Foundations of European legal culture. *Am. J. Comp. Law*., 1, 1–29.
65. Wolf, A. (1996). *Gesetzgebung in Europa 1100-1500 – zur Entstehung der Territorialstaaten*. Beck'sche Verlagsbuchhandlung, München.
66. Yakymchuk, A.Y., Valyukh, A.M., & Akimova, L.M. (2017). Regional innovation economy: aspects of economic development. *Scientific Bulletin of Polissia*, 3(11), P.1, 170-178. DOI: 10.25140/2410-9576-2017-1-3(11)-170-178.
67. Yakymchuk, A.Y., Akimova, L. M., & Simchuk, T.O. (2017) Applied project approach in the national economy: practical aspects. *Scientific Bulletin of Polissia*, 2(10), P.2, 170-177. doi: 10.25140/2410-9576-2017-2-2(10)-170-177.
68. Yakymchuк, A.Y., Akimov, O.O., & Semenova, Y.M. (2017). Investigating key trends of water resources attraction into economic turnover. *Scientific Bulletin of Polissia,* 1(9), P.2, 70-75. DOI: 10.25140/2410-9576-2017-2-1(9)-70-75.
69. Zahorskyi, V., Lipentsev, A., Mazii, N., Bashtannyk, V., & Akimov, O. (2020). Strategic directions of state assistance to enterprises development in Ukraine: managerial and financial aspects. *Financial and Credit Activity-Problems of Theory and Practice*, 2(33), 452-462. DOI: https://doi.org/10.18371/fcapt p.v2i33.207230.
70. Zahorskyi, V.S., Lipentsev, A.V., Yurystovska, N.Ya., Mazii, N.H., & Akimov, O.O. (2019). Financial and administrative aspects of small business development in Ukraine. *Financial and Credit Activity-Problems of Theory and Practice*, 3(30), 351-360. DOI: https://doi.org/10.18371/fcap tp.v3i30.179717.

Primary Paper Section: A

Secondary Paper Section: AG