

# ПОВІТРЯНЕ, КОСМІЧНЕ, ЕКОЛОГІЧНЕ ПРАВО

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**N. Armash,**

Doctor of juridical sciences, (habilitated degree), professor

**V. Kozyreva,**

PhD in Juridical sciences, Assoc. prof.

## POLITICAL POSTS NUANCES IN THE PUBLIC SERVICE SYSTEM IN THE TRANSPORT SECTOR

National Aviation University

Kosmonavta Komarova Avenue, 1, 03680, Kyiv, Ukraine

E-mails: [nadja@ukr.net](mailto:nadja@ukr.net), [kozurevav@ukr.net](mailto:kozurevav@ukr.net)

### **Abstract.**

**Aim:** to study the peculiarities of the legal status of state political figures in the transport sphere. Submit the views of scientists to the problem of duality of these categories of employees. **Methods of research:** while writing the article, methods of analysis and synthesis were used. Widely used comparative method of research. **Results:** The authors offer their views on the normative base of this category of civil servants. Opinions about the nature of discretionary powers as features of political positions in the transport sector are also outlined. **Discussion:** peculiarities of the national legislation and the prospect of implementation of the provisions of foreign legislation to the domestic legislation in the transport sphere.

**Key words:** civil servant, state politicians, legal status, transport sector.

**Topicality.** The state plays a major role in the life of every person even if he/she is nonpublic and does not participate actively in politics and state administration. The sphere of state's interference grows with evolution of society. Whereas the Article 9 of the Constitution of Ukraine states that "public and local authorities, their officials are bound to act on the ground of, within the power of and in the manner provided by the Constitution and laws of Ukraine", the legislature itself determines the borders of this governing and the level of state's liability to the person by means of formation and functioning of public service.

The distribution of posts in Ukraine in the system of executive branch agencies into political and administrative ones is directed to provide highly effective public service activity. Such an approach by its meaning and mechanism of action is similar to the system of checks and balances during the allo-

cation of functions of governmental power (on the national level). The allocation of posts for which political functions are principal provides the concentration of procedure of decision-making on state policy making and implementation in the highly restricted circle of state politicians, creates the barrier on the way of politicization of posts with administrative functions and decreases their potential political pressure on state officials that hold these posts.

**The degree of scientific development of the problem.** The conclusions on the ways of improvement of legislature in this sphere are made based on the decisions proposed by the author, theoretical insights of V.B. Averyanov, O.F. Andriyko, Yu.P. Bityak, S.V. Kivalov on the issues of public service development, prospects of further implementation of the concept "public service".

The aim of the article is to establish optimal conditions of public service development with ac-

count of necessity of division between administrative and political positions.

**Research results.** To solve the identified issues there is a necessity to establish the aim and the criteria of public posts division and the positions of public service within the bodies of executive power on the scientific level as well as to determine the principles of their correlation. The corresponding scientific background was created by the representatives of different spheres of juridical science (the theory of state and law, constitutional, administrative and criminal law) and state administration.

However, with the account of public servants such as political public officials with principally new qualities of their posts, differentiating them from state service posts the necessity appeared to reconsider the system structure of public service. There is a need to combine in official hierarchy and mechanism of interaction of different kinds of public servants those that implement political functions in their activity and those that are not granted these functions. The interchange of today's category "political public official" and the concept of "public servant" and legislature contradicts the apolitical essence of state service and the autonomous existence of the political public official beyond any system will lead to the failure of the important for the state administration interaction and the subordination between the bodies and public officials.

Within the general concept of public service, political public officials deserve special attention, in particular, their legal status and the correlation of their posts with the posts of public service. For the day this question in the science of administrative law has been studied fragmentarily. This is due to the study of public service or administrative legal status of executive power bodies which results cannot ensure complex approach to the correlation of political public posts and public service posts. The regulatory framework for attributing of the posts of political public officials to public service posts in Ukraine is item 15 of the Article 3 of the Administrative Procedure Rules of Ukraine, due to which "public service – is the activity on the political public posts, professional activity of judges, prosecutors, military service, alternative (non-military service), diplomatic service, other public service, service in Autonomous Republic of Crimea authori-

ties, in local authorities. With this regard the emphasis is on the necessity of the concept and the types of public service definition (including the service on political public posts) in special regulatory act the Fundamental Principles of Legislation on Public Service, which adoption will solve the problem of public authorities' service in an integrated and holistic manner.

In Georgia the posts with administrative political characteristics are provided. Therefore, the "Law on Public Service" in Georgia defines that "Political public post – is a public post provided for by the Constitution of Georgia, the Abkhaz Autonomous Republic and the Adzhar Autonomous Republic Constitutions, it is political and the method of electing and appointment for this post is determined by the Constitution of Georgia, the Abkhaz Autonomous Republic and the Adzhar Autonomous Republic Constitutions correspondingly. The state-political officials involve:

- a) The president of Georgia;
- b) The member of the Parliament of Georgia;
- c) The Prime Minister of Georgia and other members of government of Georgia (28.04.06 № 2945);
- d) The members of the highest representative bodies of the Abkhaz Autonomous Republic and the Adzhar Autonomous Republic;
- e) The heads of the government of the Abkhaz Autonomous Republic and the Adzhar Autonomous Republic (10.11.06 № 3653).

The characteristic feature that distinguishes political public officials from politicians (political figures) is their possession of public governmental authorities in the sphere of public policy determined by the office at relevant post. The politician or (political figure) is more general concept in comparison with political public official: every political public official is a politician as long as he is professionally in politics but not every politician is a political public official. Only that politician is a political public official that was granted such a status after the accession to the political public position.

Functionally, political public officials are responsible for such an array of activity as: determination of the most general state problems and estimation of their priority; taking strategic political

decisions concerning setting priorities in the definite field or sphere; allocation from the available community resources (financial, material, technical etc.) the share intended for the decisions taken; formation of permanent or temporary state administrative bodies aimed at the implementation of political decisions; the distribution of powers and resources to the relevant state bodies; overseeing of the state authorities' activity. Such a functional meaning of the status of political public official reflects the importance of these posts introduction in the public service system.

Public service is a strategic phenomenon for building structural links between political public officials and other public servants. With reference to the powers of political public officials their place in the system of public service we propose the definition of the term *political public official – the person, granted the governmental powers in the sphere of state policy making concerning whom the special procedure of appointment and dismissal is used and whose responsibility is of public authorization*. Accordingly, *political public official post – is the structural unit of public authority with official duties within powers, fixed by the law with the purpose of political, administrative and representative functions*.

The given definitions of the terms have to be included in the Fundamental Principles of Legislation on Public Service hereby separating this kind of public service from others.

Political and administrative authorization of different posts of state authorities is by its meaning and mechanism similar to the system of checks and balances during the allocation of functions of state authorities in general (on the national level). The allocation of posts for which political functions are primary ensures the concentration of the decision-taking procedure on state policy making and implementation in highly limited circle of political public officials, creates the barrier on the way of politicization of posts with administrative functions and decreases possible political pressure on public servants holding these posts.

Defining the importance of posts differentiation, differences between political and administrative posts (and between political public officials and public servants correspondingly) it is worth empha-

sizing that while establishing administrative legal status of political public officials it is not fully possible to refuse from granting administrative functions to this category of public servants. They have to be determined by the status as non-essential and directed firstly at ensuring primary activity of political public official – state policy making and implementation in definite sphere.

One of the features of political public official is political responsibility for his actions on the post held. However, political responsibility itself cannot be associated or furthermore be the kind of legal responsibility such as, for example, the resignation of certain person from political post. We can speak about political responsibility in terms of initiating of this resignation by the principal officers (leader, general meeting etc.) the party, this person represented. The resignation decision is a legal fact which occurrence has consequences and corresponding legal procedure strictly prescribed by the regulatory act. By means of the use of administrative intervention quick and inevitable response is achieved to illegal behavior of political public person from the side of the state. In such a case managerial (administrative) intervention is supposed to mean the system of managerial approaches and resources implemented by the state authorities and their officials with the view of pursuance of entrusted duties. Such resources include administrative process and administrative responsibility in their modern sense.

The emphasis is made on the double passive dispositive capacity of the political public official: firstly, he is responsible for the activity within the entrusted to him sphere; secondly, for his private actions. Such symbiotic relationships on the one hand provide ostensibility of unconditional and perfect functioning of state authorities' system (since it is known in advance who is responsible for limitations) and on the other hand, they do not exclude the possibility to hold to legal account political public officials for illegal acts in accordance with general practice.

While establishing structural connections between political public officials and public servants a series of factors was taken into account that determined outlining the ways of cultivating relations of these public servants. Firstly, political public offi-

cials are to some extent mediators between legislative and executive powers and hence are able to adjust state political processes in Ukraine. Secondly, the essence of the interaction of these governmental agencies is coordinating and mutual amending of their social and governance functions both between themselves and other entities of administrative-legal relations. Thirdly, public servants ensure con-

tinuity and consistency during the implementation of state power under the conditions of changes in personnel among political public officials.

**Conclusions.** Therefore, we have proved substantial meaning of the distribution of public service posts according to the functions the official performs for the effective mechanism of political power implementation.

Н. О. Армаш, В. П. Козирєва

### ОСОБЛИВОСТІ ПОЛІТИЧНИХ ПОСАД В СИСТЕМІ ПУБЛІЧНОЇ СЛУЖБИ В ТРАНСПОРТНІЙ СФЕРІ

Національний авіаційний університет  
проспект Космонавта Комарова, 1, 03680, Київ, Україна  
E-mails: nadja@ukr.net, kozurevav@ukr.net

**Мета:** дослідити особливості правового статусу державних політичних діячів транспортної сфери. Подати погляди вчених на проблему дуалістичності вказаних категорій службовців. **Методи дослідження:** під час написання статті використовувались методи аналізу та синтезу. Широко використаний компаративний метод дослідження. **Результати:** автори пропонують свій погляд на нормативну базу цієї категорії державних службовців. Також викладені думки щодо характеру дискреційних повноважень як особливостей політичних посад у транспортній сфері. **Обговорення:** особливості національного законодавства та перспективи імплементації положень зарубіжного законодавства до вітчизняного законодавства в транспортній сфері.

**Ключові слова:** державний службовець, державні політичні діячі, правовий статус, транспортна сфера.

Н. А. Армаш, В. П. Козырева

### ОСОБЕННОСТИ ПОЛИТИЧЕСКИХ ДОЛЖНОСТЕЙ В СИСТЕМЕ ПУБЛИЧНОЙ СЛУЖБЫ В ТРАНСПОРТНОЙ СФЕРЕ

Национальный авиационный университет  
проспект Космонавта Комарова, 1, 03680, Киев, Украина  
E-mails: nadja@ukr.net, kozurevav@ukr.net

**Цель:** исследовать особенности правового статуса государственных политических деятелей транспортной сферы. Подать взгляды ученых на проблему дуалистичности указанных категорий служащих. **Методы исследования:** при написании статьи использовались методы анализа и синтеза. Широко использован компаративный метод исследования. **Результаты:** авторы предлагают свой взгляд на нормативную базу этой категории государственных служащих. Также изложены мнения относительно характера дискреционных полномочий как особенностей политических должностей в транспортной сфере. **Обсуждение:** особенности национального законодательства и перспективы имплементации положений зарубежного законодательства в отечественное законодательство в транспортной сфере.

**Ключевые слова:** государственный служащий, государственные политические деятели, правовой статус, транспортная сфера.