











ORIGINAL

The ethical aspect of public administration under special regime and sustainable development

El aspecto ético de la administración pública en régimen especial y el desarrollo sostenible

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ABSTRACT

Standards of ethical conduct for public servants encompass all aspects of public administration. Standards of ethical conduct for public servants under special legal regimes act as a measure of the rule of law, impartiality, and integrity. They are guarantees of the rationality and efficiency of public administration. The article aims to determine the content and features of applying standards of ethical conduct for public servants under special legal regimes, particularly the legal regime of martial law. The methodological framework of this study encompasses general and special methods, methods of scientific cognition, system analysis, formal-logical, structural-logical, and dialectical methods, and numerous empirical methods. The article substantiates that the legal regime of martial law has entailed increased corruption risks and determines their objective (impossibility of electronic declaration, expended list of admissible gifts) and subjective (involvement of public servants in the collection, receipt, and distribution of charitable and humanitarian assistance) reasons. The above should be compensated by means of raising standards of ethical conduct. Conclusions make a stand for the inadmissibility of disregarding the rules of ethical conduct by public servants and deny any justification for their violation under the legal regime of martial law.

Keywords: Public Administration; Ethics; Ethical Standards; Special Regimes; Martial Law; Sustainable Development.

RESUMEN

Las normas de conducta ética para los servidores públicos abarcan todos los aspectos de la administración pública. Las normas de conducta ética para los servidores públicos bajo regímenes legales especiales actúan como una medida del estado de derecho, la imparcialidad y la integridad. Son garantías de la racionalidad y eficiencia de la administración pública. El artículo tiene como objetivo determinar el contenido y las características de la aplicación de normas de conducta ética a los servidores públicos sometidos a regímenes jurídicos especiales, en particular el régimen jurídico de la ley marcial. El marco metodológico de este estudio abarca métodos generales y especiales, métodos de cognición científica, análisis de sistemas, métodos

lógico-formal, lógico-estructural y dialéctico, y numerosos métodos empíricos. El artículo fundamenta que el régimen jurídico de la ley marcial ha conllevado mayores riesgos de corrupción y determina su carácter objetivo (imposibilidad de declaración electrónica, lista de donaciones admisibles agotada) y subjetivo (implicación de los servidores públicos en la recogida, recepción y distribución de donaciones caritativas y humanitarias). asistencia) razones. Lo anterior debe ser compensado mediante la elevación de estándares de conducta ética. Las conclusiones defienden la inadmisibilidad del incumplimiento de las reglas de conducta ética por parte de los servidores públicos y niegan cualquier justificación para su violación bajo el régimen legal de la ley marcial.

Palabras clave: Administración Pública; Ética; Normas Éticas; Regímenes Especiales; Ley Marcial; Desarrollo Sostenible.

INTRODUCTION

Standards of ethical conduct for public servants are determined in national legislation by one of the measures to prevent and combat corruption. They are established predominantly by the provisions of anti-corruption legislation⁽¹⁾ and permeate the entire system of anti-corruption mechanisms. In particular, standards of ethical conduct lay a cornerstone for the following: the provisions designed to prevent or address conflicts of interest; financial control; restrictions to prevent abuse of office; limitations of admissible gifts; restrictions on compatibility and switch between other activities; restrictions imposed after the cessation of duties associated with state or local governance roles, such as disclosure or misuse of information in their interests, known to them in connection with the execution of an office in their interests.

According to Article 8 of the United Nations Convention against Corruption⁽²⁾ and the legislation of most European countries, requirements for the ethical conduct of public servants are also attributed to the initiatives to preclude and counter corruption.⁽³⁾ In this regard, the approach to the formalization of standards of ethical conduct adhered to by the national legislator corresponds to international standards and the modern practice of leading European countries. The value of standards of ethical conduct is especially manifested during the active phase of reforms and special legal regimes; as a rule, the existing legal regulation does not keep pace with the rapid development of public relations, while the social demand for regulating these relations and ensuring law and order is only growing.

In terms of Ukrainian realities, this seems relevant since the public service system is being constantly reformed to meet the requirements and standards of the European Union. However, the main problem of the reforms is rather the technical nature of their implementation that does not consider such a subjective factor as the decline in the general and professional culture of people implementing the decisions (civil servants at all levels). The personality development of a public servant as a highly professional, disciplined, tolerant, but principled person is a complex and lengthy process.⁽⁴⁾ However, only such a public servant is in power to change the situation in Ukraine, which will entail not declarative renewal or another reform but ensure the development of a qualitatively new state, an equal member of the European community. The first step in fulfilling this objective should be a clear formulation of ethical standards and constant control over their observance; this will improve the moral and ethical climate in the public service.

The standards of ethical conduct acquire another dimension under special legal regimes, such as the legal regime of martial law. On the one hand, the need for proper observance of standards of ethical conduct by public servants is strengthened when circumstances that lead to the introduction of these special legal regimes and appropriate measures to ensure them arise. On the other hand, standards of ethical conduct require specifying the conditions and measures of these special legal regimes.⁽⁵⁾

Given this, it is relevant to study the features of the establishment and operation of standards of ethical conduct for public servants during the legal regime of martial law. The conclusions of this study and suggested recommendations may be applied by public authorities of Ukraine during the regulatory establishment and practical application of the standards of ethical conduct. Similarly, national anti-corruption bodies can use them to supervise whether public servants observe these standards.

The results of this study are original, independent, and scientifically grounded. The research question is considered at the level of a separate independent study for the first time in Ukraine. The prospects of further research involve ensuring the legal regulation of standards of ethical conduct for public servants, developing the institutional mechanism for their observance and prosecution, and using the resource potential of standards of ethical conduct as a measure of the appropriateness and effectiveness of public administration or forms and methods of its implementation under the legal regime of martial law.

METHOD

The sphere of observance of ethical standards by public servants is determined by its particular importance for the state and society. The objectives and goals achieved in this area determine through the activities of public servants whether the rule of law is observed in the state. Even though the problem of the ethical aspect in the functioning of public institutions has acquired new features with the introduction of the legal regime of martial law, there is no comprehensive doctrinal study of the implementation of this idea.

Studying the problems of observance of ethical standards, there is a need for a clear interpretation of these regulatory and moral provisions, which simultaneously act as duties for public servants. It is possible to classify the scientific approaches to the interpretation of ethical standards depending on the main feature that characterizes this concept. Thus, the classification can be as follows:

- 1) as a set of certain moral principles and values valid within a specific profession;⁽⁶⁾
- 2) as a system of professional and ethical principles and standards reflected in the minds of civil servants that direct and regulate their relations and activities in the field of civil service;⁽⁷⁾
- 3) as a set of arranged moral standards and rules of individual and joint actions that correspond to constitutional values and maximize the achievement of the professional activity objective;⁽⁸⁾
- 4) as a set of moral requirements for the personal integrity of a public servant, the purpose of their activities, and the nature of their relations with the state.⁽⁹⁾

Thus, it can be argued that the ethical conduct of a public servant stands for a legally defined system of ethical standards and principles, the order of actions, rules, and relationships within civil service and outside it; it is based on the value principles of public service and the awareness of public servants of their professional purpose.⁽¹⁰⁾

The conclusions on the public service career and its transformation,^(11,12) features of the status of a public servant,⁽¹³⁾ and their obligation to comply with anti-corruption restrictions^(14,15) are of considerable interest.

This article is the first attempt to examine the aspects of observance of ethical standards as a systemic element of public administration in the context of the legal regime of martial law. In order to thoroughly examine the research question, the authors identify content blocks that characterize a homogeneous group of social relations. These relations relate to the dialectics of the legal regime of martial law and the standards of ethical conduct for public servants, sources of formalization of the standards of ethical conduct for public servants, and features of observance of these standards under the legal regime of martial law.

RESULTS AND DISCUSSION

Dialectics of the legal regime of martial law and standards of ethical conduct of public servants

The enforcement of martial law in Ukraine by the President in 2022, endorsed by the Law of Ukraine “On the Introduction of Martial Law in Ukraine”,⁽¹⁶⁾ has affected all spheres of public life, organization of the state and society, and their functioning. Connivance in non-fulfillment or improper fulfillment of the current statutory requirements, even under martial law, negatively affects law enforcement activities, the legal awareness of individuals, and the legal order as a whole. Therefore, in addition to such an undeniable indirect impact of martial law on legal life, there was a need to bring the regulatory framework in line with the existing special legal regimes.

In this regard, particular anti-corruption mechanisms were canceled or significantly limited during the legal regime of martial law. Mandatory declaration was canceled.⁽¹⁷⁾ Thus, the submission of electronic declarations by public officials has become voluntary since then, but the obligation to submit relevant declarations for previous periods in the future remains. According to paragraph 27 of section 13, “Final Provisions,” of the Law of Ukraine “On Prevention of Corruption,” a person who is the subject of the declaration should file a declaration within 90 calendar days from the date of cessation or revocation of martial law. Similarly, the obligation to notify about significant changes in property status or opening a foreign currency account with a non-resident bank institution should be fulfilled.

In addition, paragraph 24 of section 13, “Final Provisions,” of the Law of Ukraine “On Prevention of Corruption” exempts officials from the obligation to declare objects of declaration or financial assistance under the Law of a foreign country (do not apply to the aggressor country as defined by the Verkhovna Rada of Ukraine), paid at the expense of a foreign country (do not apply to the aggressor country as defined by the Verkhovna Rada of Ukraine) or an international organization. According to paragraph 25 of section 13, “Final Provisions,” of the Law of Ukraine “On Prevention of Corruption,” officials are released from the obligation to notify about significant changes in property status.

The restriction on admissible gifts was limited as per paragraph 23 of section 13, “Final Provisions,” of the Law of Ukraine “On Prevention of Corruption.” Therefore, the following actions do not fall under the requirement for gifts to be consistent with generally accepted conventions of hospitality and the limits on the value of gifts during this period:

- 1) receipt of funds fully and solely applied for making transfers to support the Armed Forces of

Ukraine and (or) humanitarian assistance (if there is confirmation that the funds were applied for one or more of the specified purposes). Other purposes include making charitable donations or purchasing and delivering goods with their subsequent transfer to the Army of Ukraine or other forces of defense;

2) receipt of goods at a price below the minimum market rate or at no cost, with their subsequent transfer to the Army of Ukraine or other forces of defense;

3) receipt of goods provided as a charitable donation or humanitarian aid at a price below the minimum market rate or at no cost;

4) receipt of gifts (accommodation services, medical services, or medicines) at a price below the minimum market rate or at no cost by people living in the temporarily occupied territories of Ukraine or in the territories where hostilities are (were) conducted. This also relates to people who were forced to leave their actual place of residence as a result of temporary occupation or its threat and hostilities or their threat.

Engagement in alternative remunerated activities (except for creative, research, medical, and teaching endeavors, coaching, and refereeing in sports) or entrepreneurship was restricted unless authorized by the legislation of Ukraine. These restrictions do not apply to public servants (except for those of category “A”) and local self-government authorities (except for those of the first-third categories) under the following conditions:

- in case of leave without pay or downtime;
- if employment agreements (contracts), civil agreements on the provision of services, or transactions in the field of entrepreneurial activity are concluded with a legal person under private law or individual person-entrepreneur in respect of whom public servants and local self-government authorities have not exercised powers of control, supervision, and preparation or adoption of relevant decisions during the last year.

These people are obliged to cease alternative remunerated activities (except for creative, research, medical, and teaching endeavors, coaching, and refereeing in sports) or entrepreneurship within 15 working days from the date of termination of downtime or end of leave (paragraph 28 of section 13, “Final Provisions,” of the Law of Ukraine “On Prevention of Corruption”).

The money equivalent of admissible gifts for public servants has been doubled.⁽¹⁸⁾ Thus, the money equivalent of a gift received on a single occasion was changed from one to two subsistence minimums for able-bodied persons (from UAH 2,684, or USD 75, to UAH 5,368, or USD 150). The total money equivalent of gifts received during the year was changed from two to four subsistence minimums for able-bodied persons (from UAH 5,368, or USD 150, to UAH 10,736, or USD 300).

Thus, the relief or cancelation of anti-corruption measures under martial law represents significant corruptogenic factors and increases corruption risks or abuse of office by public servants. Therefore, the principle of proportionality should be observed here. However, the current legislation of Ukraine does not provide for proper regulation. Given all the above, the standards of ethical conduct for public servants should act as a compensator for the complete cancellation or restriction of particular anti-corruption mechanisms during the legal regime of martial law in Ukraine or should be an independent anti-corruption measure to normalize the conduct of public servants.

Sources for formalizing standards of ethical conduct for public servants

Section 6 (Art. 37-44) of the Law of Ukraine “On Prevention of Corruption”⁽¹⁾ establishes the general principles of standards of ethical conduct to be a measure to preclude and counter corruption. These general standards of ethical conduct include the following:

1. observance of statutory requirements and standards of ethical conduct (the obligation of public servants to observe statutory requirements and generally accepted standards of ethical conduct and be polite in relations with citizens, managers, colleagues, and subordinates);
2. compliance with the priority of interests (the obligation of public servants representing the state or territorial community to act solely in its interests);
3. political neutrality (the obligation of public servants to avoid demonstrating their political beliefs or views in any form or abusing office in the interests of political parties or particular politicians);
4. impartiality (the obligation of public servants to act regardless of private interests, personal attitude to any person, and their political, ideological, religious, or other personal views or beliefs);
5. competence and efficiency (obligations of public servants to perform official duties, professional duties, and decisions or orders of bodies to whom they are subordinate and accountable in a conscientious, competent, timely, effective, and responsible manner; obligations of public servants to avoid abusing and using state and communal property inefficiently);
6. the non-disclosure of information (the obligation of public servants not to disclose or abuse sensitive or confidential information that comes to their knowledge during the fulfillment of their official and professional duties);

7. abstention from executing illegal decisions or orders (obligations of public servants to refrain from executing decisions or management orders if they contradict the law, regardless of private interests).

The lack of specificity of these standards of ethical conduct is compensated by the legislative possibility of developing codes of practice of ethical conduct for particular categories of public servants on their basis. The provisions of these codes should consider all the features of public service. Domestic practice shows that these codes (standards) of ethical conduct are adopted for individual public authorities, primarily at the central level. Examples include the Code of Ethical Behavior of the Employees of the National Agency on Corruption Prevention,⁽¹⁹⁾ the Code of Ethical Conduct of Employees of the Ministry of Infrastructure of Ukraine,⁽²⁰⁾ and the Code of Ethical Conduct of Employees of the Ministry of Finance of Ukraine.⁽²¹⁾ Codes of ethical conduct may also be adopted for particular categories of public servants, prosecutors, employees of the Internal Audit Unit, employees of the State Statistics Service, border management employees, etc. Examples here are the following documents: Code of Judicial Ethics,⁽²²⁾ Code of Professional Ethics and Conduct of Prosecutors,⁽²³⁾ Code of Ethics for Employees of the Internal Audit Unit,⁽²⁴⁾ Code of Ethics for Employees of State Statistics Service of Ukraine,⁽²⁵⁾ Code of Conduct for Employees whose Functional Duties Include Border Management,⁽²⁶⁾ etc.

The main problem of legal regulation of standards of ethical conduct for public servants is their non-mandatory nature since the development and adoption of standards of ethical conduct for particular categories of public servants is the right of the relevant public authorities. In this regard, there are no standards of ethical behavior set as a norm by regulators for some categories of public servants.⁽²⁷⁾ For example, no special rules of ethical conduct are set in relation to people's deputies of Ukraine and deputies of local councils (village, settlement, city, district, and regional councils).

These problems are recognized, and principal emphasis is put on overcoming them. Thus, in clause 2.4. Clause 2.4 of the Anti-Corruption Policy for 2021-2025, approved by the Law of Ukraine No. 2322-IX,⁽²⁸⁾ determines one of the problems as the absence of enshrinement of standards of ethical conduct for the Ukrainian people's deputies, local council deputies, and elected local self-government authorities at the legislative level. One of the expected strategic results is the legislative consolidation of standards of ethical conduct for the Ukrainian people's deputies, local council deputies, and elected local self-government authorities with the introduction of mechanisms for bringing to justice for their violation. It is also expected to monitor the effectiveness of measures to bring to justice people's deputies of Ukraine, deputies of local councils, and elected local self-government authorities for violation of standards of ethical conduct.

The legal regulation of standards of ethical conduct for public servants is complicated since they are established at the level of by-laws, which reduces the significance of the standards of ethical conduct, their impact on the behavior of public servants, as well as the institutional support for their observance. As outlined in Article 37 of the Law of Ukraine "On Prevention of Corruption",⁽¹⁾ the fundamental principles of ethical conduct for civil servants and local self-government representatives established by the central executive body entrusted with the creation and execution of state civil service policies in the form of a by-law.⁽²⁹⁾ According to paragraph 6 of part 1 of Article 47 of the Law of Ukraine "On Civil Service," the general rules of ethical conduct in a state body are determined by the rules of the internal service regulations of the state body; it is a local statutory instrument that applies exclusively to public servants of a separate state body.

However, the statistics provided by the National Agency of Ukraine on Civil Service⁽³⁰⁾ shows that civil service and service in local self-government authorities are the most numerous types of public service. The actual number of public servants is 161,575, where those of category "A" reach 207 people, category "B" - 41,576, and category "C" - 119,792. Since these types of public service contact with the private sector more often, there should be properly established and aligned standards of ethical conduct and an appropriate institutional framework to ensure their observance.

Thus, there are two advisable ways to improve the legislation on the regulation of standards of ethical conduct. The first one involves adopting standards of ethical conduct for people's deputies of Ukraine, deputies of local councils, and elected authorities of local self-government through the enshrinement of an appropriate statutory instrument. The second one encompasses adopting laws that determine the principles of ethical conduct for particular categories of public servants, which are currently defined by by-laws.

Features of observance of standards of ethical conduct under the legal regime of martial law

The importance of effective public administration in all spheres of public life under the legal regime of martial law is beyond doubt. At the same time, the need to improve the forms and methods of public administration has only increased because the demand of society for rationality, efficiency, prudence, and stability of state policy is as high as ever. In this regard, the reduction of influence or even the eradication of corruption factors is essential.

A successful example of this is the need to clarify relations concerning the receipt of money, goods, or other items by public servants as charitable and (or) humanitarian assistance to the Armed Forces of Ukraine, other military units, or people affected by the war. Thus, the unity of the Ukrainian society and the international

community has been manifested in collecting a huge amount of charitable and humanitarian assistance for Ukraine, constant fundraising, etc. It should be mentioned that such events could not be ensured without the involvement of public servants, who have been the organizers of these processes. Thus, public servants of different levels have been involved in coordinating meetings and distributing assistance. Considering the volume of charitable and humanitarian assistance, the low level of controllability of its intended use, and thus the possibilities for abuse of office by public servants, proper public administration is reasonably required.

The increase in the level of ethical values in public service has become the basis for legislative implementation of the possibility for public servants to receive assistance in the form of cash, goods, and humanitarian and charitable aid. However, the legislation should enshrine the requirements and documentary evidence of receipt of these funds and their further use in order to support the Army of Ukraine, other forces of defense, intelligence agencies, territorial community volunteers, law enforcement agencies, and (or) for charitable and humanitarian assistance to persons affected by the armed aggression of the Russian Federation against Ukraine.

A striking example of the role of the ethical component is the financial control of public servants in wartime. Financial control of public servants became voluntary during martial law. In particular, this concerns the submission of electronic declarations, notifications of significant changes in property status, and the opening of a foreign exchange account in a non-resident bank, while maintaining the need to fulfill this duty in the future, after the termination or abolition of the legal regime of martial law.

After stabilizing the internal situation in the country, adapting to the conditions and restrictions caused by full-scale military aggression against Ukraine and the legal regime of martial law, as well as the need to resume anti-corruption measures, the issue of restoring electronic declaration has been raised. In addition, statistical data⁽³¹⁾ of voluntary submission of electronic declarations showed that the declaration was carried out mainly by ordinary public servants during martial law, while top officials (public servants in a responsible or especially responsible position) submitted a minimum number of electronic declarations. After a complex and lengthy legislative process, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Amendments to Certain Laws of Ukraine on Determining the Procedure for Submitting Declarations of Persons Authorized to Perform the Functions of the State or Local Self-Government Under Martial Law”,⁽¹⁸⁾ which resumed the submission of electronic declarations by public servants.

Thus, the specificity of observance of ethical standards by public servants during martial law is regulated by a balance between the interests of national security and compliance with international obligations, which Ukraine must adhere to in order to further converge with the European Union legislation and standards. As a result, the duration of this special period makes it possible to develop mechanisms that create the opportunity to implement anti-corruption measures, including standards of ethical conduct.

CONCLUSIONS

The study revealed the connection between the introduction of the legal regime of martial law and the normal functioning of the Ukrainian state and society. The implementation of measures dictated by martial law involved revising public administration tools used by public servants and changing their differentiation according to the criteria of effectiveness and compliance with existing realities. The thesis on the value component of ethical standards is substantiated to ensure the rule of law in the state, change the forms and methods of public administration qualitatively, and achieve its maximum efficiency.

It is concluded that standards of ethical conduct for public servants should act as a compensator for the complete cancellation or restriction of particular anti-corruption mechanisms during the legal regime of martial law in Ukraine or should be an independent anti-corruption measure to normalize the conduct of public servants. It is noted that non-observance of standards of ethical conduct by public servants is unacceptable during a special period. It is equally unreasonable to justify the violation of standards of ethical conduct by the legal regime of martial law.

Two ways to improve the legislation on the regulation of standards of ethical conduct are suggested. The first one involves adopting standards of ethical conduct for people’s deputies of Ukraine, deputies of local councils, and elected authorities of local self-government through the enshrinement of an appropriate statutory instrument. The second one encompasses adopting laws that determine the principles of ethical conduct for particular categories of public servants, which are currently defined by by-laws.

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