

SECRETARIAT GENERAL

**DIRECTORATE GENERAL OF DEMOCRACY AND
POLITICAL AFFAIRS**

**DIRECTORATE OF DEMOCRATIC
INSTITUTIONS**



Strasbourg, 20 July 2011

DPA/PAD 4/2011

POLICY ADVICE

On Service in the Local Self-Government Bodies of Ukraine

The present paper was prepared by the Directorate of Democratic Institutions, Directorate General of Democracy and Political Affairs, in co-operation with Prof. Gérard Marcou, University Paris 1 Panthéon-Sorbonne, Director of GRALE (Research Group on Local Administration in Europe), France.

Introduction

The present policy advice was requested by the Parliamentary Committee on State Building within the framework of the Council of Europe (CoE) Programme to Strengthen Local Democracy in Ukraine (2010-2013, funded by the Swedish International Development Cooperation Agency Sida). The work plan of the above Committee includes discussion and improvement of the legislation on service in local government bodies. On 6 June 2011, the CoE experts participated in the Round Table on Improvement of the Law on service in local self-government bodies in Ukraine. This paper reflects the discussion and provides some basic recommendations on the future of the municipal service in Ukraine. A more detailed legal appraisal of the new draft law can be prepared as the next step.

Decentralisation requires the strengthening of the administrative capacity of local self-government bodies, and hence of a professional and competent local government service. This is even more so when responsibilities of local government are growing. The experience of new States established after the collapse of the Soviet Union and of EU member States can be useful for the next reform of the municipal service in Ukraine.

The importance of the local government service was recognised by Article 6 of the European Charter of Local Self-Government, paragraph 2 of which states:

“The conditions of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided”.

I. Local government service in the former Soviet Union

A major difference between these countries and Western European countries is that the notion of municipal or of local government service is much narrower. In these countries, and as was the case in the State organisation of the Soviet Union, local government service comprises only the personnel of the executive machinery under the head of the executive power, and not the personnel of the public services provided to inhabitants (education, primary health care, and others). Furthermore, workers or non-qualified personnel are not included in the local government service. This explains why the local government personnel is much smaller than in EU member States: for example, 280 000 employees in Russia and less than 100 000 in Ukraine. The same definition of the local government service (and still

in the State civil service) exists in new member States of the EU that were formerly bound to the Soviet Union.

In most of these countries the local government service is recognised as a professional activity that has to be exercised independently from State bodies and regardless of the election results. Most East European countries have a single law on the civil service that is applicable to both the local government and the central government personnel. Important exceptions are: Armenia, Azerbaijan, Kirghizstan, Russia and Ukraine. In the common past of these countries the personnel of the local councils was just a part of the State machinery operating at the local level. The adoption of a separate law for local government services reflects the will to implement the new concept of local self-government introduced in the new constitutions.

Are there any serious reasons for having different laws for the State civil service and local government service?

In Western European countries, there are usually separate laws for the State civil service and the local government service, or sometimes even no law at all for the latter. The explanation is historical. The State civil service was organised firstly according to precise rules, whereas municipality employees were considered "private" employees of the mayor. Therefore, the easiest way to organise the local government service, or the municipal service was to adopt a new and separate law. However, the laws on local government service, where they exist usually follow the scheme and the principles of the State civil service.

Despite this convergence, there are several arguments for preferring separate legislation on local government service. A first argument is to identify local self-government through its personnel and to give it a professional identity based on the values of local self-government; under a common legislation, they would be inclined to share the values of the State civil service, which has more tradition and prestige. A second argument is that the local government service can hardly be organised on a unified basis, since each local government unit is an employer in contrast with the State which is the single employer for all civil servants, except those employed in public law corporations. The law on local government service has to take into account this particularity since it makes it more difficult to organise the professional development of employees. The last argument is that the relationships between executives and political leaders (elected officials) are much closer in local

government than in State administration, and they are much more involved in political decision-making than higher civil servants in the State administration.

This dimension is often overlooked or denied because the legislation often includes elected officials in the local government service, as in the Ukrainian Law on the Municipal Service (Articles 3 and 10). Although different rules are applied to both categories, the application of the same legislation supports the idea that the election is just a different way to assign functions, as it was in the Soviet Union for higher responsibilities, whereas nowadays the major difference is that elected officials are accountable to the voters and the employees are not. These are accountable to elected officials because they are vested with a political mandate notwithstanding the fact that all are also accountable to the citizens at a more general level. This concept can also be found in several Western European countries (e.g. Germany).

This is not in line with the European Charter, which makes a clear distinction between local government employees and elected officials. Article 7 is specifically devoted to elected officials:

“ 1. The conditions of office of local elected representatives shall provide for free exercise of their functions.

2. They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection”.

In particular, it is stated that they do not receive a remuneration but a compensation for the loss of their earnings or remunerations; the purpose of the provision is to guarantee the free exercise of the mandate, not to offer career prospects, contrary to the case for employees.

There are programmes and measures aimed at raising the recruitment quality and introducing modern management tools in post-Soviet states, which should contribute to a more professional local government service. Nevertheless, the practice is often different: there is a strong tendency to over-politisation, especially for higher positions. There was a case in one city of Ukraine, where practically all members of the municipal administration were fired and replaced after a municipal election. Furthermore, the municipal employees are starting to claim their rights: the number of cases submitted to the administrative courts is increasing. These and other facts indicate that the legislation should be improved.

There are many complaints about the low level of qualification of local government employees, the low remuneration and widespread bribery. However, it has never been demonstrated that bribery was more widespread in the local government service than in the State civil service. However, the low salaries and the lack of professional perspective combined with the risk in the event of political change after elections discourage many people from turning to local government to find a job. In this regard it is worth considering the experience of Western European countries.

II. The local government service in Western European countries

In Western Europe, there are major differences in the concept and the dimension of local government. They reflect deep differences in the concept of the local self-government as a whole. Nevertheless, it is generally accepted that the local government personnel includes not only employees of the executive machinery but also all those employed directly by a local self-government unit and paid on the local budget. For example, teachers are considered local government personnel just as much as administrative employees if they are employed by the local government unit.

This is one of the major differences between European local government systems, whether they manage in part education and/or health and employ the staff for these on their budgets. This extensive conception of local government functions is typical of Nordic countries, and was also typical of the UK in the past, but nowadays to a much lesser extent. In Sweden or Denmark, 80% of the public sector personnel is employed by municipalities or, in a small number of cases, by the local government bodies of the intermediate level (county councils in Sweden, regions in Denmark since 2007). In other Western European countries the figures are much smaller. In France, the local government service represents 31% of the whole public service, in Germany 28%, in Italy 19%, in Spain 24%. In Germany, Spain and Italy, the local government service does not include the personnel of the regional level because the regional level is not a part of local government; regional government has a different constitutional status (not in France), and a major part of the State personnel is indeed employed by or was transferred to regional governments.

Among Western European countries we can distinguish two basic employment models in the local government service: the career model and the contract-based model. In practice, most countries have a mix of both models, with one generally being predominant. For example, Italy has almost completely privatised its civil service, at the State as well as at the local

government level, e.g. employees are employed under private law contracts; whereas recruitment is still generally through competitive examinations and elements of the career system are still maintained in collective agreements.

But this is an extreme case. Most countries have a career system at least for the higher ranks of the local government service. This is the case for 26 European countries, whereas only 9 have a contract-based employment regime in the local government service (Bulgaria, Denmark, the Netherlands, Poland, Slovakia, Sweden, United Kingdom). Most countries with a career system employ personnel on a contract basis, either for positions that are supposed not to be involved in the exercise of public power (Germany), or for lower positions, or for positions requiring specific skills for which there is no career recruitment.

Countries with a large local government personnel involved in the provision of public services of national relevance but managed at the local level (education, health care) do not have a career system (Sweden, Denmark, Finland). Where these personnel are employed under a career system, they are State civil servants (France, Germany, Spain, Portugal). In all countries, including those with a contract-based employment regime, public law prevails.

SIGMA (Support for Improvement in Governance and Management) has supported for many years the development of career systems in the public service and in particular in the local government service, despite the support of the OECD to managerial reforms promoting human resource management based on the private sector experience.

III. Career or a contract based system?

The continuity of public administration requires permanent personnel: this is common to both the State and LSG civil service. A stable personnel is useful to the good functioning of public administration, indeed it is in the public interest. If too many personnel are there only for a couple of years and intend to continue their profession elsewhere, there is a loss of memory in procedures and of professional skills; it is much more difficult to support cooperative work between employees that do not feel they belong to a profession, than between employees educated in the spirit of the mission of their administration. This is probably why even in contract-based employment regimes in the public administration, the job stability is much more secure than in equivalent jobs in the private sector.

However, the specificity of the local government service, as regards executives, is the conflict between professionalism and political leadership. Professionalism is usually the aim

of all laws on public service employment, and this implies that people are recruited only on a merit basis, and are to some extent independent in their position from the political leader (the mayor or another authority). Political leadership is supported by recent reforms with the purpose of strengthening accountability to citizens; this gives the political leader the utmost discretion for making appointments, especially to higher positions. This is the main issue for legislation on the local government service: how to guarantee professionalism and neutrality in the public service, and, at the same time, reserve a minimum of discretion to the political leaders? If the law is not clear on this issue, the most probable outcome will be increased politisation.

It is particularly crucial to organise recruitment properly. Nowadays, the principle of an open competition is generally acknowledged. But very much depends on the type of procedure and competition. A competition based on purely oral examinations and psycho-aptitude "tests" gives very limited guarantees of objectivity and impartiality. A recruitment procedure organised position by position is quite cumbersome and does not solve a major problem of all public administrations, and in particular of local government service. A lot of applicants are interested in having a job but are not interested in working in remote places, where it is nevertheless necessary to have competent executives. A good way of solving this problem is to organise a recruitment procedure for a number of positions (for example 20 to 40, or more). Those who will succeed will know that they have to accept the positions offered in order of the competition results. This will ensure remote cities the executives they need, who will get more experience there. But such a procedure is only possible if the local government service legislation offers proper career prospects to these young public servants; e.g., they can be sure that after several years, if they wish, they can apply elsewhere in the country and continue their career. This is a major argument for a career system in the local government service. Nevertheless, the career system is difficult to organise in local government service, since promotion may imply a change of employer when changing the position. It is only possible by reserving all positions for transfers and organising leave for those who are unable to find a new position immediately. These solutions were tested and regulated by the law on French local government. For higher positions, the career should be organised on a nation-wide basis.

With this type of organisation, the local government service may become attractive for young graduates, provided that salaries are not too low and that progression is significant in the first part of the career.

Such a professional local government service would not undermine the authority of political leaders. On the contrary, they would be sure to rely on competent people in the preparation of their decisions. Loyalty is part of the duty of professional public servants. Furthermore, discretion can be left to the political leader for one or two positions in larger local government units. This is provided by the law in France for specific positions on a closed list set up by a government decree.

The career system offers also the best barrier to politisation and nepotism: it is more difficult to influence the recruitment procedure and the career will depend less on the influence of the present employer.

Therefore, whereas there is no perfect system, the career system presents some major advantages.

The main argument against the career system is that of bureaucracy: with well rooted employees and executives, it proves difficult to bring changes. Therefore, some typical managerial procedures have been introduced in different countries: namely performance pay and contracts limited by the term of the mandate. However, it is quite possible to introduce performance pay in a career system, and was even contemplated in the former law on the civil service of 1946 in France. The difficulty with performance pay is not in the employment regime, but in the difficulty of determining objectives for the work to be evaluated and of assessing the achievement of these objectives when political priorities may change within a short space of time. Contracts limited by the term of the electoral mandate usually run contrary to their official justification: far from facilitating the commitment of the managers in their tasks and their evaluation through a clear-cut distinction between political and managerial responsibilities, they result in increased politisation. The separation of responsibilities is also typical of what we can call the "managerial illusion": only events will decide which question will be promoted to the political agenda of the political leaders, not an a priori definition of what is of political relevance and what is of managerial relevance.

Lastly, it is important that the State and the local government public service do not live in isolation from each other, there should be a possibility for transferring from one service to the other. This is an advantage in terms of professional experience, and it may enlarge promotion opportunities. This should be based on the principle of parity. Both branches of the public service should be based on similar principles, the ranks should be parallel, the

remunerations equal, but with compensation for specific responsibilities related to the function.

All these solutions are possible in Ukraine. They would need to be adapted. For example, housing issues might hinder the mobility of public servants. This problem could be solved by the local authority, at least for a small number of posts, using the public housing fund. This has to be regulated by the law.