**State and perspectives of administrative convergence**

**of Ukraine and EU Member States**

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Administrative convergence as tendency towards a common model of public administration is relevant not only for the EU **institutions and governments of the EU-states. It is crucial for further development of public policy and public administration in the neighboring states that are not members of the European Union but are members of the Council of Europe, including Ukraine. This assertion is additionally confirmed in t**he preamble of the Association Agreement between the European Union and its Member States and Ukraine where good governance that is strictly connected to public administration, is named among common values on which the European Union is built and which are shared by Ukraine.

Despite of the general notion that in the public administration domain there is no *acquis communautaire,* national administrations of the EU-members are evaluated to expressed criteria of administrative and juridical capacity to put in practice the acquis. In the Ukrainian context it is important to emphasize that the avove mentioned Association Agreement foresees gradually approximation of Ukrainian legislation with that of the Union as well as effective implementing of it. The process of adaptation of Ukraine’s legislation to acquis communautaire started already in 2004, when the appropriate legislative act was adopted. Thus Ukraine tries to approximate its law to the European Union`s standards and such the trend changes previous tradition of backing it on Soviet and Russian examples. Similar process has been experienced by the other Eastern and South-Eastern European states that already are members of the European Union or belong to the countries - candidates for the accession. Such approximation of national law and public administrations was voluntary, at least during pre-accession period, and conditioned by political choices in the above mentioned states. Also Ukraininan political choice was voluntary and based on social and economic attractiveness of the European Union and its legal order. This pro-European choice differs from previous period of the `sovietization of the law` in Eastern and Central Europe after the World War II that `meant a radical and traumatic legal change by imposition and entailed the disappearance, or at least the undermining of the national legal features`.

Administrative convergence of Ukrainian public administration has mostly one direction – to administrative systems that already showed their effectiveness in the Member States of the European Union. This notion does not exclude a possibility of opposite direction, namely using of some contemporary administrative resolutions in Ukraine by the EU Member States. However, in most of cases we monitor one-way convergence: from the EU to Ukraine. To be more precise, there are at least six sources, from which Ukrainian scientists and politicians can inspire the ideas for further convergence of its national public administration:

- administrative systems and law of some EU Member States;

- legislative acts (including soft law) of the European Union as the whole;

- case law of the European Court of Justice;

- acts (including soft law) of the Council of Europe;

- case law of the European Court on Human Rights;

- legal and administrative doctrine of the EU Member States.

Considering models of public administration and relevant administrative law, Ukraine naturally uses experience of most prosperous countries in the European Union and especially of the Federal Republic of Germany. For example, Ukrainian reform of the judicial control over public administration and creation of specialized administrative courts was mainly based on German model. In turn, the process of decentralization of the public power that started in Ukraine a couple of years ago and evidently brought some positive results, is oriented to French and Polish experience. However, we have to add that process of decentralization was not completed, due to the necessity of considerable changes in many provisions of the Constitution of Ukraine and taking into account unsuccessful attempt to do it by the parliament (Verkhovna Rada) in 2015.

Legislative acts (including soft law) of the European Union as the whole can also inspire further improvments of Ukrainian public administration as well as administrative law. First of all, the right to good administration that is enshrined by the article 41 of the Charter of Fundamental Rights of the European Union is still known mostly to academics and such the right can hardly be found in any Ukrainian legislative act explicitly. Second, issue of biggest lacuna in national public law - lack of a law (code) on administrative procedure from time to time is discussed not only in Ukraine but also at in the European Union as the whole. In recent years the European Parliament adopted two special resolutions that were aimed at future regulation on the EU level, namely of 15 January 2013 with recommendations to the Commission on a Law of Administrative Procedure of the European Union and of 9 June for 2016 for an open, efficient and independent European Union administration.

Activity of the Court of Justice of the European Union (CJEU), unlike the case law of the European Court on Human Rights, has not direct influence on Ukraine. However, considering `development of general principles of Union law by the CJEU since the end of fifties`, significance of its case law for any European country cannot be unappreciated.

In turn, political activity of the Council of Europe has direct effect on Ukraine that joined its Statute already in 1995. One of the aims of this supranational organization is to achieve a greater unity between its members that includes administrative convergence. Besides, many acts of the Council of Europe are strictly related to public administration, among them Recommendation CM/Rec(2007)7 of the Committee of Ministers of the Council of Europe to member states on good administration and many others.

Some of this documents have been implemented into Ukranian legislation, but convergence to majority of soft law of the Council of Europe is still expected to be realized.

Case law of the European Court on Human Rights (ECHR) should also be considered among sources that stipulate adopting of new administrative legislation in all countries that joined the Statute of the Council of Europe. For example, the ECHR in the case `Vyerentsov v. Ukraine` found violations of Articles 11 and 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms `which stem from a legislative lacuna concerning freedom of assembly which remained in the Ukrainian legal system for more than two decades`. Moreover, the Court stressed “that specific reforms in Ukraine’s legislation and administrative practice should be urgently implemented in order to bring such legislation and practice into line with the Court’s conclusions in the present judgment and to ensure their compliance with the requirements of Articles 7 and 11 of the Convention`. However, even in 2018, an appropriate legislative act regulating the fundamental freedom of peaceful assembly and relations of citizens and public authorities in this context have not been passed by the Ukrainian parliament.

Finally, we should explain how legal and administrative doctrine from different EU Member States predetermines administrative convergence. Evidently it is not possible to cover all the ideas relating to public administration improvements, so we shall concentrate on the already mentioned biggest gap in Ukrainian administrative legislation – lack of general law on administrative procedure and applicable ideas in this area by scholars from EU Member States. Similar situation still remains in the European Union as the whole, where despite of the above mentioned resolutions of the European Parliament, the EU regulation of general administrative procedure has not been adopted yet.

Mostly for development of administrative procedure doctrine and law but not limited to it, the international Research Network on EU Administrative Law (ReNEUAL) was set up in 2009 and in 2014 a cooperative work of this scientific group was published and titled the Model Rules on EU Administrative Procedure. This document consists of six books, including mainly procedural but also material aspects of public law: administrative rulemaking; single case decision-making; public contracts; mutual assistance and administrative information management.

The authors of the Model Rules on EU Administrative Procedure represented universities and research institutes from England, Germany, Italy, Luxembourg, Netherlands, Poland and France. Such international cooperation provided exchange of views between administrative and legal scholars and certainly contributed to administrative convergence, though such representation confirmed bigger influence of scientists from Western European countries (with the only exception of Poland). In any case, the Model Rules on EU Administrative Procedure may be used not only for a future EU regulation but also by Member States `as guidance when they are implementing Union law in accordance with their national procedural law`. We would like to add that besides of the EU Member States, also neighboring European countries may and should use provisions from this document in their respective legislation and administrative practice.

Combining the first and the last from the listed sources for convergence - administrative systems, public law, administrative and legal doctrine of some EU Member States and taking into consideration a variety of administrative models, further research shall be related to criteria of better choice for any state. In another words, which national experience will be more relevant in a specific case of public administration reform in Ukraine? A variety of national administrative models even in the European Union is substantive, not mentioning about countries that belong to common law and other systems. Thus a choice of better model should be based on different criteria and such political choice will lead in the end to proper results in a separate country and in concrete socio-economic conditions. To our opinion, any European state striving to improve its public administration, is supposed to weigh such criteria before choosing of any foreign experience:

1) understandable and stable administrative models that evidently became one of the reasons of national prosperity. Though, too complicated models of even developed countries that are overburdened by historical and traditional resolvements can hardly be converged in another national circumstances. In this context, French experience might be seen as less attractive than German one.

2) deliberate success of any country in a certain direction of public administration shall also be analyzed and used, for example, Estonian experience in e-governance.

3) significant experience in public administration reforms of states that had similar circumstances in public sector a couple of decades ago but changed their administrative system dramatically. Polish example here might be seen as appropriate, at least for the other post-Communist countries like Ukraine.

At the same time, national traditions of public administration must be considered carefully. Moreover, level and influence of negative factors – bureaucracy, nepotism, and corruption as well as resistance of public officials to any reform should be evaluated. Simple literal translation of administrative legislation from developed countries of the European Union and formal adoption it in developing countries can hardly lead to effective public administration. In different cultural sircumstances any piece of legislation may remain just a good intention, while administrative practice of implementation will be substantially distinctive. Thus drafters of new public law in Ukraine (also in the other Eastern European states) have to modify administrative models that proved their effectiveness in developed EU Member States, taking into consideration social context of the country that tries to converge its public administration to western examples. Besides, we have to keep in mind that Ukraine and another Eastern European states experienced decades of functioning under Soviet law and its legacy cannot disappear in a month, a year or even a decade. Studying of law and administration in these states was mostly based on concept of positivism and change to the rule of law understandably may be seen as traumatic process for many, not only for law practitioners and public administrators but, rather surprisingly, for academics. On the other hand, a long road to administrative convergence that includes many reforms is the only way to implement common European standards of good administration. Existing variety of administrative models will never disappear completely but it can be substantially reduced and thus lead to better understanding as well as relations between representatives of different nations.

During twenty years many necessary steps have been done for approximation of Ukrainian legislation and administrative practice to European standards, though this process is still far from completion. So we shall list substantial elements of public administration reform in Ukraine that have been realized (at least in law) during these twenty years and finally highlight areas that still need to be converged to European standards of good governance, including good administration.

1) Division of public policy and administration. It was mostly realized at central government but at the level of local government and self-government, the demarcation line between politics and administration is still blurred. Such the situation is strictly connected to lasting delay of bigger local self-government reform and relevant changes to constitutional and administrative legislation.

2) Transparency of public administration. This European principle of good administration was partly realized with the adoption of the Law of Ukraine `On access to public information` in 2011 and rather significant administrative practice of its implementation.

3) Service-oriented public administration. The adoption of rather innovative Law of Ukraine `On administrative services` in 2012 was later supplemented by creation of one-stop administrative offices, initially in big cities and later – throughout Ukrainian regions (`oblast`) and districts (`rayons`). Inspiration for this part of administrative reform had been definitely taken from similar experience of the EU Member States.

4) Human resources development in public administration. The new edition of the Law of Ukraine `On state service` that enshrined almost all contemporary principles and rules of civil service, was adopted in 2015. Meanwhile, complementary legislative act `On local self-government service` is still expected to become the law, thus legal regulation of public officials in local self-government bodies is partly outdated.

5) Decentralization of public power. In the recent years European principle of decentralization prevails in Ukrainian internal policy and public administration, despite of unsuccessful attempt to amend the Constitution by relevant legal norms in 2015. In particular, essential changes took part in very important direction of financial decentralization and voluntary association of local territorial communities. Of course, this decentralization reform needs to be supported by changes to the provisions of the Constitution of Ukraine as well as by new legislative acts on local government.

This last point can be called as one of the main gaps in Ukrainian public law related to public administration. We have to add that bigger reform of administrative system on regional and local level must begin with changes of the administrative-territorial structure. Such the reform had been successfully done in Poland in 1990-s, but until now no Ukrainian politicians had a courage and ability to organize similar processes in Ukraine, despite of recommendations of numeral national and foreign experts.

Second big gap of Ukrainian public law is lack of general act on administrative procedure as well as law on normative acts that are also passed by authorized administrative bodies. Thus decision-making process in public administration is still regulated by different kinds of regulations (by-laws) or be sector-specific legislation in some administrative areas. It means that European standards of good administration might be found in Ukrainian legislation, but they are scattered in sector-specific and another legislation, so many principles and rules are not equally provided in different administrative areas.

So European principles and rules of good administration should be enshrined in general act on administrative procedure and such the approach is based on relevant procedural law of many EU Members States. The Ukrainian parliament tried to pass respective law on administrative procedure (in the first draft – Administrative-procedural code) at least three times (in 2004, 2008 and 2012) but all attempts were not successful. In 2018 legislative works were renewed by the Ministry of Justice of Ukraine and hopefully would lead to a result in the parliament.

To sum up, Ukraine gradually converges its public administration to the European Union standards, though this process could be and should be much faster.

Here it is worth to remind that Soviet legacy in Ukrainian society and public administration has not disappeared completely and some political forces still want to return previous times and administrative system. In practice it means that usual resistance of bureaucracy to administrative reforms that might be monitored in any country is much higher in post-communist Ukraine and efforts of public sector reformers have to be much stronger to overcome such a resistance. So future final stage of Ukrainian administrative reform needs substantive political will and support in the society. Completion of the public administration reform is necessary for Ukraine and only after it the country can fully belong to the European administrative space.