

ECONOMIC AND LEGAL ASPECTS OF RESTRICTIONS ON CIVIL SERVANTS' POLITICAL PARTY MEMBERSHIP IN UKRAINE AND POLAND: A COMPARATIVE STUDY

Tetiana Kolomoiets¹, Serhii Fedchyshyn², Karolina Rokicka-Murszewska³

Abstract. The research argues that safeguarding the impartiality of civil servants is not merely a formal requirement but a fundamental condition for the effective functioning of democratic governance, which directly influences the stability and sustainability of development of state and its democratic reforms. Ukraine and Poland were chosen for comparative analysis due to their shared historical and legal backgrounds, yet Poland's successful experience in depoliticizing its civil service provides a valuable model for Ukraine's ongoing reforms. In Poland, strict legal prohibitions on civil servants' participation in political party activities have been instrumental in eliminating conflicts of interest and fostering a professional, independent civil service. Conversely, Ukraine's current legislative framework still contains loopholes that allow for political influence over civil servants, posing risks to the transparency and sustainability of public administration. The study examines the legislative evolution and current legal regulations in both countries, highlighting the deficiencies in Ukraine's approach to restricting political affiliations among civil servants. It is emphasized that the legislative establishment of the prohibition on membership in political parties and the restrictions on financing political parties are interconnected and constitute an important element of the overall system for preventing the politicization of the civil service and ensuring its impartiality. Furthermore, the article reviews relevant case law of the European Court of Human Rights to assess the compatibility of such restrictions with human rights obligations, emphasizing their necessity for upholding democratic standards. In conclusion, the author proposes specific legislative amendments to Ukrainian laws aimed at introducing clear and comprehensive prohibitions on political party membership for civil servants. Such measures are presented as critical steps towards building a politically neutral, transparent, and sustainable civil service that can effectively support Ukraine's democratic development and long-term governance reforms.

Keywords: economic and legal aspects, state financing, financing of political parties, political party membership, legal restrictions, civil service, political neutrality, public administration, Ukraine, Poland, European Court of Human Rights.

JEL Classification: Q01, H70, H83

1. Introduction

In the ongoing process of reforming the civil service in Ukraine, achieving compliance with European standards of political neutrality, integrity, and professionalism has become a critical objective. One of the most significant measures to ensure these principles is the strict prohibition of civil servants' membership in political parties. This restriction plays a fundamental role in preventing conflicts of interest,

safeguarding the impartiality of public administration, and fostering sustainable development within the state governance system. Therefore, studying Poland's experience – where such prohibitions have been successfully implemented and embedded within constitutional and legislative frameworks – offers invaluable insights for Ukraine's reform efforts.

The importance of this research lies in its comprehensive analysis of the historical evolution

¹ Zaporizhzhia National University, Ukraine (corresponding author)
E-mail: T_deputy@ukr.net

ORCID: <https://orcid.org/0000-0003-1101-8073>

² Yaroslav Mudryi National Law University, Ukraine
E-mail: s.a.fedchyshyn@nlu.edu.ua

ORCID: <https://orcid.org/0000-0003-3096-3214>

³ Nicolaus Copernicus University in Toruń, Poland
E-mail: krm@umk.pl

ORCID: <https://orcid.org/0000-0001-5402-4137>



and current status of legislation in both Poland and Ukraine regarding legal prohibitions on civil servants' political party membership. Understanding the comparative legal frameworks is essential to identifying effective strategies that prevent the politicization of civil service and promote its depoliticized functioning. Moreover, this study examines how such prohibitions contribute not only to transparency and professionalism but also serve as a prerequisite for the sustainable development of democratic institutions.

Additionally, this research aims to explore future prospects for refining and strengthening Ukraine's model of non-partisanship in the civil service, drawing upon Poland's legislative experience and the case law of the European Court of Human Rights. By integrating these perspectives, the study emphasizes that banning political party membership among civil servants is not merely a formal legal measure but a vital mechanism for upholding democratic values, ensuring the rule of law, and enhancing public trust in state institutions.

2. Methodology

The research employs a comparative legal analysis method aimed at identifying similarities and differences in the legal regulation of civil servants' membership in political parties in Ukraine and Poland. A historical-legal approach is applied to examine the evolution of relevant legislative norms in both countries, tracing the transformation from a politicized Soviet model of public administration towards models aspiring to political neutrality in line with European standards.

A normative legal method is used to study the current legislation of Ukraine and Poland, focusing on constitutional provisions, acts on civil service, and subordinate regulatory acts that establish requirements of political neutrality and restrictions on political party membership. Special attention is devoted to the analysis of Article 153 of the Constitution of Poland and the provisions of the Polish Civil Service Acts (1996, 1998, 2006, 2008), as well as the Acts of Ukraine "On Civil Service" (1993, 2011, 2015).

In addition, a systematic analysis method is employed to examine the interrelation between political neutrality requirements and broader principles of public service, such as professionalism, impartiality, and integrity. The research also utilizes the formal-logical method to assess the internal consistency of legislative provisions and their adequacy in preventing conflicts of interest within the civil service.

To ensure compliance with international human rights standards, the research applies case law analysis of the European Court of Human Rights (hereinafter referred to as the ECtHR), focusing on decisions

interpreting the admissibility and proportionality of restrictions on civil servants' political rights. This approach allows for evaluating whether the existing and proposed Ukrainian legislation aligns with the principles of the European Convention on Human Rights.

The conclusions are based on critical assessment of the Ukrainian model's weaknesses, comparative insights from Poland, and best practices recognized at the European level as prerequisites for sustainable democratic development.

3. Literature Review

The issue of political neutrality in the civil service, including restrictions on civil servants' membership in political parties, has been the subject of extensive academic discussion both in Ukraine and internationally. In Polish legal doctrine, a significant contribution to the study of the principles of apolitical public administration has been made by E. Itrich-Drabarek, who emphasizes that political neutrality, alongside professionalism and incorruptibility, constitutes the foundation of the civil service in European Union Member States. In her papers, E. Itrich-Drabarek (2019, 2020) explores the evolution of Polish civil service legislation, with particular focus on the relationship between political neutrality and non-partisanship. The constitutional dimension of political neutrality in the Polish civil service is examined by scholars such as H. Szewczyk and T. Górzyńska, who differentiate between the concepts of "political neutrality" and "non-partisanship," underlining their significance in maintaining public trust in state institutions. M. Taraszkiewicz analyzes the jurisprudence of the Polish Constitutional Tribunal regarding the prohibition of political party membership for civil servants, emphasizing its compatibility with democratic standards and human rights obligations.

In Ukrainian legal scholarship, the issue of prohibiting civil servants from being members of political parties has been examined by a number of researchers. However, it is noteworthy that the majority of these studies have not treated this prohibition as an independent and central subject of legal analysis. Instead, this topic has generally been explored within the broader context of discussions concerning the principle of political neutrality in the civil service. Scholars such as N. Yanyuk, I. Danylieva, L. Kornuta, and N. Panova, among others, have analyzed the threats posed by the politicization of public administration, recognizing that civil servants' affiliation with political parties undermines the impartial and professional execution of public functions. However, in most cases, the focus has remained on the general importance of ensuring

political neutrality, without dedicating sufficient attention to the necessity of legally enshrining strict prohibitions on party membership for civil servants as a distinct institutional safeguard. There is a lack of comprehensive research addressing the specific legal mechanisms required to effectively depoliticize the civil service, including a comparative analysis of successful foreign models, such as the Polish approach, which provides a more stringent legal basis for safeguarding political neutrality. Additionally, insufficient attention has been paid to the development of practical legislative proposals aimed at eliminating these systemic gaps and aligning Ukraine's legal system with European standards of public administration integrity. As a result, the prohibition of political party membership for civil servants in Ukraine remains a relatively under-researched issue that demands a more profound and systematic legal examination, particularly in the context of modern challenges of democratic governance and sustainable institutional development.

4. The development of legal regulation on the prohibition for civil servants to be members of political parties in Ukraine and Poland

An important aspect of understanding the current model of a non-partisan civil service in Ukraine and Poland is the analysis of the evolution of legislation in both countries in this field. Since 1918, the issue of the civil service in **Poland** has been regulated by the provisions of five legal acts, each of which has undergone multiple amendments:

– **The Act on the civil service from 1922** should be mentioned firstly. It stated that, "*a civil servant cannot participate in relations or plots which can disturb the proper course of the state's management or a normal term of office*" (Itrich-Drabarek, 2020). It was, however, amended several times. A sense of instability emerged. There have been attempts to modernize and strengthen the administration, but they did not bring lasting results, since the main barrier, that is the politicization of the administration and its subordination to the interest groups (mainly the ruling class), remained (Zybala, 2017, p. 85). After the Second World War there was a complete destruction of the theory and practice of the civil service, the provisions of the State Civil Service Act of 1922 were not explicitly repealed, but ruthlessly adapted to the requirements of the new regime, which rejected the basic principles of the rule of law. Thus, the 1922 Act was formally in force until 1 January 1975, and was replaced by the provisions of Labour Code in 1974 (formally, the 1922 Act was repealed by Article IV of the Act of 26 June 1974 - Provisions introducing the Labour Code, Journal of Laws No. 24, item 142, as amended). This change eliminated – in accordance

with the ideology of the new regime which was uniform for all countries dominated by the Soviet Union, including the People's Republic of Poland – the guarantees of independence and political neutrality of state officials (Lipowicz, 2023). Politicization of the civil service took place. The phenomenon of party nomenclature has become widespread. Its concept used primarily in the Soviet model of public administration, characterized by the supervision of public administration by the communist party. The concept of party nomenclature is linked to pathological party membership (Itrich-Drabarek, 2019, p. 200);

– **The Civil Service Act of Poland from 1996** was a fundamentally new legal act in the development of politically neutral civil service. It provided that *in order to ensure the professional, reliable, impartial and politically neutral performance of the tasks of the state, a civil service was established*. However, this Act remained in force for a limited period, as it was replaced by the overhaul of the legal system following the adoption of the Constitution from 1997, which established the constitutional foundation for public administration. Within constitutional guarantees we find Article 153 as: "*A corps of civil servants shall operate in the organs of government administration in order to ensure a professional, diligent, impartial and politically neutral discharge of the State's obligations*". The constitutional concept of "political neutrality" is equated with apoliticality, independence from political interests and influences (Szewczyk, 2011, p. 76). However, it should be noted that political neutrality, a term used in the Constitution, is not the same as non-partisanship. Political neutrality means that political interests cannot be taken into account when performing public duties, while non-partisanship prevents persons holding political office from exploiting their connections with political parties (Górzyńska, 2012, p. 434).

Embedding the civil service principle within the Constitution was highly significant, as it established the constitutional foundation for a consistent and steady development of an impartial and politically neutral civil service in Poland. Civil service is considered as a core element of the entire government administration, and its institutional protection should be perceived as a constitutional value (Wójcicka, 2018, p. 119). Each successive Act on civil service in Poland repeats after the Constitution the statement that the civil service was established to achieve goals that included the assurance of the politically neutral discharge of the state's obligations (Itrich-Drabarek, 2020, p. 103). The establishment of political neutrality in the civil service has become an important step in the Europeanization of the Polish civil service. As highlighted by Itrich-Drabarek, Mroczka, and Świetlikowski (Itrich-Drabarek et al., 2012, p. 31), political neutrality,

alongside «incorruptibility and professionalism» has become a fundamental cornerstone of the civil service across all EU Member States.

– **The Civil Service Act of Poland from 1998** was considered one of the most progressive civil service laws among European countries. Article 1 of the 1998 Act essentially reproduced the provisions of the 1996 Act regarding the purpose of establishing the civil service: the execution of state tasks on a professional, diligent, impartial, and politically neutral basis. Members of the civil service corps were divided into two categories: a) civil service employees – individuals employed on the basis of an employment contract according to the rules of the Act; b) civil servants – individuals employed on the basis of appointment according to the rules of the Act. Article 69 of the Act was dedicated to the principle of political neutrality of the civil service, including prohibitions on promoting personal or group interests while performing official duties, demonstrating political bias, participating in strikes or protests, membership in political parties, and participating in trade unions, among others. Regarding political neutrality, this requirement was applied differentially – not to all members of the civil service corps, but only to civil servants: *"a civil servant has no right to establish or participate in political parties"*.

After 1998, the principle of political neutrality of the civil service found its expression in a number of public disputes and in attempts to guarantee it legally. This was reflected in constitutional, statutory and institutional guarantees as well as in regulations that had the character of ethical codes. In particular, the decisions of the Constitutional Tribunal of Poland played a positive role in interpreting the constitutional principle of political neutrality of the civil service, its specifics, and its relationship with non-partisanship. According to the position of the Constitutional Tribunal, expressed in its judgment from 10 April, 2002, K 26/00: *"The concept of political neutrality, as used by the Constitution, and the concept of non-partisanship, expressed in the prohibition of membership in political parties for certain categories of persons, are not substantively identical concepts. The requirement of political neutrality for certain segments of civil service primarily means the inadmissibility of motivating the realization of the constitutional and statutory tasks of these services by the interests of political groups. Non-partisanship aims to eliminate the threat arising from the existence of organizational and political ties between a person holding public functions and a political party. Guaranteeing the apolitical nature of civil services is not achievable in a situation where persons holding such functions are members of political groups"* (Fedchyshyn, 2024, p. 32). As M. Taraszkiewicz (2020, p. 231) points out, according to the Tribunal, the requirement to

observe the principle of political neutrality also means a ban on membership of political parties.

– **The Civil Service Act of Poland from 2006.** Unlike the 1998 Act, the 2006 Act did not implement major changes related to the civil service's non-partisanship.

– **The Civil Service Act of Poland from 2008** reflects contemporary approaches to the political neutrality and non-partisanship of the civil service. As emphasized by scholars, the establishment of an administration that is neutral towards politics is considered "a certain ideal state to strive for" (Przywora, 2021, p. 30). The 2008 Act introduced modifications to the regulation of non-partisanship requirements for civil servants, notably broadening their scope. Pursuant to Article 78 of the 2008 Act, the prohibition against establishing or participating in political parties applies not only to all civil servants but also extends to civil service employees occupying senior positions. Furthermore, the original version of the Act imposed specific non-partisanship criteria on candidates for the position of Head of the Civil Service, stipulating that such candidates must not have been members of any political party at the time of appointment and for a minimum of five years preceding the appointment. However, the latter temporal restriction was subsequently removed, leaving only the prohibition on political party membership in force. As a result, the right to freedom of association in political parties for relevant members of the civil service corps is subject to restriction, aiming to ensure the neutrality and impartiality of Poland's civil service (Puzkarska, 2015).

It is generally accepted that the origins of the **Ukrainian** civil service can be traced back to the national governments that existed between 1917 and 1920, notably during the period of the Ukrainian State under the leadership of Hetman Pavlo Skoropadskyi. Nevertheless, during this turbulent era, no comprehensive Civil Service Act was adopted, and the political and military instability of the 1920s precluded any substantive discourse on the regulation of political neutrality within the civil service. In the subsequent period of Ukraine's incorporation into the USSR (1922–1991), the state service became entirely politicized, marked by the integration of the state administration apparatus with the structures of the Communist Party, and the entrenchment of the nomenklatura system, which was fully controlled by the Communist Party leadership. Membership in the Communist Party was a necessary condition for occupying a position as a civil servant. In the Soviet civil service, among the requirements for candidates, there was a so-called «political component» – a requirement for membership in a Communist party, a characterization of the person «from the political

side», «the depth of their political knowledge, ideological conviction» (Fedchyshyn, 2024, p. 33).

– **The Order of The Verkhovna Rada of Ukraine "On the departisation of public authorities, institutions and organizations" from 1991.** The new stage began with the declaration of independence of Ukraine on August 24, 1991. The Verkhovna Rada adopted the first act aimed at depolitization – the Order "On the departisation of public authorities, institutions and organizations". The latter, firstly, obliged to "cease the activities of political party organizations in all public and administrative authorities, law enforcement agencies, institutions of radio and television, other public institutions, authorities and organizations"; secondly, it established that "the employees of the procuracy authorities, the Ministry of Internal Affairs, the Committee for State Security of Ukraine are obliged to terminate their membership in any political party or movement" (Order of the Verkhovna Rada of Ukraine, 1991). However, the obligation to terminate their membership in a political party did not apply to civil servants, and this issue was revisited only after more than 20 years of Ukraine's independence.

– **The Civil Service Act of Ukraine from 1993** marked the next stage in the development of national legislation, being the first such law adopted among all former Soviet republics. Enacted on December 16, 1993, this Act remained in force for 22 years. It was a general legal act that extended its provisions to all categories of civil servants (including those in the prosecutor's office, judiciary, police, etc.), unless otherwise specified by special laws. The Act regulated the procedures for entering civil service and outlined the elements constituting the legal status of civil servants, effectively formalizing the core principles of the merit-based system. However, the 1993 Act did not introduce either the principle of political neutrality in the civil service or any explicit requirements concerning non-partisanship (Act, 1993). It is notable that the Law of Ukraine "On Civil Service" was adopted three years prior to the adoption of the **Constitution of Ukraine** on June 28, 1996. Unlike the Polish Constitution, the Constitution of Ukraine did not enshrine fundamental principles of civil service, such as professionalism, impartiality, and political neutrality;

– **The Civil Service Act of Ukraine from 2011.** At the initiative of the President of Ukraine, a new version of the Law "On Civil Service" was adopted in 2011. In contrast to the previous Act of 1993, this legislative act placed significantly greater emphasis on ensuring the political impartiality of civil servants. Political impartiality was expressly defined as a fundamental principle of civil service, with its detailed regulation enshrined in Article 13 of the

Act. Specifically, the law established that a civil servant must: a) perform official duties impartially, irrespective of personal political beliefs or party membership; b) refrain from organizing or participating in strikes; and c) abstain from any actions during the performance of duties that would express political views or demonstrate preferential attitudes towards political parties (Act, 2011). Nevertheless, the enactment of the 2011 Act was postponed for several years and, due to various factors, it never entered into legal force. Consequently, this legislative act cannot be regarded as a fully effective stage in the legislative development of civil service regulation in Ukraine;

– **The Civil Service Act of Ukraine from 2015.** The sociopolitical events in Ukraine in 2014 led to a change in the political power. Involving international experts, a new Act "On Civil Service" (Act, 2015) was prepared, which was adopted by the Ukrainian Parliament on December 10, 2015 in extremely difficult political conditions. It became the basic Act in force, which, for the first time since the proclamation of Ukraine's independence, contained a special regulation of political impartiality of the civil service, providing liability for violating its requirements. The adoption of the Act "On Civil Service" of December 10, 2015 is associated with the modern stage of development of legislation in the field of political impartiality of the civil servants.

The Ukrainian model of non-partisanship for civil servants involves a differentiated approach (Article 10 of the Act of Ukraine "On Civil Service" from 2015). The criterion for such differentiation is the category of position held by the civil servant. For civil servants in category "A" (senior civil service corps), more stringent requirements are established compared to those for civil servants in categories "B" and "C". Specifically, there are restrictions regarding membership in political parties:

– for civil servants in category "A" (senior civil service corps), it is prohibited to be a member of a political party. During their tenure in a position of category "A", individuals suspend their membership in a political party;

– for civil servants in categories "B" and "C", there is no outright prohibition on membership in political parties. The requirements regarding party affiliation for such civil servants do not deprive them of the right to be members of political parties, but conditionally limit their involvement, prohibiting them from holding positions in their governing bodies.

The current state of legislative regulation regarding the non-partisanship of civil servants in Poland and Ukraine can be represented in the table as follows.

Model of non-partisanship of civil servants in Poland and Ukraine

	The Civil Service Act of Poland from 2008	The Civil Service Act of Ukraine from 2015
<i>Constitutional basis</i>	Article 153 of the Constitution of Poland from 1997: «A corps of civil servants shall operate in the organs of government administration in order to ensure a professional, diligent, impartial and politically neutral discharge of the State's obligations».	The absence of the principle of political neutrality of the civil service in the Constitution of Ukraine
<i>Personnel prohibited from being members of a political party</i>	All civil servants and the civil service employees holding senior positions within the civil service	All civil servants of category «A» (higher corps of the civil service)
<i>Personnel permitted to be members of a political party</i>	Civil service employees, except those occupying senior civil service positions	Civil servants of categories «B» and «C», except holding positions in governing bodies of political parties

5. Financing of Political Parties and Its Correlation with the Restriction on Civil Servants' Political Party Membership: The Experience of Ukraine and Poland

The prohibition on civil servants' membership in political parties constitutes a key mechanism for safeguarding the political neutrality and impartiality of public administration. However, this restriction must be complemented by adequate financial constraints, since even in the absence of formal membership, civil servants may exert influence on the political process through material support to political parties. Consequently, legislative regulation of political party financing represents an essential component of the overall framework for preventing the politicization of the civil service and ensuring its impartiality.

Scholars distinguish three principal models of political party financing according to the predominance of funding sources: the European-continental model – prioritizing state financing, legally guaranteed; the Anglo-Saxon model – focusing primarily on non-state financing subject to legal regulation; and the mixed model – combining both public and private funding (Vasylchenko, 2008, p. 83).

In Ukraine, the financing of political parties is governed by the Law of Ukraine *On Political Parties in Ukraine* of April 5, 2001. Pursuant to Article 17-1 of this Law, funds from the state budget are allocated to: (1) the statutory activities of political parties not related to their participation in parliamentary, presidential, or local elections, including salaries of employees of statutory party bodies and their local branches as prescribed by law; and (2) reimbursement of party expenditures associated with election campaigning during regular and extraordinary parliamentary elections (Act, 2001).

At the same time, Ukrainian legislation sets strict limitations on the sources of party financing. Article 15 of the Law prohibits contributions from state authorities, local self-government bodies, and civil servants of any category. The restriction on civil

servants' contributions to political parties serves several purposes: ensuring political neutrality, so that civil servants discharge their functions objectively and without partisan bias; preventing conflicts of interest and corruption, as financial support for parties may generate risks of undue influence over public decision-making; and maintaining public trust in state institutions, since the limitation guarantees transparency, accountability, and independence from political pressure.

Political parties are required to submit quarterly reports on property, income, expenditures, and financial obligations to the National Agency on Corruption Prevention via its official website. Violations of legislation on political party financing entail administrative, criminal, or other liability.

Scholarly research demonstrates that the Polish model of political party financing shares several features with the Ukrainian system (Dzhugan, 2017, p. 48; Tsiubchenko, 2017, p. 58). In the Republic of Poland, the financial aspects of party activity are regulated by the Act of June 27, 1997 on Political Parties. According to Chapter 4 of this Act, the assets of political parties may be derived from membership fees, donations, inheritances, bequests, income from property, and from subsidies and subventions established by law. Acceptance of financial assistance from foreign entities, state authorities, and legal persons is prohibited, except as explicitly provided by statute. Parties receiving at least 3% of the vote (or 6% in the case of electoral coalitions) in parliamentary elections qualify for state subventions. The size of the subvention is calculated according to a statutory formula and disbursed quarterly. In addition, each political party is required to establish a permanent Election Fund to finance participation in elections to the Sejm and Senate, presidential elections, elections to the European Parliament, and local government elections. Contributions exceeding statutory thresholds must be recorded in a public register maintained by the party and supervised by the Państwowa Komisja Wyborcza (State Electoral Commission). Oversight of political

parties' financial activities is exercised by the State Electoral Commission, which may reject a party's financial report in the event of violations, resulting in the forfeiture of subvention rights. This practice is applied even to parliamentary parties, underscoring the effectiveness of financial oversight as a mechanism for ensuring political equality.

Therefore, both in Ukraine and Poland, a clear interconnection can be observed between the prohibition on civil servants' party membership and restrictions on their ability to influence political processes through party financing. Comparative analysis of Ukrainian and Polish legislation demonstrates that both systems combine political-legal and financial mechanisms of control: the prohibition on membership prevents formal partisan affiliation, while financial restrictions preclude indirect influence through monetary contributions. In practical terms, this framework establishes a transparent system of accountability and minimizes risks of conflicts of interest and corruption among civil servants. The comprehensive application of these restrictions is thus a prerequisite for preserving the neutrality of the state apparatus and sustaining public confidence in its functioning, as evidenced by the practice of financial oversight of political parties.

6. Prospects for Developing Ukraine's Model of Restrictions on Civil Servants' Political Party Membership: Lessons from Poland and the Case Law of the ECtHR

The existing Ukrainian model of non-partisanship within the civil service fails to align with contemporary challenges, as it overlooks the profound politicization and widespread corruption within the public administration system. Under the current legislative framework, approximately 99.9% of civil servants in Ukraine are, in principle, allowed to hold membership in political parties (Fedchyshyn, 2024, p. 36). This category potentially includes all civil servants in categories "B" and "C", encompassing heads of departments within ministries and other central executive bodies, court personnel, members of the police and other law enforcement agencies, officials in the security and defense sectors, as well as employees of institutions directly engaged in activities related to political parties, such as party registration and financing oversight. In such circumstances, the affiliation of a civil servant with a political party may give rise to situations where a conflict of interest emerges between public duties and personal interests linked to party membership.

Given the current circumstances, it is, in our view, appropriate to adopt Poland's experience and establish a universal prohibition on civil servants holding membership in political parties, irrespective of their

position or category. Firstly, the current legislative model, which permits civil servants to be members of political parties while simultaneously prohibiting them from acting in the interests of these parties, effectively institutionalizes legal provisions that inherently foster situations leading to conflicts of interest. Preventing such conflicts is a key component of anti-corruption efforts. Norms that formally allow party membership for civil servants but restrict actions in favor of those parties possess characteristics of corruption-generating factors, as they create an environment conducive to corruption risks. Any civil servant who is a member of a political party is automatically placed in a situation of at least a potential conflict of interest, which may evolve into an actual conflict. As noted by Fedchyshyn (2015, p. 206-209), such potential conflicts arise precisely from the dual status of being a public official and a party member. A potential conflict of interest is understood as "the existence of a private interest within the sphere of official or representative duties, which may affect the impartiality and objectivity of decisions made, as well as actions taken or omitted in the performance of these duties" (Act, 2014, art. 1).

Secondly, given the current circumstances, it appears highly improbable that it will be possible to practically ensure a situation where civil servants, while holding membership in political parties, will refrain from exercising their official authority in favor of those parties or from expressing their personal views in a manner that benefits themselves, a political party, or a candidate. A major hindrance to this is the deeply rooted politicization and patronage system within the civil service, which are rightly identified as key obstacles to its future reform and modernization. Civil servants are often perceived as a crucial support base for the political authorities in power, serving as an effective administrative resource that facilitates the retention of political control and the securing of favorable outcomes during electoral processes. It is essential to recognize that the structure and evolution of civil service systems, including the underlying political values they embody, are largely shaped by the unique societal and political-administrative contexts of each individual country (Raadshelders et al., 2007, p. 12).

Experts from USAID also pointed out the desirability of a blanket ban on civil servants being members of a political party in the Shadow Report on the reform of the civil service in Ukraine (2017): "At the current stage of development of Ukraine's political system, it is recommended to prohibit political activity for all categories of positions in the civil service, category "A". This should contribute to the development of impartiality and professionalism in the civil service" (Shadow Report, 2017, p. 16).

Furthermore, it is worth emphasizing that the restrictions on civil servants' right to freedom of association with political parties and the imposition of a ban on membership in political parties are in line with international legal norms, particularly those of the European Convention on Human Rights of 1950 (hereinafter referred to as the European Convention). Article 11 of the European Convention on "Freedom of Assembly and Association" stipulates that "everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests". It is provided that "the exercise of these rights shall not be subject to any restrictions other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others". The more specific content of the freedom of assembly and association, the features of its implementation, and limitations can be formulated through the practice of the ECtHR, whose jurisdiction extends to issues of interpretation and application of the European Convention.

The ECtHR considers political parties as associations falling under the scope of Article 11 of the ECHR. Parties are recognized as a form of association that is vitally necessary for the proper functioning of democracy (ECtHR decision in the case of *Republican Party of Russia v. Russia* dated April 12, 2001, ECtHR decision in the case of *United Communist Party of Turkey and Others v. Turkey* dated January 30, 1998, and others). The ECtHR does not exclude the possibility of political parties influencing their own members. The ECtHR argues that if an association is created by individuals who, supporting certain values or ideals, intend to pursue common goals, then if they did not have control over their members, it would contradict the very effectiveness of the freedom in question. It is recognized that political parties, as a rule, may regulate membership by admitting only those who share their convictions and ideals (ECtHR decision in the case of *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom* dated February 27, 2007, § 39).

As stipulated in the European Convention, Article 11 does not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, police, or administrative authorities of the state (Article 11(2) of the European Convention). From the perspective of the ECtHR, freedom of association may be restricted to ensure the political neutrality of civil servants (ECtHR decision in the case of *Ahmed and others v. the United Kingdom* dated September 2, 1998). However, such restrictions

must be necessary in a democratic society (ECtHR decision in the case of *Tüm Haber Sen and Çınar v. Turkey* dated February 21, 2006, § 35-36). Based on the rulings of the ECtHR, it cannot be concluded that there is a uniform standard of apoliticality for civil servants in Europe (Stefanicki, 2005, p. 53). Each country has a certain degree of freedom in shaping its legal instruments. However, the legal positions of the ECtHR confirm the existence of criteria in the context of restricting (prohibiting) civil servants from being members of political parties (Fedchyshyn, 2024, p. 38-39).

Firstly, the ECtHR considers that since the role of civil servants in a democratic society is to assist the government in carrying out its functions, the duty of loyalty and restraint acquires special significance for them (ECtHR decision in the case of *Trade union of the police in the Slovak Republic and others v. Slovakia* dated September 25, 2012, § 57). Secondly, the ECtHR emphasizes that both the elected body of political actors and the permanent corps of public servants are responsible for implementing the adopted policies. In this regard, the trust relationship between them is achieved through confidence in the political neutrality and loyalty of public servants to the incumbent government, as well as in the assurance that the implementation of political decisions will not encounter "political opposition" from public servants. From the perspective of the ECtHR, "the democratic state has the right to demand loyalty from civil servants regarding the constitutional principles on which it is based" and "the state has the right, by virtue of their special status, to require them to exercise restraint". In addition, members of the public must be assured that in matters of interaction with government bodies, they will be consulted by neutral public servants detached from political struggle (ECtHR decision in the case of *Ahmed and others v. the United Kingdom* dated September 2, 1998, § 53).

7. Conclusions

The conducted analysis of the legislative evolution in Poland and Ukraine demonstrates a shared trajectory in the transformation of their respective civil service systems – from a politicized, nomenclature-driven Soviet model towards the establishment of a politically neutral civil service that meets European governance standards. However, a significant divergence lies in the timing and depth of these reforms. While Poland initiated the construction of a politically neutral civil service as early as the mid-1990s, embedding core principles of neutrality, professionalism, and impartiality within its Constitution, Ukraine began implementing analogous reforms only after a two-decade delay. This temporal gap has had a profound impact on the effectiveness and resilience of civil service

institutions in both countries. A key factor contributing to the stability and sustainability of Poland's administrative system is the constitutional entrenchment of political neutrality as a foundational principle of the civil service. Furthermore, Polish legislation applies a comprehensive and uniform prohibition on political party membership to all civil servants, regardless of their position or administrative rank. This approach is instrumental in fostering a depoliticized and transparent public administration, which serves as a critical pillar for the rule of law and sustainable institutional development.

In contrast, Ukraine's current model of political neutrality within the civil service remains fragmented and insufficiently robust. The existing legislative framework allows the vast majority of civil servants – approximately 99,9 % – to retain political party membership, which perpetuates risks of conflicts of interest, undermines public trust in state institutions, and hinders progress towards sustainable governance. Merely formal declarations of political neutrality, without concrete legal prohibitions on party affiliation, are incapable of ensuring genuine impartiality, especially in conditions of political instability and pervasive corruption.

Given these circumstances, it is imperative for Ukraine to adopt a more rigorous approach to civil service reform by drawing upon Poland's legislative

experience. This includes, first and foremost, enshrining political neutrality as an explicit constitutional principle. Secondly, the Law of Ukraine "On Civil Service" must be amended to introduce a universal prohibition on political party membership for all categories of civil servants, not limited solely to top officials.

The legislative prohibition of membership in political parties, together with restrictions on financing them, are closely interconnected and form a crucial component of the overall framework designed to prevent the politicization of the civil service and to ensure its impartiality, both in Ukraine and in Poland.

Implementing such comprehensive restrictions is not only a necessary safeguard against conflicts of interest but also an essential precondition for the sustainable development of Ukraine's public administration. A depoliticized, professional civil service serves as a stabilizing force that enhances governance efficiency, promotes public confidence in state institutions, and aligns with Ukraine's international commitments, including the Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the ECtHR. Consequently, the prohibition of political party membership among civil servants should be viewed as a strategic instrument for institutional resilience and long-term democratic sustainability in Ukraine.

References:

- Act of Ukraine from the 16-th of December 1993 on civil service. Vidom. Verkhov. Rady. 1993, № 52, art. 490, as amended.
- Act of Ukraine from the 17-th of November 2011 on civil service. Ofits. visn. Ukrainy, 2012, № 4, art. 115.
- Act of Ukraine from the 14-th of October 2014 on prevention of corruption. Ofits. visn. Ukrainy, 2014, № 87, art. 2474, as amended.
- Act of Ukraine from the 10-th of December 2015 on civil service. Ofits. visn. Ukrainy, 2016, № 3, art. 149, as amended.
- Act of Ukraine from the 5-th of April 2001 on political parties in Ukraine. Ofits. visn. Ukrainy, 2001, № 17, art. 728, as amended.
- The Constitution of the Republic of Poland of 2 April 1997. Journal of Laws No. 78, item 483, as amended.
- Act of Poland of 17 February 1922 on the civil service. Journal of Laws of 1949, No. 11, item 72, as amended.
- Act of Poland of 26 June 1974 – Provisions introducing the Labour Code, Journal of Laws No. 24, item 142, as amended,
- Act of Poland of 26 June 1974 Labour Code. Journal of Laws No. 24, item 141; original version.
- Act of Poland of 5 July 1996 on the civil service. Journal of Laws No. 89, item 402, as amended.
- Act of Poland of 18 December 1998 on the civil service. Journal of Laws of 1999, No. 49, item 483, as amended.
- Act of Poland of 24 August 2006 on the civil service. Journal of Laws No. 170, item 1218, as amended.
- Act of Poland of 21 November 2008 on the civil service. Journal of Laws of 2024, item 409, as amended.
- Judgment of the Constitutional Tribunal of Poland of 10 April 2002, K 26/00, 'Constitutional Tribunal Case Law – Series A' 2002, No. 2, item 18.
- Order of the Verkhovna Rada of Ukraine from the 24-th of August 1991 on the departisation of public authorities, institutions and organizations. Vidom. Verkhov. Rady, 1991, No. 38, art. 504.
- Dzhugan, V. (2017). Restrictions on financing political parties under the legislation of Ukraine, Poland, and the Federal Republic of Germany: a comparative analysis. *Actual Problems of Domestic Jurisprudence*, 1 (2), 46–49.
- Fedchyshyn, S. (2015). The question of the participation of civil servants in political activities in Ukraine. *Scientific Bulletin of Kherson State University, Jurisprudence*, 2 (2), 206–209.

- Fedchyshyn S. (2024) Legal Restrictions on Membership in Political Parties as a Means of Preventing Conflict of Interest in the Professional Activities of Civil Servants: The Realities of Ukraine and the Experience of Poland. *Reality of Politics. Estimates – Comments – Forecasts*, (4) 30, 29–41.
- Górzyńska, T. (2012). § 49. Służba cywilna w Konstytucji Rzeczypospolitej Polskiej. In R. Hauser, Z. Niewiadomski & A. Wróbel (Eds.), *Konstytucyjne podstawy funkcjonowania administracji publicznej. System Prawa Administracyjnego* (Vol. 2, pp. 427-452). C.H.Beck.
- Itrich-Drabarek, J. (2020). The evolution of the Polish civil service since 1989. *Studia Politologiczne*, 57, 103.
- Itrich-Drabarek, J. (Ed.). (2019). *Encyclopedia of Public Administration*. Warsaw: Dom Wid.
- Itrich-Drabarek, J., Mroczka, K. & Świetlikowski, Ł. (2012). *Civil Service in Poland*. Warsaw: Oficyna Wydawnicza.
- Lipowicz, I. (2023). Civil Service in Poland: its status in the state and its evolution. *CERIDAP*. 17.07.
- Puszkarska, A. (2015). Praca w służbie cywilnej, a członkostwo w partii politycznej. *Rzeczpospolita*. 10.11.
- Przywora, B. (2021). Commentary on Article 1. In K. W. Baran (Ed.), *Ustawa o służbie cywilnej. Komentarz*. Warszawa: Wolters Kluwer.
- Raadshelders, J., Toonen, T., & Van der Meer, F. (2007). *The Civil Service in the 21st Century: Comparative Perspectives*. London: Palgrave Macmillan.
- Shadow Report. (2017). *Reform of the civil service of Ukraine: implementation of the profile Act 2016-2017*. Kyiv: Laboratory of legislative initiative.
- Stefanicki, R. (2005). Apolityczność urzędników w świetle orzecznictwa Europejskiego Trybunału Praw Człowieka. *Państwo i Prawo*, 5, 41–54.
- Szewczyk, H. (2011). W sprawie neutralności politycznej członków korpusu służby cywilnej. *Przegląd Prawa Publicznego*, 11, 75–86.
- Taraszkiewicz, M. (2020). Prawne regulacje neutralności politycznej służby cywilnej w Polsce. *Przegląd Prawa Konstytucyjnego*, 2(54), 219–239.
- Tsiubchenko, A. (2017). State financing of political parties: Ukrainian and international experience. *Bulletin of the National University "Lviv Polytechnic", Legal Sciences Series*, 865, 56–61.
- Vasylchenko, O. (2008). Financing of political parties in foreign countries. *Theory and Practice of Intellectual Property*, 6, 80–85.
- Wójcicka, E. (2018). The new model for filling senior positions in the civil service in Poland. *Transylvanian Review of Administrative Sciences*, Special Issue, 111–128.
- Zybała, A. (2017). Public administration reforms in Poland. In: J. Nemeč & D. Spacec (eds.), *25 Years of Public Administration Developments and Reforms in V4 region*. Visegrad Fund.

Received on: 21th of June, 2025
Accepted on: 05th of August, 2025
Published on: 20th of August, 2025