

## **ADMINISTRATIVE REFORM IN UKRAINE**

By the Centre for Political and Legal Reforms (31/08/2004)

As a constitutional and democratic state, Ukraine cannot develop without a full-fledged administrative reform. The system that underpins organization and operation of public authorities, in particular executive public authorities and local self-governments, shall meet the requirements of proper governance. This implies recognition of the priority of human rights and interests in public administration, true respect of the rule of law and legality principles, as well as introduction of the fundamentals of efficient, effective, and economic public administration.

Today, the system of public administration in Ukraine features a number of essential defects that slow down social and economic transformations in the country. The **key flaws**, in particular, include:

- the inability to initiate and pursue reforms;
- the post-event response of public authorities to the problems they face;
- lack of respect for human rights;
- corruption and bureaucratization; and
- inefficient use of public resources.

**The above problems are mainly caused by the following:**

**1) Unconstitutional and inefficient division of powers between the President and the Cabinet of Ministers in their pursuance of public policies:**

- The President often abuses the powers vested in him (by issuing regulations concerning economic matters, organization of public authorities, relations in local self-governance sector etc, and appointing deputy heads of central executive authorities);
- Many strategic, political and staff-related decisions are de-facto adopted by the head of state or within his administration, while political and legal responsibility for such decisions is laid into the government;
- The unconstitutional influence of the head of state on the public executive authorities is often legitimized through the mechanism of instructions;

**2) Ineffective decision-making procedures within the Cabinet of Ministers:**

- The Government is overburdened with administrative functions;
- Political and long-term matters are given a secondary importance;
- Activities of the Cabinet of Ministers lack strategic planning;
- Proposed governmental decisions are approved through an overly bureaucratic mechanism instead of political reconciliation procedures;
- Governmental committees lack efficiency (since they have not become political reconciliation bodies, and because civil servants are included into them);
- No institutional memory is preserved with no succession in the operation of the government (the governmental secretariat is headed by a member of government);

**3) Irrational system of the central public executive authorities:**

- The number of central public executive authorities is growing unceasingly (the number of central public executive authorities and governmental bodies has again reached 100);
- Many central public executive authorities are directly subordinated to the President, and not to the government;
- There is no actual difference between the status of ministries and other central public executive authorities;
- The horizontal coordination is weak;

- There is an excessively high level of centralization of public executive authorities (the majority of central public executive authorities demonstrate a trend towards development of their own vertical administrative systems);

#### **4) Inefficient internal organization of ministries:**

- Ministerial political and administrative leadership is not separated (the only political position in a ministry is the office of the minister, and therefore civil servants are often forced to fulfil political functions);
- Ministers are overburdened with administrative issues;
- Governmental committees are organizationally dependent (being set up within the structure of ministries, they encounter difficulties with making their management more autonomous and optimized);
- Internal structures of ministerial secretariats lack the system;

#### **5) Inefficient organization of public authorities at regional and subregional levels:**

- There is no proper subordination of local state administrations to the government;
- Heads of local state administrations often act to promote regional clan interests, rather than pursue public policies;
- High concentration of power in governmental authorities (instead of decentralization or transfer of many powers to local self-governance bodies);

#### **6) Inefficient civil service system:**

- The civil service staff is hired and promoted mainly through eye-wash contests;
- The civil service is unprotected from political influences and unstable (high rank civil servants fulfil political functions; civil servants can be dismissed without explanations; civil servants are often drawn into election and other political campaigns);
- Disproportional and unfair salaries, and other conditions of service at different public authorities;
- Rampant corruption (primarily due to low salaries);

#### **7) Irrational administrative and territorial system:**

- Very small communities are independent local self-governance subjects (about 12,000 communities out of total 30,000 communities in Ukraine);
- Districts (subregional units) drastically differ in terms of their territories and population (out of total 490 districts some have from 9,000 to 10,000 people living in them);
- Disproportional regional development, as well as volume and quality of services provided;

#### **8) Inefficient local self-governance:**

- Financial inability of the basic local self-governance units (the right of every community for local self-governance is but declarative);
- District local self-governments have no executive bodies (and no full-fledged self-governance overall);
- District authorities bear no responsibility to voters (communities) (as it is local state administrations that are executive authorities);

#### **9) Vulnerability of citizens in relations with public authorities:**

- There is no general law on administrative procedures which are mainly regulated by rather biased by-laws (where officials' rightfulness is often presumed);
- Private needs and interests are not properly taken into account for organization of relations with public authorities (in terms of provision of administrative services);
- Public administration lacks transparency;
- Administrative and judicial protection is inefficient.

The administrative reform is aiming to eliminate the above deficiencies, as well as the causes behind them. For these purposes, it shall be divided into the following stages:

- Stage I – 100 days upon election of the new President;
- Stage II – 2005;
- Stage III – 2006-2009.

The key precondition of a successful administrative reform is formation of an **essentially new political government** based on the constitutional norms and a more important role of the government in the development and implementation of public policies. When the government is formed by parliamentary factions that set up a coalition (through the mediation of the President), it is necessary to ensure political identification of the government and each of its members. Each member of government shall be required to have an action plan for a specific public policy sector, to show initiative and fidelity to principles, and to be publicly open in their activities.

The government shall focus its work on strategic issues, mainly the conduct of reforms. All public policies shall be divided among the members of government, so that there are no issues left that are not covered by one of them.

There shall also be a member of government (a minister without portfolio) appointed to be in charge of the administrative reform for the period of main administrative reform undertakings.

The key administrative reform priorities are as follows:

## I. PUBLIC EXECUTIVE AUTHORITIES REFORM

One of the objectives of Stage I is **subordination of all public executive authorities to the government**. In this context, the top priority is *reorganization of the system of central public executive authorities (CPEA)*. Ministries as offices headed by members of government and extensions of the government shall become the main type of the CPEA. They shall focus their work on development of public policies, programs and regulations with the least possible involvement in the day-to-day administration.

Almost all “other CPEA” (not ministries) shall be reorganized into governmental offices and subordinated to relevant ministers. Such governmental offices shall focus their work on provision of administrative services, control and oversight functions, and other administration. Political responsibility for operation of each governmental office shall be carried by a specific member of government (a minister). Governmental offices (and such CPEA as the Security Service, the Antimonopoly Committee, and the State Property Fund) may have their territorial subdivisions.

Top ministerial posts shall be **divided into political and administrative ones**. Thus, deputy ministers shall be regarded as political posts (their number shall be limited between 1 and 3) while the office of the ministerial chief of staff shall be introduced (re-introduced) as a civil servant’s post.

At Stage II, it is necessary **to examine the functions of ministries**, as well as offices and institutions subordinated to them (public policy sectors). The results of such functional examination shall be used as a basis for decentralization and deconcentration of governance functions and powers to put the system of executive authorities, their territorial structure and internal organization in good order.

## II. CIVIL SERVICE REFORM

It is envisaged to reform the civil service during Stage I and Stage II. The main objectives here include:

- introduction of the political neutrality principles into the civil service;
- separation of the civil service and ordinary employment relations;
- introduction of exclusively competitive civil service employment procedures;
- introduction of a new division of civil service posts into 4 categories; and
- improvement of civil service administration system.

With the CPEA status of the Main Civil Service office preserved, its chief official shall be a civil servant. Political responsibility for the operation of the Main Civil Service over the reform period shall be vested into the minister for administrative reform, and later, upon implementation of the key reform priorities, it shall shift to one of the members of government (preferably the Prime Minister). In addition, an independent collective body (modelled on the example of the High Council of Justice) shall be set up to protect the civil service and civil servants from illegal political influences. It will also promote legality and transparency of appointment, career development, and dismissal of senior public officials.

## III. LOCAL SELF-GOVERNANCE AND TERRITORIAL SYSTEM REFORM

**The strengthening of local self-governance** shall be one of the objectives of Stage I. The current constitutional norms shall be used to set up conditions to strengthen local self-governance, specifically by stimulating creation of associations of territorial communities (in particular through differentiation of powers of communities and community associations of different dimensions), and by strengthening budget powers and financial independence of local self-governments.

At Stage II, the **local self-governance reform** shall be conducted mainly **at the level of communities and districts**. For these purposes, it is necessary to:

- Enhance the competence of local self-governments by providing them with certain powers transferred from the executive branch, including those taken away from public executive authorities as a result of functional examination of public policy sectors;
- Divide powers between the basic and district units of local self-governance,
- Make steps to consolidate communities and districts as a territorial basis of local self-governance.

In addition, at Stage II it is necessary to develop the **Regional Self-Governance Concept** that shall focus on the following:

- Improvement of the administrative and territorial system at the oblast level;
- Setup of executive committees at oblast councils;
- Transformation of oblast state administrations into the bodies exercising control and oversight of legality of local self-governance activities.

At Stage III, **the administrative and territorial system reform shall be completed with introduction of regional self-governance**. In particular, oblasts shall be enlarged and regional self-governance shall be introduced with executive offices at oblast councils.

## IV. PUBLIC ADMINISTRATION REFORM

The public administration reform as an administrative reform priority shall dominate at Stage III. Specifically, it is necessary to finalize the legal regulation of procedures that govern operation of public administration authorities, which includes i.a. regulation of control and oversight procedures related to the private sector and improvement of the administrative appeal procedures.

In addition, other priorities shall include:

- Introduction of the doctrine of public and administrative services, including the use of methods and principles of the private sector in organization of operation of offices providing administrative services;
- Provision of access to public information;
- Introduction of the electronic governance methods; and
- Reformation of the administrative responsibility rules.

It is especially important that the administrative reform is conducted in a legitimate way. Regulation of powers, organization and operation procedures of public executive authorities, civil service and local self-governance principles, and the territorial system basics by laws is not just a requirement stipulated in the Ukrainian Constitution. It is a condition of irrevocability of the administrative reform, its systemic and democratic conduct.

The objectives of Stage I shall be achieved, first of all, through adoption of laws on public executive authorities, civil service (in a new version), local self-governance (new version), as well as amendment or replacement of the Budget Code.

The objectives of Stages II and III shall be achieved through adoption of laws on the status of oblast and regional self-governance, on access to public information, and approval of the Code of Administrative Procedure and the Code of Administrative Infringements (new version). It is also necessary to amend the laws regulating operation of the central public executive authorities.

Acts of President and governmental resolutions necessary for the conduct of the administrative reform shall be passed in strict compliance with the Ukrainian Constitution.

**The Constitution** itself, however, needs **to be amended** at Stage II in order to:

1) *Make possible further reform of local self-governance* (and the administrative and territorial system). District communities shall get the right of local self-governance while district state administrations shall be eliminated; “budgeting” and “budget reporting” shall be taken off the list of constitutional powers vested into oblast state administrations; the list of oblasts shall be excluded from the Constitution);

2) *Strengthen the status of the government*. While preserving the half-presidential form of government, the Cabinet of Ministers shall be required to resign before the election of a new parliament (and not the President as today); the positions of the government and the status of the Prime Minister shall be strengthened; the Cabinet of Ministers shall get the powers to appoint and dismiss heads of oblast state administrations; it is necessary to directly allow combination of governmental and parliamentary offices.

<http://www.pravo.org.ua/index.php/2010-03-06-00-08-13/2010-03-06-00-23-46/93-administrative-reform-and-good-governance-ua>