TSUL LEGAL REPORT

THE LAW JOURNAL

E- ISSN: 2181-1024



VOLUME 3
ISSUE №1
APRIL 2022



TSUL LEGAL REPORT

INTERNATIONAL
ELECTRONIC SCIENTIFIC JOURNAL

VOLUME 3

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ISSN: 2181-1024. Certificate: No. 1342

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TSUL LEGAL REPORT

Journal homepage: www.legalreport.tsul.uz

PROBLEMS OF PUBLIC SERVICE IN THE REPUBLIC OF UZBEKISTAN: FURTHER IMPROVEMENT OF THE PUBLIC SERVICE SYSTEM

UDC: 35(045)(575.1)

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ARTICLE INFO

Keywords: public service, formation and legal regulation of public service, selection for public service, principles of public service, meritocracy, selection qualification, public service reserve, competition.

ABSTRACT

This article is devoted to the study of the public service system. The author comes to the conclusion that the effectiveness of the public service, its social usefulness is determined by how, in what way and how well it serves the needs of a person, helps them in life. The civil service includes a necessary and important element of the structure of the state. It plays a bridging role between the state and society. This article also analyzes the new draft law "On the State Civil Service". The further democratization of state building is a continuous process. Obviously, the reform of national statehood in Uzbekistan should also affect the institution of public service. The state program for the implementation of the Strategy of New Uzbekistan for 2022-2026, approved by the Decree of the President of the Republic of Uzbekistan dated January 28, 2022 №PQ-60, provides new changes in this sphere.

I. Introduction.

The experience of most countries shows that when determining the legal status of a civil servant, it is necessary, on the one hand, to take into account that a civil servant, being a citizen of the country concerned, must have those constitutional rights and freedoms that other citizens have. On the other hand, the performance by a civil servant of his functions requires the establishment of certain restrictions on him / her (prohibition to engage in other paid activities, including

entrepreneurial; prohibition to receive royalties for publications and speeches, the preparation of which is part of his official duties; inadmissibility of using his official position in interests of political parties, public associations, etc.). Such restrictions are introduced in order to prevent abuse of office. Therefore, one of the most important tasks of the civil service reform is to ensure a combination of the legal status of an official as a citizen and as a civil servant. At the same time, maintaining a balance of interests of the state and its employees is one of the conditions affecting the effective implementation of public service.

II. Research results and discussion.

Thomas Hobbes, argued that the stability of the order and the security of the people depend on a strong state power. Three centuries have passed, but this statement is true today for all states with different political regimes. However, the mechanisms for the exercise of power and the issues of the effectiveness of its management are still one of the most difficult in the practice of the state.

As you know, the central link of management is the public service, which can be represented as the practical participation of citizens in achieving the goals and exercising the functions of the state through the performance of public office. The reform of the civil service in the new Uzbekistan is aimed precisely at strengthening state power, capable of ensuring a comfortable and safe life in the country in response to new challenges associated with globalization, the threats of international terrorism and, as a result, the need to modernize all spheres of life, starting with management [8, P.50].

In our opinion, the essence of the performance of public office is the regulation of the objectively reproduced and constantly emerging contradiction between the pluralism of the civil sphere and the integrity (unity, sovereignty) of the state. An open form of this contradiction is the conflict of general and private interests, the agents of which are the state and society.

Unfortunately, in Uzbekistan there is still no single legal act, which considers the civil service as a single mechanism.

In 2017 and 2018, bills on public service have already been submitted for public discussion. But in 2020, the word “civilian” appeared in the title of the draft law.

It is important to understand that the law on the state civil service cannot replace the law on the civil service.

The unity of the civil service is necessary for the civil service to work effectively as a single mechanism. And for this it is important to create a unified system of interdepartmental interaction with common goals and vision. Now in Uzbekistan there is no such unity, each department serves its own interests.

For example, the country still does not have a unified system of electronic keys for the formation of a digital signature. You can get an electronic key at the State Tax Committee, you can - through the state unitary enterprise “Unicon.uz”. There is only one standard, but there is no mutual recognition of keys, so it is impossible to sign a tax report with a key from Unicon.uz [24].

In Uzbekistan, there is still no single digital database of all individuals and legal entities. But it could be used to issue a TIN, EDS, to maintain registers in various departments. Now each department creates its own database with limited access.

The Draft of the Law On Civil Service was supposed to unite all departmental interests within the framework of state policy. But this will not happen if the project developers do not eliminate the conceptual, systemic problems and pass the law with minimal and declarative changes.

In accordance with the priority areas for further improvement and reform of the civil service, determined by the Decree of the President of the Republic of Uzbekistan dated October 3, 2019, as well as taking into account the best world experience, recommendations of authoritative international organizations, national experts, a draft Law of the Republic of

Uzbekistan “On the State Civil Service” was prepared [3].

According to the wording of the project, the state civil service is a professional paid activity of citizens of Uzbekistan in state bodies and organizations in the public interest.

There was no such concept before, and even now it is not very clear how the civil service differs from other types of public service (if any are meant at all).

In general, the public service can be civil, law enforcement, diplomatic and military (in terms of the nature of the service), or political and non-political (in terms of participation in the development and implementation of state policy).

In our opinion, there are some gaps in this Law, including in Article 3 of the draft law it provides that its norms do not apply or partially apply to a certain category of officials due to the specifics of their legal status, the procedure for election (appointment) and activities, determined by the Constitution of the Republic of Uzbekistan and relevant laws (members of Parliament, deputies of representative bodies, judges, members of the Government, etc.). In world practice, these officials are classified as political employees, not civil servants [10, p 60].

The law uses the term “employment contract” to secure relations, which is not applicable to public service. The employment contract is based on the freedom of contract for both parties. That is, the employee and the employer can influence the content of the contract and have the right to choose its provisions. With regard to the civil service, there is no such choice, because it is built on the hierarchy of power and the mission of serving the people.

Compared to civil servants, public political positions are not always covered by labor legislation, since they are elected by the people or deputies or appointed by higher bodies, and can be dismissed on grounds not provided for in labor legislation. In other words, the rules governing the civil service do not apply to political employees.

As a general rule, civil servants in almost all countries are divided into civil and political. Their names, and sometimes the list of persons included in their circle, may vary (public and civil - in the UK, competitive and patronage - in the USA, officials who are in private or public law relations with the Federation - in Germany, etc.), but the essence of legal regulation remains unchanged [11, p 4].

In addition, the draft law does not contain rules excluding any categories of civil servants from the system of mandatory declaration of income and property. The articles of the draft law define only the scope of its application, since the draft, along with the declaration, regulates a wide range of other issues of the civil service. In addition, the draft provides that in relation to members of the Government, the Chairman and members of the Council of Ministers of the Republic of Karakalpakstan, khokims, it is applied to the extent not regulated by other legislative acts.

World experience shows that the issues of declaring the income and property of civil servants are regulated in independent legislative acts or acts related to combating corruption. In accordance with the Decree of the President of October 3, 2019 “On measures to radically improve the personnel policy and the system of the state civil service in the Republic of Uzbekistan”, regulatory legal acts are being prepared for the consistent introduction of a system of mandatory declaration by civil servants of their income and property [24].

The basic issue of developing the concept of reforming the civil service is the choice of the most appropriate mechanism for its regulation. World practice knows several approaches to this issue.

The first option, which is used mainly in the countries of the common law system of law (for example, Great Britain, the USA), is that the provisions governing the civil service are not consolidated in a single law, but are enshrined in a number of legal acts. For example, in the UK, the powers of certain

categories of civil servants (the Ministers of the Crown Act 1975, the Act on the regulation of powers in the civil service system 1992), generalized criteria for passing the stages of civil service (The Service Relations Act 1999), on funding employees (Law on Ministerial and Other Salaries 1975, Law on Appropriations 1996) [13, p 5].

Unlike other countries of the common law system, the United States has been moving towards the creation of a single act of legislation regulating public service issues for quite a long time. In this regard, many disparate provisions on public service have been unified in Title 5 of the United States Code.

The second approach, used mainly in the countries of the continental system of law, is to create a single special comprehensive law on civil service (for example, in Germany, France, Uzbekistan). The regulation of the civil service in these countries is based on the norms of Constitutions and complex laws (for example, the French Law on the rights and duties of officials of 07/13/1983).

The advantage of this solution to the problem is the structured, systematic, transparent legislation on the public service, as well as close connection with the principles of regulation of the public service. However, this leads to insufficient flexibility of the legislation, its slow response to changing conditions, etc.

It is also necessary to regulate the procedure for entering the civil service. In the countries of Western Europe (Germany, France, the Netherlands, etc.) and East Asia (Japan), the civil service laws regulate in detail the procedure for entering the civil service. In general, a clear regulation of the rules for admission to the civil service is characteristic of the legislation of almost all countries of the world. The main issues regulated by this block of norms are the requirements for candidates for public office, as well as the procedure for admission to public service [14, p 3].

Relevant provisions are included in the laws of the CIS countries. For example, in Kazakhstan, a separate chapter is devoted to this issue, and in Russia and Kyrgyzstan, articles regulating entry into the civil service are contained in the chapter of the law devoted to the civil service.

The experience of foreign countries shows that almost all laws on public service contain a list of requirements for candidates for public office. Among the most common requirements are: citizenship qualification (UK, USA) or residence (Germany); age qualification (Great Britain, France), educational qualification (Great Britain, France, Germany), and for different categories of positions the content of the educational qualification varies from having a diploma of special education to an academic degree; qualification qualification (practically all countries of the world), involving the selection of the most experienced, capable, knowledgeable candidates, etc. There are other requirements that are specific to each individual country, taking into account its historical and cultural characteristics.

In Germany and some other countries, a number of positions require preparatory practice for several years (depending on the position) [16, p 5].

An analysis of the selection systems for civil service in foreign countries allows us to identify two relatively separate systems: an elite, relatively closed system for selecting personnel, which is more characteristic of Germany and Japan (competitive selection in such a system is carried out according to complicated programs), and a flexible system for recruiting highly qualified applicants to the civil service from various walks of life by competition, which is widely used in the UK and Canada. In Uzbekistan, the selection of civil servants takes place in a mixed form, for example, in the system of the Ministry of Justice, a flexible system operates most of all, and higher positions in the Cabinet of Ministers or in investigative bodies are of an elitist nature of selection.

Also, taking into account the best foreign experience, it is important to include articles on equal access to public service and the

prohibition of discrimination in entering and passing public service into the draft law of the Republic of Uzbekistan “On Public Service”.

In order to avoid unreasonable presentation of additional requirements for employment in a public body, illegal denials of admission and other cases of abuse, the draft law should establish clear and transparent procedures for entering the public service. At the same time, special attention should be paid to the list of documents required for admission to the civil service, as well as the issues of holding a competition for filling positions of civil servants, issuing individual legal acts on the basis of which admission to the civil service is formalized, an employment contract, preliminary testing, etc. [4, p 7].

Legal regulation of the procedure for entering the civil service should be based on a combination of public law and private law approaches. In particular, it should be shown how the election, acts of appointment or approval correlate with an employment contract concluded with a civil servant.

Taking into account public opinion and foreign experience, it is necessary to revise the provisions of the draft law, which allow persons who are closely related to occupy positions in the same state institutions if their service is connected with the direct subordination or control of one of them to another. Provide for additional study of questions about the right of officials and members of their families to open accounts in foreign banks, keep valuables and own real estate abroad.

In addition to conceptual problems, the draft law has a number of significant shortcomings: weak conceptual apparatus, wording with indefinite content and ambiguous terms are used. The principles of the state civil service are not explained, the concept of serving the people, which is integral to the public service, is poorly spelled out.

Moreover, the draft law does not define the “career model” of the state civil service, which is determined by Presidential Decree №PQ-5843. It should be noted that the key points of the career model are also not reflected: public service in the reserve, qualification exam, selection of personnel based on real achievements, skills, career growth based on competencies, etc.

The principles of meritocracy, that is, a system of rewards for abilities and achievements, should ensure the development of public service. But the tools described in the bill will not be able to provide this. The selection of personnel, recruitment to the civil service, promotion, prosecution is built on the subjective assessment of leaders at the level of departments, which is a corruption clause. In our opinion, it is necessary to determine a specific model for the admission of citizens to the civil service.

Some articles may conflict with the Constitution of Uzbekistan. For example, Article 8 proposes the development of an ideological platform - it is not clear what is meant, because according to the Constitution, no ideology can be established as a state one. And Article 12 proposes to carry out psychodiagnostics and assessment of the level of worldview of a civil servant. How is it possible to test a mindset? Moreover, the Constitution guarantees citizens freedom of thought, speech, beliefs and conscience. In addition, the draft law gives the government virtually unlimited powers, while limiting the president’s powers.

III. Conclusion.

To sum up, it should be noted that many provisions relating to the public service have not been settled, and a number of organizational issues need to be resolved. Therefore, it is necessary to provide for a reasonable time for the entry into force of this law. In addition, it should be borne in mind that a number of provisions of this law (for example, on declaring income, expenses and property) can be put into effect only after the adoption of special legal acts (the law “On declaring income”).

The implementation of the above recommendations and their settlement in the draft law “On Public Service” will allow:

- to create and ensure the effective and efficient functioning of the public service;

- prevent corruption and other abuses in public service;

- create a single state body responsible for the implementation and implementation of a single policy in the field of regulation of the civil service;

- determine the status of civil servants;

- develop an effective system for selecting personnel for public positions, the procedure for the formation of a personnel reserve of civil servants, thereby developing a procedure for entering the civil service and regulating the process of hiring civil servants, provide for the widespread use of competition for appointment to a public position;

- develop a procedure for passing the civil service and create a mechanism for evaluating the activities of civil servants based on constant monitoring of the performance of their official duties;

- ensure the legislative consolidation of the specifics of the regulation of the labor of civil servants and create a system of compensation associated with such conditions;

- increase the responsibility of civil servants and provide a mechanism for compensation in case of harm caused by them and specifically determine the grounds for termination of employment relations with civil servants;

- develop a unified system of rights, duties and restrictions related to the activities of civil servants at all levels [5, p 2].

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