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THE CIVIL SERVANT SYSTEM IN SERBIA AND ITS ESSENTIAL ELEMENTS

Abstract: The questions related to the legal systems of modern states such as the Republic of Serbia inevitably include the ones regarding the status of persons who perform duties within the jurisdiction of state authorities on a professional basis. Civil servants need to have a clear picture of their position and the overall social significance of the activities for which they are responsible. The way in which these issues are regulated significantly influences the selection of personnel, their motivation, and, consequently, the overall results of the activities they perform in the public interest.

The focus of our attention in this paper is the segment of state administration in the Republic of Serbia related to the new civil servant system, governed by system laws and by-laws. The Civil Service Act of 2005 was the first step taken in several decades, toward certain codification of the subject matter relevant for civil service employment. Besides, some completely new methods and mechanisms of modern human resource management were introduced, which allowed the functioning of the civil servant system as a whole.

The foundations of the contemporary civil servant systems are the classification of civil servants, conditions for the employment and its termination, personnel selection, rights and duties of the civil servants, upgrading qualifications through training and professional development, development of personal values and potentials of the civil servants, as well as the system of promotional practices. The same foundations are relevant for the civil servant system of the Republic of Serbia.

Key words: state administration, civil servants, legality, depoliticization of administration, accountability, transparency, expertise.

INTRODUCTION

The science on government emphasizes that the personnel constitutes the most important and indispensable part in each organisation. Without it, neither an organisation can be established, nor can its goals be established or achieved. Therefore, the state, as an organisation of a special kind, performs its functions through various organs, services and institutions. However, the most significant part is the legal regulation of the civil servants' status, since it constitutes the basic substance of the state administration in terms of the number and the importance of the powers vested in it. Therefore, the legal systems of modern states inevitably raise questions regarding the status of

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persons who professionally perform duties within the jurisdiction of state authorities.

Bearing in mind that the legal regulations governing their status are closely linked with the development of the rule of law, it should be noted that legal regulations in this area reflect the degree of the state's development and indicate the significance that the government attaches to its civil servants. In this way, the civil servants themselves have a clear picture of their position and the overall social importance of the activities they perform.

Comparative and historical analyses show different levels of development of the regulations in certain countries. It should be noted that the states in which codifications of the civil service laws have been fully implemented constitute a minority. Hence, civil service relations in many countries appear to be arranged only partially and fragmentarily, most frequently by norms contained in legal acts of different legal power.¹

The comprehensive reform of state administration in the Republic of Serbia has introduced a new civil service system, provided for by the Act on State Administration, the Civil Service Act, the Act on Salaries for Civil Servants and Employees and other related laws and by-laws. The Civil Service Act of 2005 signified the first step taken in several decades towards a certain level of codification of the subject matter pertaining to the civil service. Besides, some completely new methods and mechanisms of modern human resource management were introduced, which allowed the functioning of the civil servant system as a whole.²

IMPORTANT ELEMENTS OF THE CIVIL SERVICE SYSTEM

The civil service system is associated with the relationships in the civil service and work in the state government organs and, being comprehensive, among other things, it regulates personnel policies. In addition to this, the personnel policy summarises the questions related to the classification of civil servants, the basis for the selection of personnel, rights and duties of the civil servants (including the system of salaries and promotional practices), enhancement of their competence through a system of professional training and development, as well as the development of their personal values and potentials, while at the same time managing the transitional processes in this area.

The new civil service system in the Republic of Serbia shows features of a career system based on merit (the so-called merit civil service system). The basic principles on which the career system is based are defined in the substantive legislation and include several principles. These are: the principle on political neutrality and impartiality; legality and accountability; equal access to jobs; promotion in service; protection of rights of the civil servants and employees; prohibition of privileges or denial; liability for violating official duty; flexible deployment of the

¹Кулић Ж., Васиљевић Д., *Радни односи у органима државне управе* (електронски извор), уџбеник, прво издање, Београд, Криминалистичко-полицијска академија, 2009.

²Миловановић Д., Ненадић Н., Тодорић В., *Студија о унапређењу законодавног процеса у Републици Србији*, Београд, 2012.

civil servants; right of civil servants to professional development; right to organize trade unions and postulates of professional ethics.³

The purpose of the civil service system is maximum rationality (observed from the aspect of the overall administrative organisation) and maximum legal security for the civil servants. Therefore, it encompasses three narrower systems, including the system of classification, the payment system and the system of promotion, according to the Serbian legislation.

The classification system consists of a set of categories, criteria and rules for the classification of civil service jobs into certain positions. The classification can be performed vertically or horizontally. Vertical classification occurs when jobs are classified according to the degree of complexity of the assignments and the responsibility involved in a certain position. Horizontal classification occurs when the classification of jobs and/or classification of civil servants is based on the educational levels. The vertical classification of jobs is closely related to the hierarchy of the civil service system, which is based on the principle of subordination.

The hierarchy among the employees in public administration is based on the division of the activity process and the establishment of specific function, where each function has a special character and, as such, gravitates towards a more general function. As a rule, more general functions comprise a number of simple functions that they coordinate. This practice is also outlined in the Civil Service Act, which provides for the duty to execute orders, issued by a superior officer. Besides, the Act classifies the civil servants as those in basic positions and those in executive positions i.e. in the managerial executive positions. This ensures consistency in the hierarchical functioning in the organisation of the working process.⁴

The job classification is applied in cases where jobs are ranked. Therefore, approximately the same or similar duties are grouped according to their degrees of complexity and responsibility. They can also be ranked according to the level of education and work experience and/or years of service required. From the aspect of organisational rationality, it is advisable to apply the system of job positions in the civil service classification, whereas the system of classifying civil servants according to the educational levels, professional experience, and/or years of service is easier to use in practice and provides much greater security to the civil servants.

The issues relating to the civil servants are of paramount importance, because of the role they play in democratic societies and, above all, in the establishment, consolidation, and preservation of democratic institutions. The general trends toward reforming the public administration impose an obligation on the organs of state government to employ civil servants who possess high professional and moral characteristics. Loyalty and respect for the rule of law, neutrality, loyalty

³Миловановић Д., Ничић Ј., Давинић М., *Стручно усавршавање државних службеника у Републици Србији*, Београд, 2012.

⁴Васиљевић Д., *Управно право*, Београд, Криминалистичко-полицијска академија, 2011.

to democratic institutions and respect for the citizens are just a few of the features associated with the civil service.⁵

In an ambience of general tendency toward reforming the systems of public administration in many European countries in order to increase its efficiency, productivity and standards of services provided to the citizens, the specific role of the government officials in these processes is recognized because of the fact that they are in the service of the state and its citizens. Committed to the European standards of public administration and the existence of common values shared by the European Union Member States, the Republic of Serbia has implemented some basic principles of good practice from the European administrative space, both in its laws and in practice involving the civil servants.⁶

THE CAREER CIVIL SERVICE SYSTEM

There is no doubt that the specific features of the civil service system involve the career movement of the civil servants for the duration of their service. The movement is referred to as promotion. Gradually moving to jobs and positions of increased responsibility, a civil servant is also promoted to higher amounts of payment. In doing so, it is essential that there is a connection between the functions performed by the civil servant and his/her qualifications.

The theory and practice have formalized two basic systems of the civil servants' progress. These are the open system of promotion - where officials are promoted based on the evaluation of their abilities that qualify them for a more responsible working position suited to the system of job classification and the automatic system - in which officials are promoted based on certain criteria (seniority, acquiring better qualifications or a higher level of education). In the latter system, the promotion of civil servants is performed automatically, regardless of the assessment of the manager who monitors and evaluates the performance of the civil servant. The purpose of the open system of promotion is to encourage employees to better performance and personal development.

On the other hand, the purpose of the automatic system of promotion is to provide certain expertise in career development. It should be noted here that the Republic of Serbia practically applies a combination of the two systems. Their combined application achieves both goals.⁷ In addition to this, any preference for a single system of promotion would raise questions regarding the subjectivity of managers who make decisions related to the promotion of a civil servant, but also regarding the very institution of appraisal of the civil servants' work.

⁵Васиљевић Д., *Законитост управе и дискрециона оцена*, Београд, Криминалистичко-полицијска академија, 2012.

⁶CCNM/SIGMA/PUMA (99)44/REVI – *European principles for public administration* - SIGMA 27, Paris, 1999, p. 225.

⁷Томић Р. З., *Опште управно право (организационо, материјално, процесно)*, Београд, 2011.

PERSONNEL POLICY IN THE CIVIL SERVICE SYSTEM

The personnel policy includes activities aimed at filling vacancies by employing civil servants in the state administration and the creation of appropriate prerequisites for their work. These activities are harmonized, in order to serve a three-fold purpose: promoting maximum liability of the organisation; ensuring optimal development and training of civil servants and creating a sense of satisfaction among the employed officials. According to the expected outcome, the personnel policy is implemented through three segments: activities associated with the employment of persons and their assignation specific working positions; jobs related to professional training and providing assistance in personal development of the civil servants and their in-service training, and, finally, activities aimed at creating optimistic conditions for the work of employees.

The purpose of coordinated activities related to filling the post in the administration aims primarily to the exclusion of the unfit, incapable or unworthy candidates from certain positions. Additionally, there are activities aiming to attract the most capable personnel to the civil service and the activities related to the deployment of personnel in accordance with the needs of the state authority and personal characteristics of the employees. The essential principles for recruiting civil servants include equal access to the civil service and the ability to work in the civil service. These principles are supported by fair and open job advertising.

The issue of equality is also related to the issue of non-discrimination. Bearing in mind the highest legal acts that prohibit any form of discrimination, we could here refer to inadmissible and admissible (or positive) discrimination. Positive discrimination is justifiable by law when it guarantees the protection of certain categories of people in terms of gender, language and/or disability. Since the constitutions of some states prescribe citizenship as a general requirement for admission to the civil service, this condition can be justified only if it is necessary for the performance of functions vested in a state official. In any event, the citizenship as a prerequisite for employment must have legal grounds. On the other hand, the criterion of competence - qualification to work in the state authority is directly related to the implementation of the merit system.⁸

In any case, in order to observe the principle of equal access to jobs in public administration, recruitment systems and procedures should be open, transparent and with clear rules. This means that applicants need to know in advance the terms and conditions of selection. The principle of transparency is of particular importance because it ensures the equality of the applicants and rules out arbitrariness in making decisions on the selection of candidates.

The civil service system of the Republic of Serbia has defined the elements pertaining to the selection of the applicants of the civil service, which relate to the needs of the authority for personnel with certain qualifications, skills and personal characteristics required from

⁸Vasiljevic D., Milovanovic D., "Novelties in the Law on Administrative Inspection in the Republic of Serbia" in: *Iustinianus Primus Law Review*, Vol. III, No. 04, 2012, Skopje. Available at: <http://www.law-review.mk/>, UDK 82+7.

the candidates who applies for admission to the civil service. In addition to the general requirements, such as adequate qualifications, the citizenship of the Republic of Serbia, the absence of criminal records and the like, the candidate's competences for employment in the civil service are also very important, especially their intellectual abilities.

The activities of personnel policy are not exhausted just in the above-mentioned procedures. Another issue related to the personnel policy is the assignment or elimination of staff members whose performance fails to meet the requirements of the job they are appointed to. These mechanisms imply the civil servants' transfer within another state authority. The last resort is the termination of employment for the civil servants who do not fulfil the professional and other duties related to the work of the state administration. As they interfere with the fundamental rights and the labour status, these institutes are governed by detailed regulations and the right of every civil servant to appeal.⁹

The attitude of the civil servant toward his work is determined, ideally, by a keen interest of the employee in the area of his expertise and ambition to develop personal skills and gain knowledge and experience in a freely chosen occupation. The main obstacle to such conduct may be observed in the routine nature of state administration activities, which frequently cannot provide an overview of the whole task and do not sufficiently encourage the development of professional potentials. Hence, despite a whole range of motivational mechanisms, they still range mostly from stimulation achieved by promoting the civil servants to sanctioning various forms of liabilities.

The personnel policy also encompasses other duties that involve the formation and profiling of persons for the employment in the civil service. This refers primarily to an autonomous, designed process of acquiring skills and knowledge, acquiring professional experience and personal development initiated and implemented by individuals with an aim to achieve the highest possible levels of competence in their work at present or in future. The organisational modalities of the formation and profiling of personnel, performed by the state authorities proved to be of much-needed assistance to the individuals in their efforts to devise and carry out the development and advancement programmes in their personal careers.

Another important task of the personnel policy is the provision on the working conditions for civil servants. Engaging human resources to fill the vacancies implies responsibility for creating conditions for their work, which ensures that the ability of individuals is best expressed and that their working role should be put to best possible use. The tasks of this nature most prominently include the provision of general working conditions - premises, furniture, technology, equipment, organisation and distribution of working hours - the issues of continuous work, shift work, breaks, vacations, other cases of absence from work and, finally, safety at work.

⁹More in: Васиљевић Д., Миловановић Д., „У сусрет новим законским решењима у управном поступку Републике Србије” in: Зборник на Правниот факултет „Јустинијан Први“ во Скопје, 2011; Васиљевић Д., Миловановић Д., „Битне новине у Закону о управним споровима Републике Србије” in: Зборник на Правниот факултет „Јустинијан Први“ во Скопје, 2011.

The sphere of personnel policy in the Republic of Serbia has been subject to reform activities aimed at creating conditions in which the quality selection and quality training and education for work in the civil service, along with expertly programmed promotion and incentives will increase the overall efficiency and effectiveness of the work with a view to creating a new profile of the civil servant. Expected results go in the direction of providing quality professionals who will finally be able to strengthen the administrative capacities of the public institutions and thereby facilitate transitional transformations of the state administration in the Republic of Serbia

CIVIL SERVANTS AND THE CODE OF ETHICS

The professional ethics is a particularly important issue related to the civil service system and it requires some general remarks. Namely, the general starting point is that professional ethics means a set of social rules inherent to a civil servant, which the servant adopts as a personal criterion of behaviour. Such ethics is evident through the relationship of the civil servants to the citizens as individuals, the society as a whole, the government authority in which they work and their duties. Since the person's ethical conduct articulates a professional conduct, the civil service system is expected to devote its full attention to the relationship between the unethical conduct and the weak individual and organisational performance. It is necessary because it has been confirmed that the issue of ethics is closely connected to the question of individual and organisational activities.

Based on the general proposition that the ethical and value-related principles represent a step towards efficient professionalization of the civil service, contemporary civil servant systems promote the necessity of clear and systematic integration of these aspects with the mechanisms for implementation of the ongoing and future reform programmes. As the issue of civil servants' ethics is mostly regarded as an organisational rule in the civil servant system, the efficient integration of these standards in the civil service system indicates the state administration's readiness to change in the direction of full professionalization. Their continued implementation presents a key to success and it can restore public confidence in the entire system of public administration in the Republic of Serbia, which is currently transformed in line with the European Union standards.

The attitude of the officials towards the citizens is guided by the assumption that civil servants perform expert activity necessary for the community. This implies that the civil servants should not appear as if they direct the citizens. In addition, the civil servants themselves must not regard their position as such. As providers of a kind of social services and, at the same time, as users of other services, they have to build their relationship with the citizens based on equity, equality and readiness to help in the area of their expertise. The civil servants must act within the limits of their expertise and service, not favouring anyone. The generally accepted statement that certain ethical values and requirements prescribed by the Civil Servants Act as well as by the legislation on disciplinary and criminal liability are insufficient still appears to be topical. These legal instruments point to the traditional

values of the civil service as well as to lawfulness, neutrality, absence of bias, avoidance of conflicting interests and the like.

The question of ethical principles seems to arise whenever the relations of the civil servants towards the society generally are observed, as well as the attitude of the officials towards politics and society, which is based on the loyalty to the community. This implies that the relationship of the civil servants towards administrative organisation has two aspects: the adoption of general goals and measures of value, special aims, tasks and methods of work of the specific administrative organisation and peer relationships among the members of the authority who work jointly. In order to strengthen the ethical standards, many existing civil servant systems apply written codes of ethics as new instruments that are considered nowadays as a very important element of the ethical infrastructure in civil service.

Taking into account both the fact that almost all contemporary states are prepared to invest in these new instruments and the cultural differences in the perception of unethical conduct, it is important to mention that these codes and their executive instruments vary from state to state. Some states do not have written ethical codes at all. An instance of this is Finland, which, despite the fact that it does not have a written code of ethics providing for the conduct of its civil servants, is one of the least corrupt states. Germany has also shown some reserve as regards these new ethical measures, because its legal system ensures a high level of ethical and professional activity.

Despite their popularity, ethical codes do not make much difference if the civil servants do not accept them and if they are not implemented energetically. Besides, the ethical codes are also useless if the civil servants are not regularly reminded of them and if they are not offered regular training focusing on ethics. Therefore, it is the basic task of every civil service system to improve the code of ethics together with the mechanisms for the implementation of rules they provide for, which is the starting point for the strengthening of the moral qualities of the civil servants.

CONCLUSION

The civil servant system is based on several characteristic features and principles, such as the political neutrality and objectivity, lawfulness and responsibility, equal access to job positions, flexibility of deploying the civil servants and the right to professional development and advancement in the service, protection of the rights of the civil servants and employees, the prohibition of favours or denials, liability for the breach of civil servants' duty and professional ethics. Prescribing the conditions for employment and its termination, the classification of the civil servants, the selection of personnel, the system of promotion, the rights and obligations of the civil servants, the improvement of qualifications through training and development, the development of personal values and potentials among civil servants constitute the foundations on which all contemporary civil servant systems are built. The appropriate treatment of these issues and finding viable solutions represent feats that call for joining the political vision with organisational ability.

There is no doubt that the solutions will be applicable only if they are adjusted to the reality of a specific country, local socio-economic and social circumstances, historic and cultural heritage and even the specific traditional habits. All of this is of importance if the solutions are to improve our reality. The professional civil service, as well as the quality of the public services it provides are directly linked to the regulatory framework within the civil service system, as well as to the managerial capacities that can ensure an increase in professionalism, stability and continuity in the development of the civil service.

The Civil Servants Act of the Republic of Serbia and the accompanying bylaws are the foundation of this system, because they provide for liability, obligations, duties and rights of those performing the civil service. At the same time, they determine the basic institutional frameworks, which should ensure that the defined standards of the civil service are homogeneously implemented in their entirety. The Civil Servants Act does not serve the purpose of creating better or privileged working conditions for the civil servants. The rights granted to the civil servants have to be in accordance with the duties imposed on them. Since the state as an employer is the only authority in charge of ensuring quality management in all state institutions, this implies the obligation to enforce responsible and professional attitude to work. Besides the mechanism of sanctions, the task that is set in this way relates to achieving better and more lasting performance by creating new personnel policies, monitoring the situation in the area of human resource management, analysing the personnel quality and improving the professional and working competences among the civil servants.

A few years after the implementation of the Civil Servants Act we can still talk about the transitional dimension of the development of the civil service system in the Republic of Serbia, which implies a number of unresolved problems. The civil service system in our country has not succeeded in qualifying all currently employed officials in the state authorities for the actual status of the civil servants.

Contrary to the experience of some countries in central and eastern Europe, the Republic of Serbia experienced an automatic transformation of the employees to state authorities, according to the old Act on Working Relations in the State Organs and, into the status of civil servants, according to the Civil Servants Act. These had certain consequences that have not been overcome until the present day. Since the Republic of Serbia missed the opportunity to create a professional elite consisting of actually and essentially depoliticized civil servants, the civil service system is rightfully expected to make up for and to correct what has been missed, using all available mechanisms.