
State and Prospects for the Development of Legislation Regulating the Labor Activity of Civil Servants in the Republic of Uzbekistan

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Abstract: The article analyzes the legal status of a civil servant, its features, elements and legal consolidation in a separate chapter of the draft Law "On Civil Service". However, there are certain shortcomings in the legal regulation of the status of civil servants. In this study, the author attempts to identify the problems of legal regulation of the legal status of civil servants and propose ways to resolve them. For example, the content and the difference between the concepts "civil servant" and "civil servant" from the point of view of normative content are disclosed. From a practical point of view, it is not the concept itself that is of greatest importance, but the constituents that form it. Traditionally, the legal status of an individual includes rights, freedoms and duties. At the same time, as applied to a civil servant, the range of elements of the legal status is much wider. In addition, the article presents various concepts of understanding the concept of "public service". At the same time, the author draws attention to the fact that at present there is no consensus in the legislation and the normative establishment of the legal category of "civil servant".

Keywords: public service, qualification classes and ranks of public service, public civil servant.

Introduction

For France in the 19th century, the study of social class has long been influenced by the Marxist definition, which attaches great importance to the economic criterion (the place of the group in production relations) and the establishment of bipolarization of society (bourgeois / proletarians). [1, p.6] Uzbekistan, in turn, considers it expedient to define its own path of development.

The civil service stands out against the background of other types of service by its peculiarity, namely, by its public nature and by the fact that it is regulated mainly by administrative rather than labor law. A characteristic feature of the professional activity of civil servants as employees who are in labor relations with state bodies is that it requires a special approach to the legal regulation of their work.

Civil servants are considered by the International Labor Organization as a special category of employees, as a rule, enjoying social and economic rights common to all workers. Thus, the ILO Convention No. 151 "On the Protection of the Right to Organize and Procedures for Determining the Conditions of Employment in the Public Service" (1978) defines civil servants as persons employed by public authorities. As noted in the preamble of this Convention, its adoption is caused by the need to regulate labor relations between public authorities and organizations of civil servants. The Convention establishes guarantees for the protection of civil servants from discriminatory actions aimed at infringing upon the freedom of association in the field of employment. [2, p.1886]

It should be noted that in recent years, large-scale transformations have been carried out in Uzbekistan aimed at improving the civil service system in order to ensure the implementation of the main tasks of the country's socio-economic development by the state apparatus.

Currently, there is no unified law in Uzbekistan in the field of civil service labor regulation. Labor relations of persons working in state institutions of Uzbekistan, their rights and obligations are regulated not only by the current Labor Code, but also by other normative legal acts, in particular, by the laws "On Courts"

"On the General Prosecutor's Office", "On the Advocate", "On the Notary" and others.

When we wonder how something works when we know almost nothing about it, we almost inevitably have to take an inductive approach. However, the aforementioned regulatory legal acts did not address such issues as the implementation of a unified personnel policy in government agencies and organizations, effective personnel management and human resource development, the formation of a competitive pool of qualified personnel, and their timely replacement of vacant positions of civil servants.

Materials and methods

The methodological basis of the article was the classic commonly used research methods and approaches, both theoretical, based on the analysis of empirical material on the issue under study, so and applied, based on identifying similarities and differences in the studied efficiency assessment methods. The work uses methods for analyzing performance indicators, general scientific, such as systemic, logical, comparative, as well as methods of scientific analysis and synthesis. When we wonder how something works when we know almost nothing about it, we almost inevitably have to take an inductive approach. [3. p.637]

The sources of the research are the conceptual provisions and conclusions on this issue, set out in scientific publications of domestic authors, dedicated to the study and analysis of the effectiveness of public service, issues of application and improvement of the efficiency assessment system activities of public civil servants.

Were studied and used basic regulations governing the activities of civil servants, as well as bills expected to be adopted.

Result and discussion

According to I. Khamedov, who was directly involved in the development of the draft Law "On Civil Service", "in Uzbekistan, departmental disunity has formed in matters of civil service at the level of regulatory legal acts, while the general state personnel policy requires the integration of civil service into a single system. , which will be based on uniform principles, a single organizational and legal mechanism, uniform procedures, uniform standards of behavior, qualification hierarchy, and career conditions".[4, p.33]

In this regard, within the framework of the State Program for the Implementation of the Strategy of Action in Five Priority Areas of Development of the Republic of Uzbekistan in 2017–2021 in the "Year of Dialogue with the People and Human Interests", approved by the decree of the President of the Republic of Uzbekistan dated February 7, 2017, No. UP-4947, as well as by the order of the President of the Republic of Uzbekistan dated February 14, 2017, No. R-4849 "On organizational measures for the implementation of the Action Strategy in five priority areas of development of the Republic of Uzbekistan in 2017-2021", provided for the development of a draft law "On Civil Service".

The development of the draft Law "On Civil Service" is perhaps one of the longest procedures in the history of independent Uzbekistan.

The draft Law on Civil Service, based on the German model, was developed back in 2015. [5.

p.8]

Naturally, when developing this draft law, it is necessary to take into account national experience, the legislation of foreign countries, ideas and concepts of advanced states, on the basis of which the reform of the civil service was carried out.

In December 2017, the Ministry of Employment and Labor Relations developed the Concept and the draft Law of the Republic of Uzbekistan "On public service" and is included in the Cabinet of Ministers. In 2018, the Concept and the draft law were finalized by the Ministry of Justice and submitted to the Administration of the President of the Republic of Uzbekistan. The project was uploaded to <https://regulation.gov.uz> on May 21, 2018, and was discussed for a month. But unfortunately, following the discussion, it was decided to finalize this project.

In May 2020, Uzbekistan has developed another draft law "On Civil Service". And again, the document was published on the portal for discussing regulatory legal acts. As a result of familiarization and discussion of the presented draft law, significant changes were noticeable that distinguished the new draft law from the previous one.

The bill is aimed at regulating relations in this area and improving the mechanism of public service.

The legislative act consists of 13 chapters and 106 articles, it was prepared on the basis of an analysis of national legislation and the study of foreign experience of Malaysia, Singapore, France, the Federal Republic of Germany, Great Britain, Holland, and other developed countries.

This bill was developed by the Ministry of Justice in cooperation with specialists from interested ministries and departments, academia in the field of public law, with international organizations such as UNDP, GIZ, and KIPA.

The purpose of the document is to regulate relations in the field of public service. The objectives of this draft law are to ensure the unity of the organizational and legal mechanism of the civil service and the status of a civil servant, to gradually create the foundations for the career of civil servants, to establish guarantees for fair selection and promotion based on merit and merit, to regulate the procedures for admission, passage, and termination of civil service, conditions for the growth of professionalism and competence of civil servants, strengthening the spirit of serving the interests of the people and high ethical standards in the field of civil service.

The document applies to all civil servants of the Republic of Uzbekistan with reservations and exemptions provided for by this article.

In this case, the action of the draft law does not apply to the President of the Republic of Uzbekistan, deputies of the Legislative Chamber and members of the Senate of the Oliy Majlis of the Republic of Uzbekistan, deputies of the Jokargy Kenes of the Republic of Karakalpakstan and local representative bodies of state power, as well as judges.

The legal status of the Prime Minister, members of the Cabinet of Ministers of the Republic of Uzbekistan, the Chairman and members of the Council of Ministers of the Republic of Karakalpakstan, is determined by the Constitution of the Republic of Uzbekistan, the Constitution of the Republic of Karakalpakstan and individual laws, including this Law.

The legal status of employees of the Office of the President of the Republic of Uzbekistan is determined by acts of the President of the Republic of Uzbekistan. This Law applies to the specified civil servants on issues not regulated by the acts of the President of the Republic of Uzbekistan.

The bill proposes to oblige all civil servants (except for employees of the technical group) to be obliged to annually submit a declaration of property, information on their income and large expenses.

Civil servants will be required to provide a declaration of property, income, and similar expenses of their family members, including parents, spouses, children, including adopted children. The system for declaring income, property, and large expenditures of civil servants is introduced by law as one of the measures to prevent corruption in the public civil service.

If the employee provides inaccurate and incomplete information (or does not provide it at all), then this is considered the basis for his dismissal.

According to the bill, a civil servant has the right to promotion on the basis of an objective and fair assessment of professional qualities and special merit (meritocracy), to receive fair and decent remuneration, to express an opinion to the management on official matters, to respect for his honor and dignity by managers and other officials persons and more.

A civil servant is obliged to conscientiously fulfill the duties assigned to him, not to allow a conflict of interest, not to use his official position for personal and other illegal purposes, to refrain from committing actions that may undermine the authority of the civil service, to submit an annual declaration of his income, property and major expenses, as well as a declaration of income, property and large expenses of their family members.[6, p.629]

According to Parkhomenko-Kutsevil O.I. training civil service personnel - is necessary to organize a special center for training civil servants and local government officials, who, during the period of their activities, must take into account the conditions under which civil servants work, they need certain skills and knowledge to meet the modern conditions of society. In the Republic of Uzbekistan, on August 8, 2017, a Presidential Decree was signed "On measures to further develop the system of training, retraining and advanced training of management personnel at the Academy of Public Administration under the President of the Republic of Uzbekistan. [7, p.147]

For certain categories of civil servants, the list of which is determined by the president, additional requirements may be established for the declaration of income, property, and large expenses, including an extended range of their close relatives, included in the declaration.

Applicants for admission to the civil service are required to submit an income tax return. Information on the submission of the declaration is checked by the personnel departments of state bodies and organizations before a decision is made on the appointment of a candidate for public office.

A civil servant is not entitled to:

hold a public office directly subordinate to a position held by persons who are in a close relationship or property with him (parents, brothers, and sisters of parents, brothers, sisters, sons, daughters, spouses, as well as parents, brothers, sisters, and children of spouses), with the exception of cases provided by law;

Engage in entrepreneurial activities personally or through affiliated (trusted) persons;

Be a member of the governing body of a commercial organization, with the exception of organizations with a state share;

to acquire, directly or through representatives, shares, shares, shares in organizations controlled by a government agency or organization in which a civil servant is in government service or with which he has connections and interests that may lead to a violation of their independence;

Receive any remuneration from individuals and legal entities in connection with the

performance of their official duties or with the status of a civil servant;

And others.

Admission to the civil service is carried out by appointing a candidate for a public office on the basis of an open independent competitive selection. During the selection process, it is not allowed to discriminate against applicants on the basis of gender, race, nationality, language, religion, social origin, and beliefs, personal and social status.

Information about vacant government positions is automatically published on the website of the civil service body using the Interdepartmental hardware and software complex "Unified National Labor System", as well as on the website of the government agency, in social networks, messengers, and periodicals.

A five-day working week with two days off is set for civil servants. If, due to the nature or conditions of the civil service, it is impossible to establish a 5-day working week, then a 6-day working week may be established.

Civil servants are paid on the basis of a unified system that provides for the payment of:

Base official salary;

Additional payments for qualifying rank;

Personal allowance, calculated based on the achievement of key performance indicators by civil servants, as well as other criteria for assessing their activities, determined by the employer.

"Remuneration for civil servants should provide sufficient material conditions for unconditional and exhaustive performance of official duties, staffing state bodies and organizations with competent personnel, stimulating them for conscientious, proactive and effective work," the bill says.

As noted in the explanatory note to the document, the adoption of this law will contribute to creating conditions for the formation of stable professional personnel in the civil service, preventing corruption and other abuses in the civil service, introducing an effective system for selecting and promoting civil servants, consolidating a unified system of remuneration for their labor and social protection.

In most countries reforming the civil service, the list of civil service principles is enshrined in a single law on civil service. [8, p.248] It is advisable to take this provision into account when developing the draft law of Uzbekistan "On public service". This approach will take into account the democratic traditions of the Republic of Uzbekistan, ensure a link with the Constitution of Uzbekistan, and facilitate the application of the law in practice.

Legislative consolidation of the principles of civil service is necessary to ensure a uniform state policy in the field of civil service at all stages of its implementation.

The principle of political neutrality of civil servants occupies a special place among the principles of civil service.

This principle is enshrined in most European countries and is considered as one of the conditions for ensuring the stability of the work of the state apparatus. Moreover, in Germany, this principle is strengthened by the provisions on the political loyalty of a civil servant, his restraint in the manifestation of political activity, and the obligation to be guided not by political considerations, but by the public good in the exercise of official powers.

The Law of Kazakhstan "On Civil Service", which entered into force on January 1, 2016, does not specify the principle of political neutrality of a civil servant.

Comparative analysis shows that all democratic rule-of-law states adhere to this principle,

investing in it the same understanding, although, depending on traditions, they formulate it differently (neutrality, loyalty, non-partisanship, political restraint, etc.).

The analysis of regulations, the practice of their application, bills, and literature on civil service issues, carried out in this work, allows us to draw a conclusion about certain trends in the legal regulation of the labor of civil servants in the Republic of Uzbekistan.

Firstly, the civil service is considered as a professional activity and in this capacity is equated to labor activity, and, therefore, the hired nature of the work of civil servants is recognized, public relations for the application of which are the subject of labor law. However, the boundaries between administrative and labor regulation of the activities of civil servants should be carefully distinguished;

Second, taking into account the experience of foreign countries, the draft law should provide for an exhaustive list of disciplinary sanctions (reprimand; severe reprimand; fine in the amount established by the Labor Code of the Republic of Uzbekistan; termination of an employment contract) applied to civil servants for violation of official duties.

Although civil servants have their shortcomings, they have an important role to play in implementing constitutional rights. The key is to police their undesirable behaviors while at the same time encouraging behaviors that will result in better policies. Some of the strategic behavior in which civil servants engage could actually lead to an increase in rights-enhancing policies. The executive should therefore institute measures to ensure that civil servants advance the cause of constitutional implementation. [9, p.406]

As G. Malik ova rightly noted, "the issue of the terms of remuneration of civil servants is also not easy. Article 60 of the draft law stipulates that" the remuneration of civil servants must provide sufficient material conditions for unconditional and exhaustive performance of official duties. " the norm of Article 39 of the Constitution of the Republic of Uzbekistan that "... types of social assistance cannot be lower than the officially established subsistence minimum." But while there is no law on the consumer basket, this norm is unlikely to solve systemic problems. " It is worth noting that G. Malikova was directly involved in the development of the draft of this law and it is obvious that the issue of remuneration of civil servants should not raise doubts, but the presence of such a norm in a regulatory legal act will not show its effectiveness, if not develop an exact mechanism for its implementation. [10, p.53]

The proposed solution to the issue of incentives and disciplinary sanctions will not contradict the Labor Code, since according to Art. 18 of the Labor Code, the peculiarities of the work of civil servants are determined by law;

Thirdly, due to the lack of provisions in the legislation of the Republic of Uzbekistan regarding the procedure for dismissing a civil servant from office and conducting an official investigation against him, these issues must also be settled in the draft law "On Civil Service";

Fourthly, it is advisable to supplement the conceptual apparatus of the draft Law "On Civil Service" with a definition of the term "state civil service", since it is a type of civil service.

However, as it became apparent in the course of the study, not all of the above trends can lead to a positive result.

It must not be allowed that the fight against bureaucracy, corruption, privileges of the bureaucracy is carried out by restricting the civil (including labor) rights of civil servants, which worsens their position in comparison with other categories of workers. The legal regulation of their work must first of all proceed from the principles of ensuring the rights and freedoms of the individual, protecting the rights of the employee before the authority of

the employer. This is of great importance for solving the problems of ensuring the rule of law and professionalism of the civil service.

Acknowledgements

Implementation of the above recommendations and their settlement in the draft law "On Civil Service" will allow:

- to create and ensure the effective and efficient functioning of the civil service;
- to prevent corruption and other abuses in the public service;
- to create a single state body responsible for the implementation and implementation of a unified policy in the field of civil service regulation;
- to determine the status of civil servants;
- to develop an effective system for the selection of personnel for public positions, the procedure for the formation of a personnel reserve of civil servants;
- to develop the procedure for admission to the civil service and regulate the process of hiring civil servants, to provide for the widespread use of competition when appointing to a civil service;
- develop a procedure for passing civil service;
- to create a mechanism for assessing the performance of civil servants based on constant monitoring of their performance of official duties;
- to ensure legislative consolidation of the specifics of labor regulation of civil servants and to create a system of compensation associated with such conditions;
- to increase the responsibility of civil servants and provide a mechanism for compensation when they cause harm;
- clearly define the grounds for terminating labor relations with civil servants;
- To develop a unified system of rights, duties, and restrictions related to the activities of civil servants at all levels.

Decision

Based on the analysis of the normative material and international experience in the legal regulation of this area, it is possible to formulate the following specific proposals for improving the legal regulation of the labor of civil servants in the Republic of Uzbekistan.

1. It is necessary to create a unified mechanism for regulating legal relations in those issues of regulating the working conditions of civil servants (in particular, on the establishment of a remuneration system, additional leaves, benefits, and compensations, material security), which cannot significantly affect the maintenance of the unity of the civil service system;
2. Restrictions for civil servants to participate in entrepreneurial activity and perform other paid work should be specified. An absolute prohibition should not be maintained, it is necessary to allow other paid activities, if such is not related to the performance of official powers, does not have the goal of providing services in state bodies, and is carried out without prejudice to public service. Moreover, such restrictions should be differentiated according to the corresponding groups of government positions (main, leading, senior, junior government positions) and by the type of service (depending on the nature of the competence of the government body). The most severe restrictions should exist for civil servants whose activities are related to the management of the material and financial resources of the state;

3. It is advisable to divide public positions into exceptional (the occupation and release of which is possible only by appointment of the Head of State or higher authorities), competitive (occupation of which is possible exclusively by competition) and career, promotion or salary increase for which would depend solely on the length of service in public service;
4. Personnel services of state bodies should be under double subordination (to the leadership of the relevant state body and the body on civil service issues);
5. Conducting qualifying examinations, competitions for filling public positions should be entrusted to special commissions created by personnel services. Moreover, in the composition of such commissions, representatives of the state body in which the competition or attestation is held should not constitute a majority, or should have an advisory vote. This could help to ensure the independence of the attestation (competition) commissions;
6. It is advisable to introduce a special procedure for the consideration of labor disputes in the civil service, which should provide for:
 - a) Consideration of the dispute by an independent body (for example, mediation);
 - b) The possibility of direct appeal to the court on any issue related to the civil service, including appealing the decision of a special body for the consideration of labor disputes in the civil service.

Participation in decision-making is understood as the ability of citizens to interact electronically with government services, and not only to be recipients of information. [11, p.502]

In conclusion, it should be noted that many provisions concerning the civil service have not been regulated, and a number of organizational issues require their solution. Therefore, it is necessary to provide 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 the declaration of income, expenses, and property) can be put into effect only after the adoption of special regulations (the law "On Declaration of Income").

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