

ANALYSIS OF APPROACHES TO UNDERSTANDING THE CIVIL SERVICE IN THE RUSSIAN FEDERATION AND FOREIGN COUNTRIES

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The article analyzes the legal norms establishing the institution of the state civil service in the Russian Federation and a series of foreign countries. In the course of the analysis, the characteristic features inherent in this institution were identified in accordance with the legislation of each of them. The significance of the study is an attempt to unify the characteristics inherent in the civil service as a legal institution for effective reform taking into account world experience.

Keywords: state civil service; public administration; Public service; comparative analysis.

Articolul analizează normele juridice de instituire a instituției serviciului public de stat în Federația rusă și o serie de țări străine. În cursul analizei, caracteristici inerente acestei instituții au fost identificate în conformitate cu legislația fiecărui stat. Semnificația studiului reprezintă o încercare de a unifica caracteristicile inerente serviciului public în calitate de instituție juridică, cu scopul perfectării unei reforme efective, ținând cont de experiența mondială.

Cuvinte cheie: serviciul public de stat; administrație publică; servicii publice; analiza comparativă.

The Institute of Public Administration has a central place in ensuring the functioning of the state and its interaction with society. Changes in public relations, regulated by the legislation on public service, entail changing the requirements for public service as a legal institution¹.

The concept of public service was formed as a political, social and legal phenomenon associated with the implementation of measures to ensure the execution of state functions.

The appearance of the Institute of state service is the result of social development and the necessity for awareness of socially important interests, ensuring

1 United States Code: Title 5 - Government Organization And Employees // Current through Pub. L. 114-38. (See Public Laws for the current Congress.).

proper functioning of society. This Institute acts as the component peculiar to the state as the most optimal method of the organization of life and consolidation of resources of society. The processes of deep social transformation in the state require urgent public service transformation; maintain its ability to provide targeted and regulating effect on social processes in the interests of the members of the society. Public service is the institute of strengthen the state, to ensure the functioning of its structures, to strengthen the power of the state to enforce legislation. At the same time, the most important is the provision that only if there is a special category of citizens, in particular, the officials constituting the state apparatus; it is possible to functioning of the state.

Currently, in most countries, attempts are being made to improve not only the organizational structure of the public service, but also the mechanisms for the exercise of authority employees. Problems from the point of view of administrative-legal science deals with principles and methods of implementation of the public service, determining the priority directions of its development and the impact of legislation on state service.

Due to the fact that at present public administration actively changes occur increasingly study of world experience of the organization and functioning of the public service as legal and socio-political institution. The optimization problem of the public service system and provision of public services to the population, maintain and enhance the professional level of employees shall be established in most countries of the world, but only some of them are being successfully solved.

Modern law enforcement and research practice have a number of obstacles that significantly complicate work both in the field of law enforcement and in the field of theoretical research. One of such problems is the lack of a single terminology base. According to the principle of action, this obstacle is like a language barrier not only in the legal practice of representatives of different states and legal families, but also sometimes within the legal system of one state.

The exact meaning of normative concepts and legal terms, corresponding to reality, is of paramount importance to comparative jurisprudence. A mismatch of legal terms difficult to understand and compare legal phenomena, the establishment of which is not possible without defining them.

Unlike the Russian Federation, in many foreign countries the term “public service” is not widely used, and the term “public service” is used as a general term. The system of categories associated with this concept is unique in every state. In the countries of the continental legal family (France, Germany, Italy, Spain, Switzerland, etc.) the term “public service” is used, and the notion of “public service” (*fonction de l'état*) became its component. In the countries of the Anglo-Saxon legal family (the United Kingdom, the United States of America, Canada, New Zealand, etc.) the term “public services” is used, which includes such services as servicing in state institutions, servicing in paramilitary organizations of servicemen and others. The concept of “public service” is not applied, but is replaced by a number of concepts:

the concepts of “service to the crown” in the United Kingdom and Commonwealth countries, “civil service”, “internal public service of Her Majesty”, “state service of the state”, military service and paramilitary organizations².

Despite the existence of these differences, most modern States have adopted regulations on the organization and functioning of public service, defining the principles of organization, methods of regulation of public service activities and its types. This, in turn, indicates the existence of uniformity in approaches to legal regulation and the establishment of public service as a special activity.

In the comparative analysis of the legislation of the Russian Federation and foreign countries reveals certain patterns, the consideration of which appears to be most evident through the prism of the civil service. As it is through the functioning of the civil service in the state effectively implements the dialogue between the state and society.

In the Russian legislation the concept of civil service prior to 1995 was not used, but in fact it existed. And if organization of service in law enforcement agencies regulated by law, neither the General law on civil service, nor special laws on the civil service of the Union of Soviet Socialist Republics was not adopted. In contrast to countries in Europe and North America, where the pillar of political power and State apparatus became the civil service, the political elite in the Soviet Union relied mainly on the paramilitary service. Apparently so then and there was no need for the notion of public service³.

Throughout the period of formation in different countries of the world institutions of State and civil service of their concepts have undergone significant changes.

A common feature in the formation of the concept of civil service for Russia, Anglo-Saxon countries and countries of continental Europe was the separation of the civil service from the state and the underlined politically neutral, “non-violent” character, giving it elements of a special legal status other than simple employment.

Modern Russian law uses the notion of “civil service” and defines it as “a kind of public service that represents the professional activity by citizens of the State civil service posts for the enforcement powers of federal State agencies government agencies of constituent entities of the Russian Federation, persons employed in public positions of the Russian Federation, and persons employed in public positions of the constituent entities of the Russian Federation”.

From this definition, we can distinguish the following characteristics that characterize the civil service in the Russian Federation:

1. The civil service has a public character.
2. The civil service is a professional activity of citizens. Person exercising the civil service must meet the established qualifying requirements. Call of the

2 The Constitutional Reform and Governance Act 2010 of United Kingdom (Commencement No. 3) Order 2010.

3 Federal Law of the Russian Federation of 27 May 2003 No. 58-FZ “On the Civil Service System of the Russian Federation” // SZ RF 2003. No. 22.

nature of the civil service, stressed its difference from employment regulated by labour law.

3. The civil service is carried out on the positions of the civil service, defined in relation to the executable functions.
4. The civil service provides the enforcement powers of the organs and officials of the State and does not involve the direct exercise of State power.

The existence of a civil service is conditioned by the existence of an institution of the state. The official nature of this institution is determined by the priority of the interests of the state and society, and not of the organization or individual. If a non-governmental organization starts and stops its activities at the behest of its founders, then civil service institutions are subject to formation and abolition only under the instruction of law.

Civil service law of France considered as a form of public service, is vested with all the characteristics of the latest.

English scientist J. Adler identifies the following features of civil service:

1. Civil servants are legally are employees of the Crown acting in its behalf, but in fact they are accountable to Ministers and to act in the public interest;
2. The Civil Service administers state property;
3. Civil servants take individual legal acts under the permission delegated to ministers;
4. Civil service carries out the day-to-day management of government departments-the Central specialized agencies of the executive competence.

The civil service is characterized as the activity of civil servants in favor of the Crown (and through it in the public interests) in the sphere of state property, law enforcement, day-to-day administration and legislation, carried out within the framework of delegated competence.

Turning to the science of the near abroad, we should dwell on the position of A.Z. Turisbek, investigating the problems of public service in the Republic of Kazakhstan. It highlights the following features of the civil service:

1. It is carried out in the sphere of the administrative influence of the state in various spheres of public life, activities that are not directly related to the production of material and spiritual goods, the provision of social services to the public;
2. It has a public nature and is carried out in the interests of the whole society;
3. It has some degree of political character, too. Is aimed at realizing the tasks and functions of the state, for the state itself is the basis of the political system of society;
4. It is paid exclusively at the expense of the state budget;
5. It is carried out by civil servants, that is, by persons who replace established posts in state agencies;
6. Requires the availability of relevant professional knowledge, skills and experience, which implies the establishment of certain qualification requirements

and conditions for persons applying for substitution and replacing public positions, as well as continuous improvement of such knowledge and skills throughout the career of the employee;

7. The presence of a government official of one or another amount of competence, including the right to issue mandatory acts not only for subordinates, but also for other individuals and legal entities;
8. It is carried out strictly on a legal basis, ways to replace the posts of the state civil service, tasks, powers, procedures for the activities of civil servants are usually determined by law⁴.

In this case, the author focuses on the administrative characteristics of the civil service, largely reproducing the approaches of the Soviet period, when this is not enough stopping the social characteristics of civil service. Not taken into account that the public service in general and civil service in particular, interacts with society, and in fact operates to provide services to citizens.

The legislation of the Anglo-Saxon countries is characterized by a functional definition of civil service and employees. Due to the peculiarities of Anglo-Saxon law, the legislation lacks a single concept of public service; each act defines its object of regulation and treats the concepts used in its text, taking into account specific objectives. It is no accident that the classical definition of a civil servant is given not in law, but in the report of the Royal Commission of Tomlin: "Civil servants are persons in the service of the Crown, not related to political, military and royal officials who hold civil offices and whose remuneration is entirely Is paid out of funds voted by the Parliament"⁵.

Civil service in the People's Republic of China and the Republic of Cuba is based on the principles of party spirit, nomenclature, administrative hierarchy and centralism. The activities of officials are regulated by party decisions, and administrative activities are somewhat subordinate, in comparison with party activities, character. The above defines the characteristics of the civil service and, in many cases; civil service is equated to the general labor activity. Thus, there is an identification of the legal status of civil servants and workers, namely, as wage labor.

In Islamic states, the main legislative source is Sharia, which is considered not only as a collection of divine institutions, but also as one of the regulators of official behavior. The main characteristic of the regulation of the activities of officials in this system is the orientation toward determining the duties of religious servants with a certain secondary significance of social prerogatives recognized by a citizen.

Islamic law is in many respects "archaic" in nature, but at the same time it is able to flexibly adapt to moral evolution and technological progress. Researchers are increasingly talking about changing the basis of public Islamic law. This happens

4 Turisbek A. Z. State service in the Republic of Kazakhstan (theory and practice). The dissertation on competition of a scientific degree doctor of law., M., 2012.

5 Tomlin report. Report of the Royal Commission on the Civil Service 1929-1931. - Cmd. 3909, 1931.-L.:H.M.S.O, 1931.

through careful use of religious customs in specific administrative situations, as well as through direct intervention by the authorities themselves. The labor model of the civil service here occupies a special place among other administrative and legal systems, which remotely echoes the main features of the organization of the continental model.

Taking into account the stated positions of the authors who represent different approaches to the definition of civil service, the following characteristic features inherent in the institution of state civil service of most modern states can be distinguished:

1. Civil service - a special type of activity, it has a public legal nature and is carried out on behalf of the state;
2. Civil service is carried out in accordance with the norms of the law and on their basis;
3. Civil service is a professional activity carried out by a special category of persons - civil servants, who possess special practical skills and theoretical knowledge obtained as a result of their professional training.
4. Civil service is carried out in state bodies, as well as organizations that are vested with publicly-authoritative powers.
5. Civil servants are given power, the amount of which is determined by the position held.