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SPECIFICS OF THE CIVIL SERVICE SYSTEM OF SERBIA TO THE CIVIL SERVICE SYSTEMS OF THE EUROPEAN UNION COUNTRIES

Abstract

In this paper, the author deals with the issues and challenges regarding the general state of civil service of Serbia, analysing it through the most important institutions – fulfillment of free job positions, assessment and promotion of civil servants, realisation and protection of rights of state civil servants, subordination as an element of civil service relation, conflict of interests, disciplinary responsibility, liability for damage etc. There is also a brief comparative presentation of civil service relations in Germany, Great Britain and Slovenia as other examples of civil service systems.

Key words: *Civil service relation, civil service law, civil service system of Serbia, civil servants.*

1. CONCEPT OF EMPLOYMENT WITHIN STATE INSTITUTIONS

The right to work is a complex right, and it is not a subjective right, but is, above all, a constitutional proclamation.¹ There are certain specific characteristics within particular areas of jobs, i.e. differences within employment relations. They are, primarily, based on the differences of ownership over instruments of labour and capital, scope and quality of responsibility of the different categories of employees, nature and significance of the jobs performed by the employees – individual or general significance. The employment within state institutions is specific because of the character of jobs and duties, as well as due to the broader significance and increased responsibility in performing functions of a state institution.

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¹ R. Brković, *Privatne agencije za zapošljavanje – (međunarodni, komunitarni i nacionalni pravni okviri)*, Teme, 4/2015, 1380.

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The issue of employment within state institutions, as well as of the act which is establishing the civil servant relation² is very complex. Certainly, this is a case of so-called civil service i.e. office worker law³, which includes a set of legal regulations on the legal position of employees within state administration organs and other state organs. The civil service relation is a key content of the civil service law⁴. Therefore, the concept of the civil service work relation is a particularly challenging topic of theoretical research. The objective legal link between the state institution and the civil servant is examined, where the issue of employment is the initial but also the permanent aspect, which should be elucidated, because it has or might have both theoretical and practical value. Also, for the position of civil servants activity of the International Labour Organisation is essential.⁵

Within the framework of the legal system of the Republic of Serbia there is a distinction between the general and special regime of labour relations, and consequently the conditions of employment in each of these modes.⁶ The employment within state institutions, both from the practical and theoretical aspect, is incorporated and located in two possible employment models–integral employment model⁷ and polarized employment model⁸.

The integral employment model is based on the existence of the general, unified system of industrial law regulations. Here there is no visible difference between the employment of all employees, regardless of the

² B. Šunderić, *Priroda akta kojim se uspostavlja službenički odnos*, *Radno i socijalno pravo*, 1-6/2005

³ In the past, in the territory of ex-SFRY, this law was called „public service labour law“, N. Tintić, *Radno i socijalno pravo, First volume: Radni odnosi*, Zagreb, 1969, 538-539

⁴ The Civil Servant Law has not been established yet as a separate branch of law, but still it can be concluded that it has already acquired special legal and educational disciplines– M. Vlatković, R. Brković, B. Urdarević, *Službeničko pravo*, Beograd, 2013, 39.

⁵ R. Brković, Z. Radulović, *Konvencije MOR-a u pravnom poretku Republike Srbije*, *Pravni život*, 11/2015, 353.

⁶ R. Brković, B. Urdarević, A. Antić, *Praktikum za radno i socijalno pravo*, Kragujevac, 2016, 5.

⁷ The generally accepted position within the theory of Industrial Law is that Industrial Law is an unique branch of legal system and that it includes „all the forms of employment, regardless where they exist“. However, in regard to state employees, both in the past and today, „there are specific characteristics within almost all industrial law institutions“, P. Jovanović, *Radno pravo*, Novi Sad, 2015, 60-61; „for a certain period of time in the European continental legal system the regulation of state officials employment was a consisting part of administration law, i.e. civil servant law – separate or special industrial law“– B. Lubarda, *Radno pravo*, Beograd, 2012, 8.

⁸ Z. Tomić, *Opšte upravno pravo- organizaciono, materijalno i procesno*, Beograd, 2012, 99.

realization, and the jobs. In this case the labour law position of a civil servant is not different from the labour status of other employed persons. This system might be called the monolithic labour relation system.

From the other hand, the polarized employment model is based on the principle of specific character of particular "segments" of labour relation, where the one within state institutions is remarkable for its characteristics and significance, as well as for its nature and contents. Unlike the general employment, which is established on the basis of work, the civil servant employment is established because of performance of authority and therefore, it has much bigger significance for the society as a whole. This is the reason why the rights, duties and responsibilities, as well as all other dimensions of the civil servant status, should be regulated in a specific, particular and different manner in comparison with other employees.

There was a special legal regime for the state employees in the country before the Second World War, which was essentially different in comparison with general employment systems in other parts. In the period from the end of the Second World War to the 1960s, local legislatures continued the practice of the specific labour position of the state employees in comparison with other workers. Such solutions are the content of the Law on State Officers from the year 1946 and Law on Civil servants from the year 1957.

In the later period, up to the 1990s, in accordance with the principle of equal legal position of all working people, regardless of their employment, the labour position of state officers became close to that of employees within economy. Their position have changed.⁹

The local legislature, during past 15 years, and particularly the positive regulations, again, in a different way, regulates the labor status of state employees in comparison with labor status of other employees. So, the classic distinction between general employment regime and special regime of civil servant employment is persistently established¹⁰.

⁹ R. Brković, *Radni odnos državnih službenika Srbije i komparativni radnopravni standardi*, u: *Pravni sistem Srbije i standardi Evropske unije i Saveta Evrope* (ur. S. Bejatović), knjiga 1, Kragujevac, 2006, 333.

¹⁰ The general regime of employment in Republic of Serbia is regulated by the Law on Employment, *Official Gazette of the Republic of Serbia*, No. 24/2005 and 61/2005, 54/2009, 32/2013 i 75/2014. The civil service in Republic of Serbia is regulated by the Law on Civil Servants, *Official Gazette of RS*, No. 79/2005, 81/2005 - correction, 83/2005 - correction, 64/2007, 67/2007 - correction, 116/2008, 104/2009 and 99/2014 - *general civil service system*, and by special laws in the particular fields of public administration due to the nature of jobs, which are performed in them: police - Law on Police, *Official Gazette of RS*, No. 6/2016, Army - Law on Army, *Official Gazette of RS*, No. 116/07,88/09, 101/10

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The labour status of particular categories of civil servants (for instance, members of the police force, army, national security service, foreign affairs, inspections and similar) is primarily regulated by the system law on such state organs, secondary, i.e. subsidiary by the public service legislature and tertiary, i.e. residually, by the general industrial legislature.

2. THE CONCEPT OF CIVIL SERVICE SYSTEM

The civil service system represents an integral system of categories in which the civil servants are classified according to criteria established in advance, and which represents the basis for their advancement, awards and career mobility¹¹. It is frequently pointed out that civil service system has three basic parts: 1) classification system, namely in the form of classification of job positions in which each class encompasses all the job positions with same or similar job duties, or classification of civil servants in which each class encompasses all the civil servants with same or similar particular personal name, 2) salary system, 3) the way (system) of advancement¹².

The goal of the civil service system is to provide maximum efficiency, i.e. functionality from the point of view of the organ or organization of public service, and justice and equality from the point of view of the individual – civil servant within it. Also, the civil service system must provide a high level of objectivity of criteria, independent from particular persons in public service to whom particular individual decisions are relating¹³. Also, such system must be, by its institutions and processes, ethically acceptable for the major number of employees. This is achieved mostly by its fairness i.e. the same procedure is applied on same situations and same cases. This is the way to achieve or at least get close to the goal that interest of civil servant, how he/she feels it in his/her daily functioning of public service, is harmonized with his/her obligations and duties. Also, civil servants must be loyal to the state as their employer, as it is believed that loyalty to the

10/2015 and 88/2015, foreign affairs – Law on Foreign Affairs, *Official Gazette of RS* No. 116/07,126/07 and 41/09 – *special civil service employment*. Unlike employment, which is primarily a contractual relation, civil service employment is a public law relation. Namely, the state is regulating such relation by itself, without participation of civil servants, as it can modify it without consent of civil servants - R. Marković, *Upravno pravo*, Beograd, 2002, 170-171; Ž. Mirjanić, *Radno pravo*, Banja Luka, 2004, 211,276.

¹¹ M. Vlatković, R. Brković and B. Urdarević, *op. cit.*, 45.

¹² M. Vlatković, *Javni službenik u vršenju javne službe*, *Radno i socijalno pravo*, 16/2005, Beograd, 2005, 211.

¹³ *Ibid.*

employer constitutes an employer's legitimate interest arising from employment.¹⁴

3. LEGAL REGULATION OF CIVIL SERVICE IN THE REPUBLIC OF SERBIA

The Law on Civil Servants established an integral¹⁵ civil service system with, as it is pointed out, solutions “based on standards which are accepted in modern comparative legal systems”, and adoption of such law is “one of the key issues of the institutional transformation of the Republic of Serbia”.

The Law on Civil Servants, together with the Law on State Administration, represents the system of complementary laws, which should lead to the transformation of the public sector in Serbia. It introduces the career semi-open civil service system, with characteristic that senior job positions are occupied by those who are already employed as civil servants, i.e. through the institution of advancement. This is a major difference in relation to the recent spoil system of system of political merits.

The Law on Civil Servants of Republic of Serbia created assumptions for establishment of a new civil service in Serbia, which, above all, shall be based on solutions, implemented in the modern comparative legal systems. By this, the European Union standards in the field of civil service in our country are completely fulfilled. Also, for the position of civil servants in Serbia are important and collective agreements that they conclude with the state as their employer.¹⁶

4. A BRIEF COMPARATIVE PRESENTATION OF LABOUR POSITIONS OF CIVIL SERVANTS

There is no unified regulation of labor position of civil servants in the national legislatures. It varies, depending on the period and particular needs of particular countries for an efficient civil service. The rights, duties and

¹⁴ R. Brković, *Zabrana konkurencije poslodavcu i dostojanstvo radnika na radu*, *Radno i socijalno pravo*, 1/2008, 255.

¹⁵ However, there is no constructed integral civil service system in Republic of Serbia yet”, B. Davitkovski, A. Pavlovska-Daneva and Z. Lončar, *Nauka o upravi*, Podgorica, 2012, 143.

¹⁶ R. Brković, *Kolektivno pregovaranje u aktima međunarodne organizacije rada koji su inkorporirani u legislativu Republike Srbije*, *Radno i socijalno pravo*, 1/2015.

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responsibilities of civil servants, as well as the legal content of their position, are expressed in different forms from state to state¹⁷.

Theoretically¹⁸, there are two major legal systems, which are regulating the status of civil servants: 1. career (statutory) system and 2. contractual system. Some countries combine those two systems (combined systems).

Here we are going to state several key elements of distinction for the career and contractual system of the labour position of civil servants.

The career system has regulated the system of employment of civil servants from the initial position on the basis of public competition. However, the employment at the higher positions is performed by advancement (career development) or by distribution (mobility) within the state administration. The advantages of such form of employment are: stability and a guaranteed quality of service due to long working experience of higher civil servants in the public sector, as well as the possibility of advancement in the career (which is stimulating for the civil servants), legally defined requirements for retirement, special disciplinary procedure, legally established system of advancement etc. From the other hand, the employment at all position in the contractual system is performed on the basis of public competition, without giving priority to persons, already employed by the state. This form of employment is flexible, external competition is providing necessary changes and innovations in civil service as well as increased efficiency of work.

The professional education and training for work are classic characteristics of the career system. The unified education qualifications are established as the basis for employment of a person at the appropriate degree of the career structure. Due to the standardization of expertise, it is provided that civil servants can meet the most subtle requests of the civil service, as well as the possibility of the desired mobility in service. There is no special, compulsory education for work in civil service in the contractual system. There is only a formal criterion (for instance, University degree), as the requirement for employment at particular position. The professional qualification depends on varied jobs and tasks, which are within each job position, which is fulfilled. The good thing about this system is that it

¹⁷ See more: T. Verhijen, *Civil service Systems in Corporative Perspective*, Leiden, 1999; H. Bekke, J. Perry, T. Toonen, *Civil Service Systems in Corporative Perspective*, Bloomington, Indiana, 1995.

¹⁸ "In relation to the organization of public services, the fulfillment of job positions within administration (particularly the state one), there are two systems: career system and job position system", B. Davitkovski, A. Pavlovska-Daneva and Z. Lončar, *op. cit.*, 165-166.

excludes the expenses of specialist education, and the diffuse educational structure is already provided, which may fulfill various concrete requirements of the civil service.

In the career system, the rules, which are regulating the requirements, standards and criteria for advancement, are established by civil service law. All the job positions, except the initial positions, are open only for the internal competition, which is providing the possibility of regular advancement. Unlike this, in the contractual system, each job position is subject to full competition and is available not only to the internal human resources but for all the interested parties out of the state administration.

The fully open and fully career systems do not exist in the practice. All the public civil service systems foresee to some extent a possibility of advancement or employment from the private sector, on the basis of public competition.

We shall present the comparative review on the position of civil servants through the presentation of some of their characteristic properties, on the basis of examples from legislatures of different civil service systems.

5. CIVIL SERVICE SYSTEM IN THE FEDERAL REPUBLIC OF GERMANY

The Federal Republic of Germany has built the most typical career system model for civil service¹⁹. The German Constitution guarantees to each German the access to civil service according to his/her inclination, skills and qualification. The employment in civil service is possible only from the initial position, through a public competition at the one of four levels – highest, higher, office staff and the lowest. A special school and education are required – for the highest level, University degree and two years of internship, for the higher level – college, which entails education in the fields in which the civil service work shall be performed as well as internship, office staff level - secondary school and internship and the lowest level – work in the profession. The three years trial work is compulsory for all the levels at the beginning of the career.

In the procedure of decision making according to the public competition, the law did not foresee the way of testing of knowledge and skills of the candidates but this at the discretion of the head of the state organ, but in

¹⁹ Federal Law on Civil Servants of FR Germany, 1953, (Federal Official Gazette for Laws IS. 551) in the version published on 31 March 1999 (Federal Official Gazette for Laws IS. 675, Federal Official Gazette for Laws III 2030-2).

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practice there is examination by the commission, interview, written test and similar. The employment is for an unlimited period of time by rule, established by the unilateral act of special commission. The final decision may be reexamined by administrative tribunals.

The advancement of civil servants is based on the performance, so each career level has three degrees – the initial degree, promotion degree and the final degree. The advancement to the higher career level is possible through the further education and through the statutory procedure.

The voluntary mobility is possible both at the request and by the approval of the state official, while the compulsory mobility is linked exclusively within the state institution, and only temporarily in another organ.

The civil servants in FR Germany have the obligation of personal improvement because this is the basis for advancement. However, the organizational additional improvement is possible after the assessment and approval by the superior officer. The assessment of the working performance is usually done once in three years. The civil servants between 50 and 57 years of age, as well as the highest and lowest civil servants are exempt from the assessment.

The system of salaries and awards is established by the law, and there are special compensations for Christmas, vacations, for special working conditions, as well as the increase of salaries in accordance with the economic movements in the state. The possibility of payment by work performance is defined in the areas where this is sustainable, where the special level of efficiency is required, as well as inventiveness.

The disciplinary sanctions are set forth by the law and are undertaken in cases of violation of working duties. The procedure takes place before the competent body within the service, with the possibility of appeal before the disciplinary tribunal.

The civil servants are not entitled to strike, but they have the option that their representatives participate in decision making regarding employment, work, social conditions etc. The state organs are obliged to achieve an agreement with the union on realization of the basic rights, as well as on the social and working conditions. The special attention is dedicated to the gender equality issue. It is interesting to remark that there is an established obligation for each state organ with more than 200 employees, to have an official in charge of gender equality issue, and each lower organizational unit shall organize special programs in order to improve such equality.

The Federal Law on Civil Servants regulates the existence of the Federal Personnel Commission, consisting of seven regular members and seven

deputies. The Commission is an independent organ with basis function of an integral implementation of civil service regulations.

6. CIVIL SERVICE SYSTEM IN THE GREAT BRITAIN

The civil servants in Great Britain are formally in the service of the British Crown but de facto in the function of British Government. They are elected by the Civil Service Commission but are appointed and nominated by the Prime Minister at the order of the state organ or service²⁰. The Commission members are appointed by the Crown at the proposal of the Government. Like the Central Commission for Civil Servants of U.S.A., the British Commission is competent for giving instructions and definition of the technique and procedure of examination of candidates, monitoring of fulfillment of requirements in all the domains of employment of the civil servants, arbitration of disputes, planning of human resource needs, calling and implementation of the contest procedure and providing impartiality in work.

The civil servants are directly responsible to the competent Minister.

The political neutrality is the supreme principle in the work and behavior of civil servants, so they are in the service of each Government. Therefore, there is dominance of merit system in the Great Britain, which means that selection and advancement of the administration personnel is based on their professional knowledge and skills, which are established through the various forms of checking like, for instance, competition procedure, public exam, trial work etc. However, this system does not exist in its pure form in this case as well, but it is combined with the so-called spoils system, so the certain smaller number of job positions is fulfilled by members of the political party, which has won the general elections and won the right to form the Government.

7. CIVIL SERVICE SYSTEM IN THE REPUBLIC OF SLOVENIA

The Republic of Slovenia has accepted the civil service system which includes elements of both career and the contractual system, so we can call this model the combined civil service system²¹. In order for a person to be employed by the state, it must fulfill the requirements in the view of

²⁰ See more: M. Davies, A. Doing, *Public Service ethic in the UK*, London, 1983.

²¹ Law on Civil Servants, Official Gazette of Republic of Slovenia, No. 56/02.

particular degree and education, which are adequate to the career level. The trial work is compulsory in duration of ten months at the beginning of career, or six months if the service is begun from a higher positions. The Law has set forth the procedure of employment and a significant part of the procedure is dedicated to specialized methods for examining the working ability (interview, written test etc.), which are autonomously determined by the state organ in question. The employer, i.e. state body, has discretion to decide which one of the three procedures of employment shall be implemented: internal competition within the particular organ, internal competition within the entire administration or public advertisement for the free job position.

The key characteristic of the Slovenian model is that employment within the service is performed on the basis of employment contract but in fact there is no space for individual negotiations. The decision on employment is at discretion of the head of the state organ and reassessment at the court is possible.

The advancement in state service is based on the criteria of working results. The advancement to the higher degree at the same career level is possible, while the transfer to the higher career degree may be performed only on the basis of further education and adequate selection procedure.

The mobility of a civil servant is a factor of most rational use of available human resources potential, as well as strengthening and qualification of civil service to adapt to the various needs in the given period of time.

The awards for civil servants are set forth by a special law.

In the case of individual or collective labor disputes, the court is competent for their resolution, i.e. the specialized labour and social tribunal.

8. CONCLUSION

Beside the general regime of employment, which pertains to all employees regardless of organizational forms of work and property forms, there is also a special regime of employment within state organs for the persons employed within such organs, i.e. for the civil servants. The need for existence of such special regulation of employment of civil servants originates from the specific character of the state activity and the specific nature of jobs performed by civil servants. Such specific employment of civil servants can be conceptually viewed as civil service based on the legal relation between the state and the civil servant.

By a comparison of local positive legal civil service regulations with the applicable solutions in the world, we can make the conclusion that our civil service system only started to develop and is merely facing its

comprehensive and full harmonization with the requirements of an efficient, professional, unbiased and depoliticized performance of this significant social function. For that purpose, there is an urgent need to harmonize the existing solutions in this field with the solutions, which are applicable in the EU countries. This is the basic precondition for the building of stable institutions, which shall be based on the internationally recognized standards and opening of more intensive reforms in all fields of society. Also, it is necessary to adequately regulate the labour law position of the province and local civil servants, concerning the unstoppable process of decentralization.

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