

PARTICIPATION OF CIVIL SOCIETY INSTITUTIONS IN CIVIL SERVICE COMPETITIONS

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ABSTRACT--Currently, in Ukraine, attempts of civil society institutions to participate in public problem solving seem to be unsuccessful, including in competitions for vacant civil service posts. Reevaluation of their functional role in the competition is considered to be one of the main tasks of development of democratic governance. The purpose of this article is to determine possible ways to improve efficiency of interaction between Ukrainian civil society institutions and public administration subjects in competitions for vacant civil service posts; to define a single concept of governance humanization and democratization and to offer specific recommendations on reforming citizen participation in competitions for vacant civil service posts in Ukraine. During the research, general and special methods of scientific knowledge were used: system analysis method, dialectical method, formal logical method, and structural functional method, as well as certain empirical methods. The authors came to the conclusion on poor interaction between public administration subjects and civil society institutions in competitions **for vacant** civil service posts in Ukraine. The positive effect of new forms of public involvement can be improved by promotion of e-participation of citizens in the public administration. Free access to electronic reflection of any public administration subject's activity is believed to simplify public involvement in making decisions. The results of the research seem to be interesting and useful for national legislators and public administration subjects against actualized tendencies in democratization and humanization of administrative processes. The research subject is considered in Ukraine for the first time and seems to have the prospect of further development.

Keywords--civil service, competition, competition commission, public associations.

I. INTRODUCTION

According to the conclusion of the Grand Chamber of the Supreme Court, the right to appeal to the court against an individual act (accepted both in civil service competitions and regarding their results) belongs to a person involved into disputed legal relations or mentioned as a subject in this act or whose rights, freedoms and interests directly related to in this act (Decree of the Grand Chamber of the Supreme Court, 2019).

Since civil society institutions, as a rule, do not participate in legal relations for civil service competitions, the court concludes that their rights are not violated, and therefore their claims are rejected.

For example, by the decree of the Sixth Administrative Court of Appeal of 09/10/2019 on case No. 640/22184/18, the case was upheld; another example of the Decision of the Kiev District Administrative Court of

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26/06/2019, which refused to satisfy the claim of the Stop Self-Will public campaign on recognition as illegal of actions of the competitive commission at the National Agency of Ukraine for Civil Service during a competition of 17/12/2018 for vacant civil posts and abolition of its results (Decree of the Sixth Administrative Court, 2019).

When making such decisions, the courts proceeded from the fact that the public organization did not apply to be included in the competition commission as prescribed by law, and did not receive the right to attend the competition, and therefore the defendant was not proved to violate rights and interests.

Thus, on procedural basis, the court refused civil society institutions to investigate revealed violations in competitions for vacant civil service posts.

Under political instability, imperfect current legislation, ineffective interaction of public state authorities and civil society institutions (Presidential Decree, 2016), the study of possibilities to attract citizens to competitions for vacant civil service posts seems to be urgent.

II. METHODOLOGICAL FRAMEWORK

The issue of participation of civil society institutions in competitions for vacant civil service posts is believed to be urgent, however, as for now there is no comprehensive study of public participation in competitions for vacant civil service posts.

The problems of insufficient openness and transparency of the civil service system, poor control of civil society institutions over execution of public functions and tasks by state authorities, bodies of the Autonomous Republic of Crimea are caused not only by shortcomings of the current legislation (although them as well), but by other, non-legislative factors.

For example, the number of civil servants, according to the National Agency of Ukraine for Civil Service, for 2017 is shown in *Table 1* (Regulation on the work of the Commission for Senior Civil Service, 2017), for 2018 - in *Table 2* (Annual Report, 2018), for 2019 - in *Table 3* (Analytical Report for numerical composition of civil servants at the state authorities as of 30/09/2019, 2019).

Table 1: Data of the National Agency of Ukraine for Civil Service for 2017

Staff listing			Actual number of employees			Vacant positions		
by category			by category			by category		
"A"	"B"	"C"	"A"	"B"	"C"	"A"	"B"	"C"
587	63,656	177,785	-	-	-	-	-	-
240,028			207,525			32,776		

Table 2: Data of the National Agency of Ukraine for Civil Service for 2018

Staff listing			Actual number of employees			Vacant positions		
by category			by category			by category		
"A"	"B"	"C"	"A"	"B"	"C"	"A"	"B"	"C"
198	63,268	181,139	145	55,821	153,819	53	7,099	23,935

244,605	209,785	31,087
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Table 3: Data of the National Agency of Ukraine for Civil Service for 2019

Staff listing			Actual number of employees			Vacant positions		
by category			by category			by category		
“A”	“B”	“C”	“A”	“B”	“C”	“A”	“B”	“C”
203	68,631	197,497	141	55,232	151,104	62	12,986	41,908
266,331			206,477			54,956		

Thus, very high personnel turnover is observed in the civil service. For example, in 2017, the number of dismissed civil servants was 46,693, and the number of appointed – 53,488; in 2018, the number of dismissed – 32,503, and appointed – 45,351; for the third quarter of 2019, 26,154 were dismissed and 27,598 were appointed.

The data provided allow to state that by 2019, the number of those appointed for civil service and the number of those dismissed are expected to coincide, despite the trend of a significant increased number of appointments in the civil service seen in previous years. Besides, the vacancy rate in the civil service is very high in 2019.

The current situation can be solved by changing the approach to competitions in the civil service, the main way to selection for recruitment for vacant posts in the civil service, including by expanding the capabilities of civil society institutions.

This article is the first to study forms of participation of civil society institutions in competitions for vacant posts in the civil service as a systemic tool for reforming the civil service in Ukraine. For a consistent disclosure of the issue, substantive blocks are detailed to characterize a homogeneous group of public relations affecting determination of civil society participation in competitions, namely: forms of participation of civil society institutions in competitions for civil service vacancies, institutional and legal framework for public participation in competitions for civil service vacancies, characteristics of inclusion of a representative of public associations into the Commission structure.

III. RESULTS AND DISCUSSIONS

3.1. Forms of Participation of Civil Society Institutions in Competitions for Vacant Civil Service Posts.

National legislation on civil service provides for several forms of participation of civil society institutions in competitions for vacant posts:

- a representative of public associations is a member of the Commission for Senior Civil Servants (hereinafter referred to as the Commission);
- attraction of public association representatives to be included into the membership of competitive commissions by the state authority;
- monitoring of publication of information on vacant civil service posts;
- monitoring of agreements on competitions for vacant civil service posts and their results.

The Commission, as a permanent collegial body in accordance with Part 2 of Art. 14 of the Law of Ukraine (2016) “On Civil service”, includes a representative of public associations. The meeting of the Commission on senior civil service is open to media representatives and journalists, except for cases of a closed competition for category “A” civil service posts.

Besides, by decision of the Commission on senior civil service, representatives of state authorities, scientific institutions, educational institutions, the media, public associations and international organizations may attend its meetings. The Commission makes an appropriate decision based on an application from the above bodies, associations, institutions and organizations or at the proposal of any Commission member (Regulation of the work of the Commission on senior civil service, 2016).

However, in this case, the attended representatives of public associations can only watch the competition for vacant posts in category “A” civil service, the senior corps, record violations revealed and make the public aware. Representatives of civil society institutions do not have other forms and methods, such as rights to submit comments, to demand compliance with current legislation, to request attendance in order to influence the Commission and its members.

Without a doubt, the attraction of a representative of public associations in the Commission is believed to be a positive step, testifying intentions to ensure their involvement in formation of the senior civil service, as well as to increase the competition transparency.

At the same time, the legislation provides for unreasonably high requirements for representatives of public associations and a complicated procedure for their selection, which reduces the accessibility and interest of public associations.

As for public association representatives involved in the competitive commissions of state authorities, the possibility to be involved in these commissions is usually considered within ensuring openness and transparency of competitions for civil service posts.

Monitoring of published information on vacant civil service posts, of agreements on competitions for vacant civil service posts and their results published on the unified portal of civil service vacancies should be mentioned (Unified Civil Service Job portal, 2020) as additional forms of participation of civil society institutions.

Any civil society institutions, with no exception, may use this form navigating public information posted by relevant authorities, enjoying the right to access public information, etc. At the same time, the effectiveness of these participation forms seems to be poor due to the lack of real mechanisms to influence the practical activity of state authorities with the results obtained.

Monitoring of the state authorities’ activities, including competitions for vacant posts in the civil service, is considered as a form of public control over activities of the relevant state authorities (Vashchenko et al., 2017; Vashchenko, 2018).

The monitoring object is the state authorities’ compliance with the current legislation regulations on mandatory publication of information on vacant civil service posts and on competitions for vacant civil service posts and their results. Besides, the materials for monitoring can be collected by sending enquiries to state authorities.

Currently feedback from state authorities on such monitoring is poor if any.

As a rule, appropriate monitoring by civil society institutions, revealing violations and shortcomings, suggestions or comments lead to correction or elimination of state authorities’ comments.

3.3. Institutional and Legal Framework for Public Participation in Competitions for Vacant Positions in the Civil Service

Competitions for civil service posts in state authorities are held by competition commissions at such authorities.

The Law of Ukraine (2012) “On Civil service” provides for the possibility to involve public association representatives in such competitive commissions acting in accordance with the Law of Ukraine “On Public Associations” (The Law of Ukraine, 2012), in accordance with the Order for selection of public association representatives to competitive commissions for recruitment selection for civil service posts, approved by Order of the National Agency of Ukraine for Civil Service No. 76 of 12/04/2016 (Order of Kyiv, 2016).

First of all, involvement of public association representatives in the competitive commissions, as well as determination of the number of the representatives are actually the right of the subject of this appointment, who establishes a competitive commission, that is, still at own discretion. Public associations, in turn, are deprived of any opportunities to influence the decision.

Another drawback regarding involvement of public association representatives in the competition commissions is believed to be the fact that the law does not stipulate their number and the ratio of the representatives and employees of the authority at the competition commission. The point is that the legislation specifies the minimum number of the competitive commission members (at least 5), all of them as a general rule are civil servants of this authority. Thus, to include one public association representative into the competition commission composed of 7 people (for example, to legitimize the competition) seems to be pointless since he fails to somehow influence the results of the competition.

The public association representatives are selected on a competitive basis. A committee, minimum one third composed of public association representatives, is established to select representatives of public associations. What kind of public associations, what way of election and why only one third (taking into consideration that all decisions of the committee are made by a majority vote), it is not clear. A possible option to eliminate the revealed uncertainty is to involve public councils at state authorities, like the organizing committee for selection of public association representatives to the Commission.

In practice, there are examples of Committees for selection of public association representatives for one competition for a specific position, for example, selection for a competition commission for the position of the chief architect of the city of Kiev (On the Committee on competitive selection of public association representatives to the competition commission for a competition for the vacant position of the Director of the Department of Urban Planning and Architecture at the executive authority of the Kyiv City Council (Order of Kyiv, 2016), or establishment of a committee to select public association representatives for all competition commissions at one authority (On Establishment of the committee on selection of public association representatives to competition commissions of the State fiscal service of Ukraine, 2017).

Public associations nominating candidates for the competition commissions should comply with the following requirements:

- registration not later than 12 months before the day of the selection notification publication;
- legal entity status;
- statutory activities in development of civil service and administration (including related to the authority activities) or human resources management, promoting the implementation of the principles of good governance for a period of at least 12 months before the day of application.

In this case, the candidate must have: 1) citizenship of Ukraine; 2) higher education (master's degree); 3) at least seven year work experience in total; 4) at least three year work experience in civil service positions and/or in local government authorities and/or in senior positions at organizations, institutions and enterprises, regardless of the legal status and ownership form and/or professional knowledge in civil service, public administration (including

related to the authority activities) or human resources management; 5) the state language knowledge; 6) the ability to represent the society's interests and to ensure the politically impartial and professional work of the competition commission.

After checking the submitted documents, public association representatives are elected to the competition commission according to the results of the preferential voting.

In this case, the problems of the complicated procedure for selection of public association representatives to the competitive commission structure are considered as an additional argument for the closed procedure for the competition in the civil service.

In this regard, the participation of public association representatives in competitions for vacant posts of categories "B" and "C" is very insignificant.

The state authorities hardly make decisions to include public association representatives in the structure of the appropriate competitive commissions when vacancies are related to categories "B" and "C".

3.4. Specifics of the Inclusion of a Public Association Representative into the Commission

Let us consider in more detail the procedure for selecting a representative of public associations.

To arrange the selection of candidates and to verify their documents submitted, the National Agency of Ukraine for Civil Service NADS establishes an organizing committee from among representatives of the NADS and the public council at the NADS.

The public associations nominate their candidates for the commission as follows: one public association - one candidate. Thus, the public association gains the right to nominate candidates after at least five-year statutory activity on implementing the good governance principles in the practice of civil service and human resource management at state authorities.

The requirements for candidates for the Commission members are stipulated in the Law of Ukraine (2016) "On Civil service" and the Procedure for selection of representatives of public associations and higher educational institutions, approved by Resolution of the Cabinet of Ministers of Ukraine (2019), namely:

- citizenship of Ukraine;
- higher education;
- at least seven year work experience in total;
- non-membership in any political party;
- Experience or professional knowledge in civil service or human resources management - at least 5 years.

According the scientific and practical literature, the above regulation does not provide clear requirements for experience in civil service or human resource management. The lack of such experience can be substituted by the professional knowledge in civil service or human resource management.

It should be noted that "the ability to represent the society's interests and to ensure the politically impartial and professional work of the competition Commission" is considered as a so-called "evaluation category", that is, a category does not contain actual information to determine the ability availability or non-availability in the candidate for the Commission members.

Besides, candidates for the Commission members should pass a test for knowledge of the current legislation, the failure (non-passing) of which precludes appointments to the Commission members.

As an example, let's consider the selection of a public association representative to the Commission, held in October-November 2019. Four candidates were competing in selection by public associations, three of which

were rejected after checking for compliance with their documents (Minutes of the meeting of the organizing committee, 2019).

The organizing committee rejected the submitted documents because of inconsistencies of: the statutory activities of public associations (two public associations); shorter period of statutory activity of the public association (one public association).

As a result, one candidate from public associations passed the verification of documents and became a member of the Commission from public associations (Order of the Cabinet of Ministers of Ukraine, 2019).

At the same time, actually one representative of public associations in the Commission is opposed to the other six, appointed by the state authorities (state officials) or included by virtue of their positions as well as to representatives of higher education institutions, most of which are state owned.

IV. CONCLUSION

The problems of insufficient openness and transparency of the civil service system, poor control of civil society institutions over execution of state functions and tasks by state authorities, bodies of the Autonomous Republic of Crimea are caused not only by shortcomings of the current legislation (although them as well), but by other, non-legislative factors. An economic component and a level of citizens' legal awareness seem to be significant among these factors affecting an insignificant role of civil society institutions in holding competitions for vacant posts in the civil service.

The economic component, which is believed to be the key to formation and approval of civil society institutions, determines their interests and the real possibility of direct involvement in public affair management, including in competitions for vacant posts in the civil service.

The level of citizens' legal awareness and their appropriate knowledge level are believed to be important both for understanding their role in public affair management, and affecting the effectiveness of the participation of civil society institutions in competitions for vacant civil service posts.

In order to overcome the revealed problems, collisions of the current legislation and to improve the procedure for attracting public association representatives to the competition commissions for competition for vacant civil service posts, the following steps are considered to be appropriately suggested: to provide for obligations in participation in the competition commissions of state authorities of public association representatives as competent and independent members, with independent rights and obligations; to simplify the procedure for attracting public association representatives to the competition commissions, in particular by revision of the requirements for them; to ensure the mandatory publication of information on attracting public association representatives to the competition commissions by the relevant state authorities on official websites, social networks, as well as through the local and national mass media, depending on the jurisdiction of state authorities holding competitions.

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