

DOI <https://doi.org/10.30525/2592-8813-2023-1-4>

**GERMAN EXPERIENCE IN REGULATING PROCEDURE  
FOR DISMISSAL OF CIVIL SERVANTS: AREAS OF APPLICATION  
IN NATIONAL LABOUR LEGISLATION**

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**Abstract.** The relevance of the article is due to the need to optimise and review for compliance with European standards the institution of dismissal of civil servants. Therefore, the modernisation of the civil service in line with the European experience is one of the priority tasks facing the national legislator, and the institution of dismissal of civil servants is one of the issues that, in our opinion, could be improved on the basis of the legislation of European countries. The experience of those countries, which have the civil service modernised and reformed already in the last century, and today have a stable and sustainable system where each element functions properly is certainly useful for Ukraine. Such countries include the Federal Republic of Germany, which is traditionally considered by domestic researchers as a model for reforming any civil service institution. The article analyses the specifics of German legislation regulating the procedure for dismissal of civil servants. The author presents the legislative provisions of Germany in the context of the area under study. The article reveals how the specificities of the national legal framework for the procedure for dismissal of civil servants differ. The positive aspects of progressive foreign legislation are noted. Specific proposals are made to adopt the positive German experience into national labour legislation. It is found that since German law does not set minimum time limits for a civil servant to notify the appointing authority of his/her dismissal, this way the interests of the State are protected if the dismissal of a civil servant will harm them in the short term. An alternative to such changes may be to grant the appointing authority the right to postpone the dismissal of a civil servant if his or her dismissal within the timeframe specified in the application would harm the public interest. For example, in case a civil servant performs certain official tasks that cannot be transferred to another employee, or if the head of the civil service has reasonable doubts about finding an adequate replacement for the civil servant within the time limits established by law.

**Key words:** Germany, civil servants, dismissal of employees, labour law, civil service.

**Introduction.** In recent years, our country has been undergoing various intense and complex socio-political processes of establishing a democratic, legal, social State that will ultimately meet the standards of the European Union, which should become the norm of life for our citizens. Therefore, it is important for the legislator to bring national legislation in line with European standards since the outdated Soviet legal heritage is far from compatible with the principles of democracy and the rule of law that are characteristic of the leading countries of Europe and the world.

Despite several civil service reforms and the relatively recent adoption of the Law of Ukraine "On Civil Service" dated 10.12.2015 No. 889-VIII, as our research has shown, problems related to the legal regulation of the procedure for dismissing civil servants still remain in domestic legislation employees. That is why we see the presence of prospects for further improvement of this sphere, and we consider the implementation of positive foreign experience into the legislation of Ukraine to be one of the most effective ways for this.

The inconsistency of some provisions of the current legislation on the civil service with the democratic norms of the European Union and the imperfect regulation of service-labor relations in the field of civil service led to the fact that the quality of personnel of civil servants in our country

required influence from the state. As a result, trust among citizens in state institutions has traditionally remained low throughout the entire time since Ukraine declared independence.

As of today, one of the issues to be optimised and reviewed for compliance with European standards is the institution of dismissal of civil servants. Therefore, the modernisation of the civil service in line with the European experience is one of the priority tasks facing the national legislator, and the institution of dismissal of civil servants is one of the issues that, in our opinion, could be improved on the basis of the legislation of European countries.

Among the states whose experience could be useful, in our opinion, it is first of all worth analyzing the experience of post-socialist countries, because they went through the process of reforming the civil service and bringing it into line with European standards, and as a result joined the European Union. Among such countries, we would like to note such countries as the Republic of Lithuania and Estonia, which, like Ukraine, left the Soviet Union in 1991 and declared independence, but, unlike our country, are members of the EU. Our states are united by a common historical past, close social and economic ties, assistance and support provided by Lithuania and Estonia during the Russian-Ukrainian war, as well as the fact that the goals declared by Ukraine have already been implemented by these countries.

The experience of those countries, which have the civil service modernised and reformed already in the last century, and today have a stable and sustainable system where each element functions properly is certainly useful for Ukraine. Such countries include the Federal Republic of Germany, which is traditionally considered by domestic researchers as a model for reforming any civil service institution.

**Literature review.** Among the scholars who have studied the issues of foreign experience in regulating employment relations in the civil service, we should note the contribution of: T.Yu. Vitko, M.D. Denysov, N.A. Zhydenko, M.I. Inshyn, A.S. Karpunets, Y.Y. Kizilov, A.V. Kirmach, L.M. Kornuta, A.A. Neselevska, N.S. Panova, L.L. Prokopenko, A.P. Rachynskyi, S.V. Semenenko, V.P. Tymoshchuk, Yu.H. Faier, V.I. Shcherbyna and others. However, the issue of foreign experience in regulating the procedure for dismissal of civil servants is not one that has been comprehensively studied in the domestic scientific literature. Therefore, the focus on this issue is required, and the analysis of the experience of the Federal Republic of Germany is timely and relevant.

**Main material.** The Federal Republic of Germany, as an object for studying the positive experience in regulating the procedure for dismissal of civil servants, is a State that modernised and reformed the civil service several decades ago. Today, this directly affects the efficiency of the public sector in this country, as well as the quality of administrative services provided to citizens by civil servants. The German model of civil service differs from other models in terms of its clear organisation, clear regulatory procedures for internal organisational activities, complexity of the civil service selection system, high social status of civil servants, three types of legal status of civil servants (preparatory service, probationary service, civil service), high legal, social and economic security of civil servants, etc. (Kizilov, 2016; Hubska, 2017; Prokopenko, Shabatina, 2020). Among the features highlighted by virtually all researchers of the German civil service, it is traditionally underlined that the fundamental basis of the German model is the attraction of the most professional personnel, an enabling environment for them and high standards under which their service will be as effective as possible. Since the procedure for civil service in the Federal Republic of Germany is quite specific, the legal framework for the dismissal procedure in this country is also specific. Despite the fact that the German experience in general is quite problematic for implementation in the domestic context, some of its aspects, in our opinion, could be considered by the domestic legislator in the context of finding ways to improve the national legislation of Ukraine.

The legal act that regulates the procedure for dismissal of civil servants in the Federal Republic of Germany is the Federal Civil Service Act (Bundesbeamtengesetz (BBG)) of February 05, 2009

(Bundesbeamten-gesetz, 2009). Section 5 of this Act is devoted to the procedure for termination of civil service. Analysing the content of this section, we should note that most of its articles are devoted to specific grounds for termination of civil service. Similar to Law of Ukraine "On Civil Service" No. 889-VIII of December 10, 2015 (Law of Ukraine "On Civil Service", 2015), these grounds are grouped under one article, Article 30, which defines four grounds for termination of civil service: 1) dismissal from the civil service (in this context, we are talking about both dismissal from the civil service at the initiative of the civil servant and dismissal at the initiative of the appointing authority); 2) loss of the right to civil service; 3) dismissal from civil service for committing a disciplinary offense; 4) retirement. In other words, in general, the grounds for termination of civil service under Law of Ukraine "On Civil Service" No. 889-VIII of December 10, 2015 (Law of Ukraine "On Civil Service", 2015) and Federal Civil Service Act of Germany of February 05, 2009 (Bundesbeamten-gesetz, 2009) are comparable.

Subsection 1 of Section 5, namely Articles 31-37 of the Federal Civil Service Act of February 05, 2009 (Bundesbeamten-gesetz, 2009), regulates various grounds for dismissal of civil servants related to dismissal of civil servants on their own initiative or on the initiative of the appointing authority. At the same time, the application of a particular ground is influenced not only by the circumstance itself, but also by the specifics of the legal status of civil servants inherent in the civil service model of the Federal Republic of Germany. For example, during the preparatory service, a civil servant may be dismissed for committing a disciplinary offense (Article 34 of the Federal Civil Service Act of February 05, 2009 (Bundesbeamten-gesetz, 2009)), but after completing probationary service and being appointed for life, a disciplinary offense is no longer considered a ground for dismissal. Article 36 of the Federal Civil Service Act of February 05, 2009 (Bundesbeamten-gesetz, 2009) stipulates that a civil servant who is on probationary service "may be dismissed from it at any time". In turn, a civil servant appointed for life, for example, may be dismissed as a result of losing the right to civil service (Article 41) or may resign on his/her own initiative (Article 33).

Despite the fact that the status of a civil servant is characterised by a high level of legal protection, the German legislator tries to maintain a balance in protecting private and public interests in the procedures for dismissal of civil servants. For example, according to Article 33 of the Federal Civil Service Act of February 05, 2009 (Bundesbeamten-gesetz, 2009), civil servants in Germany, like civil servants in Ukraine, may resign from the civil service at their own initiative. Unlike Ukrainian legislation, German law does not set clear deadlines for resignation. It means that a civil servant will be dismissed within the period requested in a written application. In addition, part 1 of this Article defines the right of a civil servant to withdraw such an application within two weeks from the date of submission of the application (as it was done by the Estonian legislator). Moreover, part 2 of this article stipulates that dismissal may be postponed by the appointing authority in order for the civil servant to complete the tasks assigned to him/her, but not for longer than three months. Article 89 of Law of Ukraine "On Civil Service" No. 889-VIII of December 10, 2015 (Law of Ukraine "On Civil Service", 2015) also establishes the obligation of a civil servant to transfer the files and property entrusted in connection with the performance of official duties to a person authorised by the appointing authority in the relevant state body, however, the domestic legislator obliges the civil servant to do so before dismissal, without burdening him/her with additional terms. According to A.V. Kirmach, this can be explained by the protection of public interests from "abrupt" actions of officials (Kirmach, 2010). In other words, since German law does not set minimum time limits for a civil servant to notify the appointing authority of his/her dismissal, this way the interests of the State are protected if the dismissal of a civil servant will harm them in the short term. An alternative to such changes may be to grant the appointing authority the right to postpone the dismissal of a civil servant if his or her dismissal within the timeframe specified in the application would harm the public interest. For example, in case a civil servant performs certain official tasks that cannot be transferred to another employee,

or if the head of the civil service has reasonable doubts about finding an adequate replacement for the civil servant within the time limits established by law. Therefore, based on the German experience, we propose to amend Article 86 by adding a new part 4 as follows:

"[...] 4. The dismissal of a civil servant on his/her initiative may be postponed by the appointing authority for an indefinite period, but not longer than three months, if his/her dismissal would create a significant threat to the public interest in cases:

1) if it is impossible to transfer cases and property entrusted in connection with the performance of official duties within the time limits established by part one of this Article;

2) if the appointee has objective doubts about ensuring the smooth functioning of the state body until the appointment of his/her replacement to the vacant civil service position".

Regarding the dismissal of a civil servant at the initiative of the appointing authority, we would also like to highlight the greater flexibility of the terms provided for by German law than those defined by Law of Ukraine "On Civil Service" No. 889-VIII of December 10, 2015 (Law of Ukraine "On Civil Service", 2015). Part of Article 87 of the latter stipulates that the appointing authority or the head of the civil service shall notify the civil servant of the impending dismissal in case of reduction of the number or staff of civil servants, reduction of civil service positions or liquidation of a state body no later than 30 calendar days; Article 84, part 2, stipulates that in most cases of termination of civil service in case of a civil servant's loss of the right to civil service or its restriction, the civil servant shall be dismissed within three days from the date of occurrence or establishment of the fact provided for in this Article. As for other cases, the current legislation of Ukraine generally does not provide for notice periods for employees, which means that in these cases the general terms provided for by the Labour Code of Ukraine apply (Labour Code of Ukraine, 1971). As noted above, given the specifics of civil service, we believe that the provisions of Law of Ukraine "On Civil Service" No. 889-VIII of December 10, 2015 (Law of Ukraine "On Civil Service", 2015) should be separated from the provisions of the Labour Code of Ukraine (Labour Code of Ukraine, 1971), and in this context, some provisions of the Federal Civil Service Act of February 05, 2009 (Bundesbeamtenengesetz, 2009) are an excellent example of how to regulate service and labour relations within the civil service legislation without reference to labour law. For example, Article 38 stipulates that an order to dismiss a civil servant in some cases (refusal to take an oath or due to membership in the Bundestag) comes into force from the moment of its approval by the appointing authority, and in other cases, at the end of the month following the month when the appointing authority issued the relevant order. Therefore, we propose to amend Article 83 of Law of Ukraine "On Civil Service" No. 889-VIII of December 10, 2015 (Law of Ukraine "On Civil Service", 2015) by adding a new part 5 as follows:

"[...] 5. The order (instruction) on dismissal of a civil servant shall enter into force at the end of the month following the month in which it is issued by the appointing authority or the head of the civil service, unless otherwise provided for in Articles 83-89 of this Law."

**Conclusions.** To sum up, the analysis of the positive experience of the Federal Republic of Germany in regulating the procedure for dismissal of civil servants enables to conclude that it may be useful for the national legislator in terms of detailing certain aspects. Unlike the Latvian and Estonian civil service models, the German civil service differs significantly from the Ukrainian civil service model. Similarly, the content and structure of Law of Ukraine «On Civil Service» No. 889-VIII of December 10, 2015 (Law of Ukraine "On Civil Service", 2015) and the Federal Civil Service Act of February 05, 2009 (Bundesbeamtenengesetz, 2009) differ significantly, which makes it difficult to apply many positive aspects of German legislation. However, the experience of the German legislator could be useful in determining the timeframe for dismissal of civil servants.

In general, with regards to the prospects of implementing the positive experience of foreign countries into Ukrainian legislation, we emphasise that most of the procedures for dismissing civil servants are regulated in domestic legislation more perfectly or at the same level as in the legislation of other

countries. The adoption of Law of Ukraine “On Civil Service” No. 889-VIII of December 10, 2015 (Law of Ukraine "On Civil Service", 2015) has a qualitative impact on the legal framework for civil service in general, and the procedure for dismissal of civil servants in particular. Therefore, despite the problems underlined in the course of our research, most of the provisions of national legislation, especially those that define the grounds for dismissal of civil servants, are comparable to the provisions of the legislation of European countries. However, when it comes to the regulatory mechanism for certain procedures or terms related to the dismissal of civil servants, the legislation of the Federal Republic of Germany is clearer and more specific. Some of the experience of the State being analysed is relevant for the domestic legislator, so to further optimise the legal framework for the procedure for dismissal of civil servants, the review of foreign experience is extremely useful and necessary.

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