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ON LABOUR REGULATIONS OF CIVIL SERVANTS AT WARTIMES

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The problem of preserving the economic and social guarantees of civil servants, the effective work of state institutions and ensuring human and citizen rights realization was relevant throughout the period of Ukraine's independence. The outlined problem was considered in the works of well-known scientists who, to a greater or lesser extent, dealt with issues of public service. In particular, the problems of organizing the effective work of state bodies and ensuring the guarantees of state employees are highlighted in the works of such scientists as: N. Alyushyna, O. Andriyko, A. Benish, Yu. Bityak, O. Butenko, K. Vashchenko, I. Venediktov, S. Dubenko, M. Kanavets, V. Kolpakov, V. Kupriy, S. Kivalov, V. Kovalenko, T. Kolomoiets, M. Konovalova, V. Lazarev, V. Malinovskiy, N. Nyzhnyk, L. Stekkolini, S. Stetsenko, V. Tymoshchuk and others. At the same time, analysing the works of scientists, it is worth noting that the mentioned problems were not considered from the point of view of the wartime. There was no such experience in independent Ukraine, and it was even difficult to imagine that such conditions would be possible. Therefore, it is worth stating that in the current situation, state institutions had to face some difficulties and unforeseen situations. As it turned out, the legislative basis was also not ready for such a situation. Although, since 2014, namely with the active phase of the anti-terrorist operation in Luhansk and Donetsk oblasts, it would be worth paying more attention to the regulations of the civil service during armed attacks and war context.

Therefore, it is important and relevant to highlight certain problematic issues of the civil service functioning that require a solution and a clear normative regulation at wartime.

First of all, it is worth defining that wartime is a special legal regime introduced in Ukraine or in some of its localities in case of armed aggression or threat of attack, danger to the state independence of Ukraine, its territorial integrity, and expects that appropriate state authorities, military command, military administrations and local self-government bodies have the powers to avert the threat, repulse armed aggression and ensure national security, eliminate the threat of danger to the state independence of Ukraine, its territorial integrity, as well as the temporary, due to the threat, restriction of the constitutional rights and freedoms of a person and citizen and the rights and legal interests of legal entities with an indication of the period of validity of these restrictions [1].

First, it is worth paying attention to the issue of entering the civil service at wartime. Analysing the Law «On Civil Service» of 2015, it is worth noting that the relevant law does not regulate the issue of filling vacant positions in the system of civil service bodies at wartime [2].

At the same time, according to the explanation of the National Agency for Civil Service «Regarding recruitment to state bodies at wartime in Ukraine» namely in accordance with Art. 4 in case that a raion or oblast state administration acquires the status of a raion or oblast military administration, the positions of civil servants in such administrations may be replaced by military servicemen formed in accordance with the relevant legislation, by members of law enforcement agencies, civil protection services, who are seconded to them according to the procedure established by law to carry out tasks in the interests of the state defence and its security, while remaining in military service, service in law enforcement agencies, civil defence agencies and units without exclusion from personnel lists.

It is also worth mentioning that the direct filling of vacant positions in the civil service at wartime and the creation of the corresponding military administrations are regulated by Art. 3 of the Law «On Civil-military Administrations», in particular, in case that a raion, oblast state administration acquires the status of a corresponding raion, oblast civil-military administration, the positions of civil servants in such administrations may be replaced by military personnel of military formations formed in accordance with the law, by private and senior officers of law enforcement agencies, who are seconded to them in accordance with the procedure established by law to perform tasks in the interests of the state defence and ensure its security, while remaining in military service, service in law enforcement agencies without exclusion from personnel lists, as well as by decision of the head of the raion, oblast civil-military administration, other persons with special knowledge and experience may be appointed to the positions of civil servants in such an administration, without competitive selection [3].

That is, at wartimes, a competition for the position is not held, and persons are enrolled in the position automatically. The legislation does not provide any other special procedures or exceptions for filling positions in the civil service during a special period. It is worth asking questions about the normative and professional component of the implementation of such an appointment procedure, especially if we consider that the state of war in the country can be extended for quite a long time. There is still a question of a possible solution to the problematic issue and the provision of such procedures at the regulatory level. Of course, the special competences and powers of military administrations should not be neglected. However, the introduction of additional conditions and opportunities to replace positions will allow to ensure the normal activity and efficiency of state bodies at war times [4].

In this case, it is worth paying attention to the possibility of forming a personnel reserve and forming relevant professional specialized lists of potential candidates for filling positions in the civil service. The personnel reserve is familiar to us in the historical plane based on the Law «On Civil Service» of 1993. As for the formation of lists of potential candidates, it is necessary to consider the specialist's professional training, his/her practical experience in the past, as well as a place of work. It is also worth noting that in accordance with the provisions of civil legislation, some types of work and services may be performed under the terms of a civil law contract between an individual and a state body (which was conducted during restrictions because of the coronavirus disease 2019 (COVID-19) caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)).

At the same time, a positive point in the regulatory framework is the norm that to ensure power exercising by state bodies, it is possible to change the staff list of a state body, providing instead of vacant positions in the civil service, the positions of employees of state bodies who perform service functions and employees of patronage services. Filling of such positions is carried out without conducting a competition in accordance with the current labour legislation by concluding an employment contract.

So, the issue of entering the positions of civil service still requires a sustainable legal approach and further studying in the scientific circles.

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