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larisa_zaitseva72@mail.ru

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ENSURING THE IMPLEMENTATION OF THE RIGHT OF EQUAL ACCESS TO THE CIVIL SERVICE

SUMMARY. The principle of equal access to the civil service is prescribed in the Constitution of the Russian Federation. Its implementation is ensured by norms of competition that bind candidate selection in the procedure of civil service appointment. Legislation on competitive selection should not only ensure the implementation of the stated principle, but should also facilitate admission of the most skilled and trained personnel into the state civil service. Competition is to be considered as an anti-corruption measure. The author emphasizes certain deficiencies and antinomies in civil service competitive candidate selection law, and states proposals to ensure equal access.

KEY WORDS. Civil service, corruption, competitive selection for the civil service.

The principle of equal access to the civil service is prescribed in Art. 32 of the Constitution and Art. 4 of the Federal Law “The Civil Service of the Russian Federation”. The system of competitive selection of candidates for posts in the public service is directed to ensure the implementation of this principle. In accordance with the Decree of the President of the Russian Federation № 112 of February 1 2005, “Competitive selection for vacant positions in the Civil Service of the Russian Federation” (Civil Service Law)[1], such selection guarantees the constitutional right of citizens of the Russian Federation to equal access to the civil service, and the right of civil servants to career promotion on a competitive basis.

However, there are contradictions and gaps in the legal regulation of the current system of competitive selection that can hinder the selection of the most qualified personnel for state civil service, and call into question the usefulness of the citizens’ right to equal access to the civil service. In addition, inadequate legal regulation in this area creates conditions for corruption offences relating to the appointment to civil service positions of “convenient” people, or admits manipulation, allowing trading in posts.

It would seem that competition is the main and optimal method of candidate selection of for civil service positions, with regard to the principle of equal access to the civil service and at the same time the right of civil servants to career promotion. But today, in fact, the opposite is true. The Civil Service Law significantly limited the scope of application of competitive recruitment, increasing the number of position groups replaced without competition, and determining two cases when the question of the use or non-use of the competitive selection is resolved by the representative

the employer [2]. Thus, according to the law, the competitive selection does not take place in the case of replacement of fixed term authority positions in the 'chief' and 'advisor' categories, as well as in the "leaders" category, where appointment and dismissal are carried out by the President of the Russian Federation or the Government of the Russian Federation. Competitive selection is not provided if a term of service contract is concluded, if a civil servant is appointed to another position, if a state civil servant is transferred from a former position because of bad health preventing him from performing his former duties as well as if a state civil servant is transferred due to the elimination of a state body, or the reduction of civil service posts. Competitive selection does not take place for the appointment of a citizen among the reserve personnel. Competitive selection may not be conducted for appointment to certain positions in the civil service whose duties are related to the use of state secret information, according to the list approved by the Decree of the President of the Russian Federation. By decision of the representative of the employer, competitive selection may not be held for appointment to junior posts in the state civil service.

However, despite the fairly widespread belief in an unlimited competitive selection process to fill the vacant posts of the state civil service, the courts have not seen in the norms that establish such restrictions a violation of the Constitutional rights of citizens or a contradiction of the basic principles of the civil service [3].

Thus, the possibility of competitive entry into the civil service is essentially limited, competitive selection is no longer the main method of forming public authorities [2].

It should be noted that the formation of a personnel reserve also limits in a specific way the application of the system of competitive selection and creates a restriction of the right to equal access to the civil service. Despite the fact that the personnel reserve is formed predominantly on a competitive basis, this is not the only means of its formation [4].

In accordance with Art. 39 of the Civil Service Law, a civil servant is included in the reserve in cases when a service contract is suspended due to circumstances beyond the control of the parties, with the release of the civil servant from substitution of the displaced post. For example, due to the civil servant being called up for military service; due to court decision, due to election or appointment of a civil servant to public office, due to the onset of an emergency preventing the continuation of relations connected with the civil service, in other cases involving the performance of public duties established by federal law.

Art. 49 of the Civil Service Law provides the right of the Certification Commission to make a decision on the certification of the civil servant if "the civil servant corresponds to the displaced position and is recommended for inclusion in the reserve in a prescribed order for replacement of vacant civil service post in the order of career advancement. " In this case, it is not clear whether the representative of the employer, solely on the basis of such a decision, may issue a certificate for the inclusion of the civil servant in the reserve; or whether the certifying commission's decision on this part is only a recommendation to the competitive selection committee, which may be considered as an additional argument for choosing a suitable candidate applying to

participate in the competition for inclusion in the reserve. It seems reasonable that “non-competitive” inclusion in the reserve for replacing the higher positions of civil servants based on the certification results is unacceptable [5].

The “non-competitive” method of formation of the personnel reserve is a kind of “social guarantee” provided to civil servants [6]. But does it meet the principle of equal access to public service? Hardly. Due to the appointment to a vacant post of a civil servant who is in the personnel reserve, especially without competition procedures, there is an unreasonable priority for those who are already in the civil service. However, in recent times, much attention has been paid to the formation of personnel reserve.

This is largely due to the implementation of the federal program “Reform and Development of the State Service System of the Russian Federation (2009-2013)” [7]. Today staff reserves are established in all the Subjects the Russian Federation. Thus, the probability of competitive selection for vacant civil service posts is reduced to zero.

In this context, the view of T. Ivankina and A. Zavgorodnev seems reasonable: “the presence of a personnel reserve should not lead to the substitution of competitive recruitment by direct appointment of reserve personnel, as this would lead to the creation of a closed system of civil service formation [2]. However, there are other points of view. M. Presnyakov and S.Chanov, who do not reject the idea of filling a vacant post with reserve personnel recruited on a competitive basis, consider that “non-competitive formation of the personnel reserve is allowed only as a state guarantee for civil servants, in order to keep relevant civil service positions for them under reasonable circumstances.” But “if a citizen has been included in the reserve without competitive selection, his appointment to a vacant post in the civil service shall be based on the results of open competition” [5].

The norm of part 10. Art. 58 of the Civil Service Law looks even more unreasonable, providing for the inclusion in the reserve on a competitive basis of the civil servant who was released from his position due to disciplinary punishment. Can he claim inclusion in the reserve on a competitive basis? Can he participate in the competition on an equal basis with other candidates if a vacancy is free? It is impossible to judge from the wording of this article. It seems clear that a civil servant dismissed from office because of a disciplinary offense and whose civil contract is terminated may not be an advantageous replacement for a vacant post compared with other citizens who are not included in the civil service or personnel reserve. So for what purpose does the law include a wrong-doer in the personnel reserve?

Certain obstacles to equal access to the civil service are created by some rules that determine the competitive selection procedure (for vacant posts in the civil service, and for inclusion in the reserve).

In accordance with Art. 12 of the Civil Service Law, the number of qualification requirements for civil service positions includes requirements on the level of professional education, length of service (public service of other types) or experience in a speciality field, professional knowledge and skills required for the performance of official duties . Requirements for the length of civil service or professional

experience are established by the Decree of the President of the Russian Federation № 112 of 01.02.2005 on "Competitive selection for vacant posts in the Civil Service of the Russian Federation." The decree establishes that the length of public service may be shorter than the length of professional service. This approach leads to the fact that participation in the competition is not allowed to persons with significant professional experience, or those admitted lose to those who are already in the civil service. Moreover, these preferences are used by civil servants who have no professional experience but have experience in the civil service, whose duties are not connected with initial vocational training and specialization in high school [8].

Procedural rules of competitive selection that are far from perfect can create problems for "ordinary" citizens who are not yet part of the civil service. For example, the procedure for calculating deadlines for the submission of documents for participation in the competition is not clear. The Regulation of competition for vacant positions in the Civil Service of the Russian Federation, approved by Presidential Decree № 112 of February 1, 2005 [9] (hereafter Regulation of competition) indicates 21 days but does not specify calendar or working days. Because of the lack of clarity, if we suppose calendar days were meant, it is not clear which day starts the calculation of the specified period from the date of publication of the announcement of the competition, or the next day after the day of publication. The notification procedure of the date, time and venue of the competition is also unclear. In section 14 of the Regulations of competition, the representative of the employer, no later than 15 days before the start of the second stage of the competition, should notify of the date, time and place of the meeting to candidates eligible for the competition. But how is this notification brought to the attention of the applicants? These gaps in the legal regulation create a fertile ground for the recruitment of "friends" or the "right" people.

The legislation sets out two stages in civil service competitive selection. In the second round of the competition, at the discretion of the commission can be used a variety of methods of assessment of the professional and personal qualities of candidates (individual interviews, questionnaires, group discussions, essay writing, testing). The necessity and the priority of different methods in the competition is determined by the Competition Commission. If the winner of the contest for the vacant position is determined with the help of one of the above methods, then the competition can be considered complete [10]. The large number of evaluative categories that allow to interpret arbitrarily and subjectively, a wide margin of discretion of the commission members, obligatory inclusion of the head of the unit of state authority in the competitive commission, do not promote the adoption of independent and objective solutions [11]. In addition, no safeguard system prevents the violation of the principle of equal access to the civil service or allows to justify and prove violations in the case of a court appeal. The existing Competition Regulations do not establish the right of participants to assess the legality of decisions since the procedure of act's adoption is not clear [12] and there are no clear requirements for its content.

Thus, improvement in the legislation on competition in the replacement of vacant posts in the state civil service will contribute to:

- anti-corruption measures against the “trade” in office positions and the appointment of “our people”;
- the most qualified, skilled and trained personnel entering the civil service,
- the creation of an effective “social elevator” system for young and professional staff.

To achieve these goals, we believe that it is necessary to:

1. Shorten the list of cases where competition for vacant posts is not held.
2. Set qualification requirements which are appropriate to the demands of the civil service, re-establish professional experience as a priority, or determine qualification requirements with the help of professional competence.
3. Review the goals and objectives of the reserve personnel.
4. Improve the procedural rules of competitive selection, eliminating legal uncertainties and gaps.

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