

PRINCIPLES OF CIVIL SERVICE AS AN ELEMENT OF THE MODERN STATE

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Abstract. The paper deals with the need for legal regulation and application of legal principles as leading legal concepts in civil service and civil service relationships in the Slovak Republic. The paper points at the central importance and content of individual civil service principles whose regulation and application are to considerably contribute to the development of modern and functioning civil service as a crucial personal element of the functioning of civil service in the Slovak Republic.

Keywords: Public service, civil service, legal principles, Board for Civil Service

INTRODUCTION

Good functioning of every advanced democracy requires for the institution of civil and/or public service that must be embodied in the legal order of the State. Independent and professional state apparatus is a necessary condition of the modern democratic state, and its primary interest is the respect for Constitution, constitutional laws and other applicable laws and the only aim is to honour the rights and freedoms of citizens. The state apparatus plays a fundamental and irreplaceable role in the exercise of the functions of the State, placing particular emphasis, in the never-ending process of its improvement, on the strengthening of the role of law which, although applied with other factors, has its specific and irreplaceable role.

Civil service is an institution which, by its nature, has a special mission in the process of performing the duties of the State which are fulfilled in the hierarchic system of the state apparatus bodies by a special category of people who carry out this activity professionally.

1. PUBLIC AND CIVIL SERVICE – LEGAL DEFINITION

The term “public service” defines legal status and activity of employees in public service, i.e. employees of the public sector (State, regional self-governments, in the area of public services).¹ It is an umbrella legal term, larger than the term “civil service”. The term “civil service” defines legal status and activity of civil servants – natural persons whose employment relationships is established with the State (i.e. they are in the civil service employment relationship). It is a group of employees whose subject of activity is always connected with the exercise of state power (e.g. employees in civil service, service relationship of members of armed forces).

The particularity of employment relationships in public service causes that public service represents a special type of administrative and employment relationships. The reason behind special “clerical” service right are both special nature of the employer and special nature of the work of the employee (exercise of public service). The level of particularity of legal regulations can, however, vary – depending on whether it is an employee within civil service, self-government or within other public service. If his or her activity is the exercise of authoritarian public service, the level of particularities of the employment relationship is higher and the employment relationship is largely influenced by public elements.

In general, public service employment relationships have, in the legal regulation of the European countries, either private character (with public elements) or public character (the service right is fully separated from general contract (private) employment regime, and are regulated by specific laws governing specifically the status of public servants). Public elements in employment relationships are conditioned by the need to fulfil personnel requirements for the exercise of public service as a special type of activity (it includes mainly the specification of conditions for the selection of employees and for the exercise of service), larger extent of legal duties of employees and even stricter legal liability of employees (as compared to the employees in private sector).²

¹ Technical literature defines public service differently. The most comprehensive definition of public service can be understood in several meanings: (a) from the perspective of its organisation, i.e. as a part of the organisational system of the State, as a part of the national apparatus; (b) from the perspective of certain activity: it is an activity of civil servants in the exercise of the functions of the State; (c) as a group of persons: it defines a certain category of persons (civil servants) serving the State; (d) as a legal regime: it expresses the way of organising legal regulation of civil servants; (e) as a legal relationship, it represents legal relationship of civil servants with the State; or (f) as a legal institution, i.e. a list of legal norms regulating specific, homogenous category of social relationships [Kuril 2018, 74].

² Compare Košičiarová 2017, 151.

The terms “public service” and “civil service” are not clearly defined by legal theory. The term “public service” is certainly broader in the Slovak Republic, comprising both civil service and the so-called execution of work of public interest. Therefore, a public servant is also an employee performing civil service, but also an employee performing work of public interest. According to the applicable legal regulation, public service is performed as civil service which is performed only within civil service employment relationship (*civil servants*) or within service relationship (employees of Police Corps, Slovak Intelligence Service, National Security Authority, Prison and Court Guard Service, customs officers, employees of Financial Administration, professional soldiers, employees of Fire Rescue Service and employees of Mountain Rescue Service) and the so-called execution of work within public interest³ performed within employment relationship.

Civil service is connected only to the bodies of the State, and therefore, it is separated from public service. The terms “civil service” and “public service” are widely alternated, because they are very close. However, it must be noted that the alternation of these two terms – in the Slovak Republic – is not correct (although there are countries where this difference is blurred, either as a result of language similarities or broad application of civil service (France, Belgium, Slovenia, etc.).

The term “civil service” is defined by Act no. 55/2017 Z. z. “on civil service and on amendment to certain acts” as amended⁴ which regulates civil service. Section 6 of the Act defines civil service as “an activity by which civil servant [i.e. citizen that performs civil service in civil service employment relationship in the Service Authority in the relevant field of service or without determination of the field of service – Section 7] in the extent prescribed by act on civil service or special law, performs the tasks of a national body in the exercise of civil service or performs the tasks in performing national matters in the Service Authority in the relevant field of service or without determination of the field of service and which comprises: (a) management, (b) decision-making, (c) technical drafting of laws, other applicable laws including technical activities relating to discussing, approving and signing, and technical activities relating to the drafts returned by the President, (d) technical drafting of conceptual and strategic documents, (e) technical drafting of

³ In the Slovak Republic, it is incorrect to apply the term “public service” only to activities performed by the bodies of regional self-government and interest self-government, and/or activities performed partially by self-government institutions and non-self-government institutions or persons upon which the exercise of public service has been conferred to (third part of public service - the so-called “other public service”). In this case, the term “public service” should not be used, but rather the term “work of public interest.” This area is currently regulated by two acts: Act no. 552/2003 Z. z. “on execution of work of public interest” as amended and Act no. 553/2003 Z. z. “on remuneration of employees in public sector” as amended.

⁴ Hereinafter: Act no. 55/2017 Z. z.

documents for the exercise of national matters, (f) legal representation, (g) control, supervision or inspection, (h) internal audit or national audit, or (i) technical drafting of decisions.”

A specific term which the law-maker uses in determining civil service is the performance of national matters. Performance of national matters is an activity that is not “performance of the tasks of civil service, but it is an activity performed by a civil servant (a) only within national interest in relation to the performance of the tasks of a national body or the Service Authority for a national body, (b) by which a civil servant creates conditions for proper exercise of the judiciary or contributes to the exercise of the judiciary, (c) by which a civil servant creates conditions for proper performance of the tasks of the prosecution, or (d) by which a civil servant performs the tasks of Personal Office according to Act no 55/2017 Z. z.”

Even the judgments of the European Court of Justice offer the definition of the term “public (civil) service.” In the Court’s judgment of 17 December 1980, which is legally binding also upon the Slovak Republic, the public (civil service) is defined as “[...] a series of posts which involve direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities.”⁵ An earlier judgment of the Court, in case C-152/73, *Sotgiu*, defined that “[...] public or private nature of the legal relationship is of no consequence for purposes of applying Article 48(4) of the EEC Treaty (Article 45(4) of the Treaty on the Functioning of the European Union). According to Article 45(5) of TFEU, the concept of public service within the meaning of Article 39(4) EC must be given uniform interpretation and application throughout the Community and cannot therefore be left entirely to the discretion of the Member States.” Other judgment of the Court, case C-290/94, *Commission v Greece*, defined that “[...] according to Article 48(4) of the EEC Treaty (Article 45(4) of TFEU), the term public service or civil service covers posts which involves direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interest of the States or of other public authorities and thus presume on the part of those occupying them the existence of a special relationship of allegiance to the State and reciprocity of rights and duties which form the foundation of the bond of nationality.” Also, the judgment of the Court, case C-405/01, *Colegio de Oficiales de la Marina Mercante Española*, limited the application of the exception provided for in Article 39(4) of the EC Treaty (Article 45(4) of TFEU), and therefore “[...] EC exception does not cover posts which, whilst coming under the State or other bodies governed by public law, still do not involve any association with tasks belonging to the public service properly so

⁵ The Court’s judgment, *Commission v Belgium*, case C-149/79.

called.” The said definitions can be applied to the civil service in our country by analogue, since the differences between the terms “civil service” and “public service” are often removed in the EU law, often due to language differences.

2. PRINCIPLES OF CIVIL SERVICE: LEGAL AND THEORETICAL DEFINITION

Currently, the principles get the top place among the institution in many legal branches of the Slovak legal order (constitutional law, civil procedure law, penal law, administrative law etc.), due to certain persisting crisis in law-making, which can be, in individual cases, overcome by the argumentation of legal principles (argumentation by the principles of rule of law in constitutional law is a typical example). In the application practice, legal principles are designed, *inter alia*, to overcome inconsistencies of specific legal regulation or fill the so-called “loopholes in the law.”

The principles of civil service represent a certain value framework or idea principles and background for the application of specific provisions of Act on Civil Service. By their connection to the values resulting from the Constitution of the Slovak republic, they help explain individual institutions of the Act in which they are reflected and presents foundations on which professional, credible, efficient and stable civil service should be built.

Civil service is built on principles that are followed by public officials in the exercise of civil service and by Service Authorities in decision-making in civil service employment relationships. A certain value-added of the principles of civil service is the fact that they enable connection to more general values and principles resulting from the Constitution and individual administrative and legal norms, ensuring consistency and harmony between certain “legal philosophy of State” and conduct of its representatives.

Creating laws on civil service based on principles is something common in the world. Countries such as Great Britain, Ireland, France, Poland, Belgium and US have introduced the principles for civil service and apply them. Their importance as regards other administrative principles is emphasised even by OECD (1999) in European Principles for Public Administration.

Public service just like the organisation of public administration in the EU member states is not regulated by the European Union law. The principle of free movement of persons is of crucial importance for access to employment within public service in the European Union.

However, the question of legal principles in civil service employment relationships is explicitly dealt with by the Council of Europe. The Council supports the concept that public administration must have suitable employees for the exercise of its activities. The Council does not dictate the member states which system of public service to choose. It is only important that the states

respect the principles that represent a solid starting point for efficient public service focusing on citizens. The principles defining the status of public officials in the Recommendation of the Committee of Ministers R (2000) 6 on the status of public officials of Europe and Recommendation of the Committee of Ministers R (2000) 10 on code of conduct for public officials [Trykar 2008].

Principles of civil service which should be followed by legal regulation and legal practice in the member states of the Council of Europe are, according to the Recommendation of the Committee of Ministers R (2000) 6, as follows: 1) the legal framework and general principles concerning the status of public officials should be established by law (and/or collective agreements); 2) the management policies (strategies) relating to public officials should, in general, be the responsibility of the government;⁶ 3) recruitment of public officials should be defined by equality of access to public posts and selection based on merit, fair and open competition and an absence of discrimination (this applies to service procedure too); 4) rights, particularly political and trade union rights, should only be lawfully restricted in so far as it is necessary for the proper exercise of their public functions; 5) non discrimination; 6) participation of public officials in the organisation and management of civil service; 7) social protection of public officials by means of the general social security or by means of specific schemes; 8) remuneration commensurate with their responsibilities and function, sufficient so as to ensure that public officials are not put at risk of corruption; 9) duty and right of public officials to relevant training within in the frame of an appropriate training; 10) possibility of protecting their rights (in particular in case of unlawful employment or disciplinary penalty) before a court or other independent institution.⁷

The Recommendation of the Committee of Ministers R (2000) 6 explicitly underlines the responsibility of public officials for discharging the tasks entrusted to them. It is in line with the requirement for good governance. Failure by public officials to fulfil their duties, which can have serious impact on public interest, may lead to the institution of disciplinary proceedings. The disciplinary proceedings must be adversarial and the officials concerned should be entitled to be assisted by a representative of their choice. Public officials should have a legal remedy against disciplinary action.

According to the Recommendation of the Committee of Ministers R (2006), the right of public official to protection include, in general, legal remedies for the protection of their rights against unlawful acts of their employers and the right to protection against illegal acts by third parties, if they promote its interests within their performance. The principle of termination of civil service

⁶ Principles of civil service should be stipulated by a law-making body, however their application based on valid legal regulations should be ensured by the supreme body of executive power, or implemented through the relevant bodies of national administration.

⁷ See also Košičiarová 2012, 431ff.

employment relationships only for reasons provided for by law is a part of protection of civil servants and the guarantee of protection of civil service against its politicisation and misuse of authority. Considering the serious consequences of civil service employment relationship termination on a person, public officials should have the right to legal remedy and the possibility of defending themselves before court or other independent institutions, also in order to prevent from misuse of powers of civil service.⁸

3. PRINCIPLES OF CIVIL SERVICE IN SLOVAK LEGISLATION

Principles of civil service is nothing new in the Slovak legal order. First time, they were defined in Act no. 312/2001 Z. z. “on civil service and on amendments to certain Acts,” and included professionalism, political neutrality, effectiveness, flexibility, impartiality and ethics. However, the explanatory memorandum itself to this Act did not describe in detail the role of these principles and the provisions of the act were not sufficiently connected to the principles, and even contradicted each other in some cases. Act no. 400/2009 Z. z. “on civil service and on amendment to certain acts” replaced the principle of flexibility by the principle of stability of civil service employment relationship. The explanatory memorandum contained specific provisions of this Act, by which these principles should be applied. Because the principles represent value framework for the interpretation of the Act, its makers considered suitable to embody them directly in the introductory articles. These articles contain provisions explaining the meaning of individual principles and their reflection in specific institutions and provisions of the Act.

New act on civil service, i.e. Act no. 55/2017 Z. z., is founded on the principles of political neutrality, lawfulness, transparent employment, efficient management, impartiality, professionalism, transparent and equal remuneration, stability and equal treatment. As compared to the principles defined in Act no. 400/2009 Z. z., the number of principles went up from six to nine. “The principle of ethics” brings more details and was reflected in the “principle of professionalism,” however it closely relates to transparent employment, remuneration and, last but not least, fair treatment. The “principle of lawfulness” is a new principle, emphasising the duty of applying lawful procedure by a civil servant in the exercise of civil service and by Service Authorities in decision-making about civil service employment relationships respectively.

Principles of civil service are reflected in individual institutions and provisions of the Act. Principles of civil service define recruitment of civil servants, stability of their civil service employment relationship, career, performance assessment and remuneration. In general, their aim is to ensure maximum

⁸ Compare Košičiarová 2017, 153–54.

efficiency and cost effectiveness in providing services to the public. The principles of civil service are currently contained in Articles 1 to 9 of Act no. 55/2017 and include: a) political neutrality (Article 1), b) lawfulness (Article 2), c) transparent employment (Article 3), d) efficient management (Article 4), e) impartiality (Article 5), f) professionalism (Article 6), g) transparent and fair remuneration (Article 7), h) stability (Article 8), i) equal treatment (Article 9).

Political neutrality. The principle of political neutrality prefers public interest to political interests of a civil servant in the exercise of his or her civil functions. Similarly, it applies to Service Authorities which are required to decide politically neutrally on the issues relating the employment relationships. This principle is applied through the performance of relevant duties of civil servants and Service Authorities too.⁹

Lawfulness. The principle of lawfulness means that a civil servant shall, in the exercise of civil service, proceed always in line with applicable laws, internal regulations and service regulations. Similarly, Service Authority must always proceed in line with law. In relation to the Service Authority, civil servants enjoy the rights which allow them to defend themselves against unlawful acts of the Service Authority. For example, civil servants may file a complaint, make a request for examination of the notice and lodge an inquiry to the Service Authority Board.¹⁰

Transparent employment. The principle of transparent employment ensures equal opportunities for the appointment to the civil service. Candidates for the civil service have public access, guaranteed by law, to information about selection procedure and equal opportunity to apply for a position thanks to the centralisation of information about selection procedures through a central information system of civil service – the so-called “Central Information System.” Due to the electronisation of civil service, Act on Civil Service introduces Civil Service Central Information System, consisting of several registers

⁹ “Civil servants and Service Authority shall, in the exercise of civil service and civil service employment relationships respectively, prefer public interest to political interest and act in a way that does not raise doubts that they favour a political party or political movement. The principle of political neutrality shall be applied, in particular, through the duty of civil servants to act politically neutrally, refrain from actions which could lead to conflict of interests of the Service Authority with personal interests, not to misuse information gained in relation to the performance of civil service for the benefit of a political party or political movement, and, through the duty of the Service Authority, act politically neutrally in decision-making” (Article 1 of Act no. 55/2017 Z. z.).

¹⁰ “Civil servants and Service Authority shall, in the exercise of civil service and civil service employment relationships respectively, proceed in conformity with the Constitution of the Slovak Republic, legal acts of the European Union, applicable laws of the Slovak Republic, service regulations and other internal regulations. Protection of a civil servant against acts which are considered illegal shall be guaranteed by the rights provided for by law” (Article 2 of Act no. 55/2017 Z. z.).

(register of selection procedures, register of successful candidates, register of redundant civil servants, register of civil service posts and register of civil servants). The implementation of substantial changes in the management of civil service requires for change to human resources management, which is possible only with qualified information. Through this information system, individual Service Authorities and the Office of the Government get comprehensive personnel database for successful implementation of the human resources management strategy, leading to efficient, stable and professional Service Authorities in Slovakia. Common basis for developing Civil Service Central Information System is personal development at all levels of civil service, optimisation of economic activities, informatisation and cost-saving.

If a citizen wishes to be appointed to a permanent or temporary civil service post, he or she must undergo a selection procedure,¹¹ except for cases when it concerns a civil servant performing public function, constitutional officer expert or a statutory body, with regard to the form of their appointment to the office these employees discharge (appointment, selection) and the institution that appoints to the function (e.g. National Council, President, Government). Exception from selection procedures, whose aim is to speed up the appointment, applies to candidates for temporary deputising of a civil servant, e.g. during his or her long sick-leave. The said categories of civil servants that are appointed to civil service without selection procedure perform civil service for a temporary period, i.e. temporary civil service. The period of temporary civil service lasts during the time over which the public function, function of a statutory body, function of a constitutional officer are exercised or if the reason for deputising of a public official lasts.

The aim of the current legal regulation in the area of selection procedures and winning civil servant as compared to Act no. 400/2009 Z. z., is to ensure higher transparency of selection procedures. The current act precises the process of selection procedure, in particular it defines a single point of access to information about open selection procedures, regulates the composition of the selection committee and appointment of its members, opening the selection procedures and publication of results. With respect to the new concept of staffing, the act defines and introduces restricted internal selection procedure, enlarged internal selection procedure, external selection procedure and a new institution – mass selection procedure which is, partly, a centralised way of filling the vacancies suitable for graduates and larger number of vacancies

¹¹ “Service Authority shall provide access to information about selection procedure and candidates for civil service shall have the right to public access to this information. All candidates for civil service have equal opportunity to apply for a civil service post and when they meet conditions for appointment to civil service prescribed by law, they have the right to be appointed to civil service. The Service Authority opens, announces, performs and cancels selection procedure under conditions and in a way defined by this Act” (Article 3 of Act no. 55/2017 Z. z.).

in individual Service Authorities. (Similar system functions in the European Union institutions and in countries such as France, Belgium, Ireland, Portugal, Spain, Greece, Luxembourg. In Great Britain, vacancies in the “fast stream” programme are filled this way, enabling fast career for successful candidates, and its aim is to fill civil service posts by the most suitable candidates, especially graduates. The aim of mass selection procedures is to ensure, in particular, observance of uniform standards for appointing candidates to civil service by graduates and creating same competition conditions for these groups of candidates in order to facilitate access to civil service posts).

Efficient management. The principle of efficient management provides for efficiency and cost-effectiveness in the management of civil servants through systemisation of civil service posts and the institution of service appraisal. The systemisation should ensure efficient planning of posts and give an overview of the number of civil service posts in Service Authorities. The principles of systemisation are published by the Office of the Government of the Slovak Republic. Service appraisal introduces the duty to monitor and appraise efficiency of work of civil servants by their superiors.¹²

Impartiality. The principle of impartiality prefers public interest to political interest of a civil servant in the exercise of his or her civil functions, and of Service Authority in decision-making about civil service employment. This principle should be implemented through performance of duties of the civil servant to act and make decisions impartially, refrain from actions which could lead to conflict of interests of the Service Authority with personal interests of a civil servant and do not misuse information gained in relation to the performance of civil service for his or her own benefit or benefit of a third. On the other side, the Service Authority has the duty to act and make decisions about employment without bias and with no consideration of personal interests of individuals who make and publish decisions on behalf the Service Authority.¹³

Professionalism. The principle of professionalism refers to technical, conscientious and ethical performance of service.¹⁴ For this purpose, Service

¹² “Service Authority shall manage civil servants efficiently and cost-effectively. The principle of efficient management of civil servants shall be applied, in particular, by managing and inspecting civil servants by their superiors, creating conditions for proper performance of civil service through the systemisation of civil service posts and service appraisal” (Article 4 of Act no. 55/2017 Z. z.).

¹³ “Civil servants, in the exercise of civil service, shall prefer public interest to personal interest and the Service Authority shall, in decision-making about civil service employment relationships, act impartially. The principle of impartiality shall be applied, in particular, through the duty of civil servants to act and take decision impartially, refrain from actions which could lead to conflict of interests of the Service Authority with personal interests, not to misuse information gained in relation to the performance of civil service for their own benefit or for a benefit of a third” (Article 5 of Act no. 55/2017 Z. z.).

¹⁴ “Civil servants shall, in the exercise of civil service, proceed professionally, consciously and in line with the Code of Conduct of Civil Servants, and the Service Authority shall provide them

Authority provides civil servants with required training and gives them room for long-term professional development. The training is ensured through the right and duty of civil servants to be trained and the duty of the Service Authority to provide for the training, while the aim is to reach the level of professional competencies which enable a civil servant to properly perform civil service. The training of civil servants is directly related to the professional, efficient and quality performance of civil service. The current law responds to knowledge gained from the application of Act no. 400/2009 Z. z. By introducing the principle of training, their primary importance for the entire system of the training of civil servants is declared. The new act on civil service replaces the term “increasing competence” by the term “continuous training,” which conforms the terminology of Act no. 568/2009 Z. z. “on lifelong learning and on amendment to certain acts” as amended, placing emphasis on comprehensiveness of objectives of the training, professional and personal development and continuity of the training process throughout the entire professional career of a civil servant. Furthermore, the terms “continuous training” and “specific training” were replaced by the term “competence training,” focusing on integral professional and personal development of civil servants with emphasis on their efficiency and performance growth. Adaptation training is to be undergone by civil servants during probation period; it is led by a mentor that plays a key role in the adaptation process. The conditions for the performance of a mentor are precisely defined, so the adaptation training reaches qualitatively higher level.

A long-term professional development is based on the institutions of internal selection procedures and service appraisals. Internal selection procedures lead to career development of employees through a closed competition for which only civil servants are allowed to apply and which can take into consideration of their service appraisal. This fact can significantly motivate employees in improving their performance and be promoted within the organisational hierarchy. The performance is assessed by service appraisal. The regular appraisal shall be carried out by direct superior once a year, except for partial service appraisal (change to civil service employment due to transfer of a civil servant) and repeated service appraisal (if the performance is not satisfactory). The relevant superior shall assess expertise and skills of civil servants, their performance, abilities and competences, and their approach to the personal development and willingness to learn. The service appraisal includes appraisal

with relevant training so that they can reach the level of technical competences allowing them to deliver quality exercise of civil service. The principle of professionalism shall be applied, in particular, through a long-term professional training of civil servants, support of career development, regular service appraisal, right and obligations of civil servants to get training and the Service Authority’s obligation to provide civil servants with the training” (Article 6 of Act no. 55/2017 Z. z.).

interview. A civil servant may raise objections to the appraisal's results within three days after he or she learns the results of the appraisal.¹⁵

Transparent and fair remuneration. The principle of transparent and fair remuneration means that civil servants are remunerated based on the conditions provided for by law. The Act (re)defines salary grades and, based on analysis, grades 1 and 2 are cancelled since they were below the limit of the minimum wage and were used only to a minimum extent.¹⁶

The principle of transparency is applied by the possibility of granting or taking away personal supplementary allowance based on the outcome of appraisal, thus clarifying and objectifying criteria for its granting or taking away, since the criteria and other details about the appraisal are specified by the Decree published by the Office of the Government. The Act specifies the possibility of granting and/or increasing, reducing or taking away personal supplementary allowance not only based on quality performance of service tasks, but also based on the outcome of service appraisal.

The Act regulates the allowance for the performance of mentor and defines the rules for its granting.

Stability. The principle of stability provides for protection of civil servants against dismissal from other reasons than those provided for by law.¹⁷ The aim of this principle is to eliminate dismissal of civil servants on personal or political grounds which the environment of civil service is prone to – considering the political cycles. Such cycles contribute also to high fluctuation of civil servants in the Slovak Republic, and the European Union points at it too.

The Act on Civil Service upholds the principle of stability by the institution of permanent civil service, considering the fact that is for indefinite period. The institution of internal selection procedure helps create, through career possibilities, stable environment and avoid the fluctuation of employees upon their own decision.

The institution of redundant civil servant refers to those employees whose employment relationship ended due to the organisational changes. Redundant employees are allowed, when their civil service employment relationship ends, to apply for a post within internal selection procedure, if their outcomes of the appraisal are good. In this way the principle of stability is supported. The principle of stability is supported by the fact that the employment relationship may be ended only upon reasons provided for by law. The new legal

¹⁵ Details about service appraisals can be found in the implementing law.

¹⁶ “In remunerating civil servants, the Service Authority shall be obliged to proceed only based on conditions provided for by law” (Article 7 of Act no. 55/2017 Z. z.).

¹⁷ “Civil servants are protected against the termination of civil service employment for reasons other than those provided by law. The principle of stability is applied, in particular, through the permanent civil service, removal from the office of a superior civil servant only for reasons provided for by law and the institution of redundant civil servant” (Article 8 of Act no. 55/2017 Z. z.).

regulation does not give the possibility of removing certain category of superior employees without reason.

Equal treatment. The principle of equal treatment means that the Service Authority proceeds, in civil service employment relationships in relation to civil servants and candidates for civil service, impartially and respects their right to privacy, constitutional and statutory rights.¹⁸ The principle of equal treatment is regulated in relevant provisions of anti-discrimination act (Act no 365/2004 Z. z. “on equal treatment in certain areas and on protection against discrimination and on amendment to certain acts (anti-discrimination act)” as amended).

This principle is supported by the provision relating to ban of discrimination under conditions of performing civil service and in appointing, remunerating, career development, training and terminating employment relationship. According to the Act, discrimination is disadvantaging a civil servant or a candidate for civil service on grounds of “sex, sexual orientation, religion or belief, race, nationality of ethnic origin, colour of skin, language, social origin, property, family lineage, unfavourable health condition or a handicap, age, marital or family status, political affiliation, membership or activity in trade unions, in other association or on grounds of other status or of reporting crime or any other wrongdoing (e.g. according to Act no 583/2008 Z. z. on prevention from criminality and other anti-social activity and on amendment to certain acts as amended) or other anti-social activity” (Act no. 54/2019 Z. z. “on protection of whistle-blowers and on amendment to certain acts”).

Discrimination includes also a situation when a civil servant is disadvantaged because he or she claims, in a legal way, their rights resulting from their civil service status. Civil servants who file an action against other employees or other superior employees, report on crime or other anti-social activity may not be discriminated against for it in the matters concerning the exercise of civil service or employment relationship. In case of violation of the principle of equal treatment, civil servants or citizens applying for civil service may address the relevant Service Authority or go the court.

4. OBSERVANCE OF CIVIL SERVICE PRINCIPLES AND SUPERVISION OVER THEIR OBSERVANCE

Supervision over the observance of Act on Civil Service is divided, in terms of competences, between the Office of the Government of the Slovak

¹⁸ “Service Authority shall proceed, in civil service employment relationships in relation to civil servants and candidates for civil service according to the principle of equal treatment, and respect their privacy, constitutional rights and statutory rights” (Article 9 of Act no. 55/2017 Z. z.).

Republic as the central body of civil service and the Board for Civil Service as an independent, coordinating and monitoring body of civil service for the protection of principles of civil service (“Board”). Observance of provisions of Act no. 55/2017 Z. z. including civil service principles is guaranteed by the procedural right of individual entities to use instruments of protection (guaranteed by law). These instruments include a complaint, motion to inspect, proposal for assessment of the service discipline violation, complaint about the violation civil service principles and the right to court protection.

The supervision over the observance of civil service principles is exercised by the Board and can be exercised on its own initiative or based on the complaint about the violation of civil service principles. Act no. 55/2017 Z. z. defines who (citizen or civil servant), in which form (in writing) and in what matter (specific violation of civil service principles) may lodge a complaint. Unless the complainant meets all requirements, the information provided by him/her may be used by the Board at least for its own investigation activity, however it will not be an official handling of the complaint. In dealing with the complaint, the Board may require cooperation from the Service Authorities, use information from the complainant or other relevant sources.

If the Board finds out any violation it recommends that the Service Authority take a corrective measure, and informs the Office of the Government of such procedure, which can undertake an inspection under Act no. 10/1996 Z. z. “on inspection in civil service” as amended, and considers further actions (methodological guideline for Service Authorities, bills etc.). The Board’s conclusions can be also useful for civil servants so as to protect their rights, for example before court.

The conclusions resulting from the process of handling the inquiries do not serve only for the correction in a specific case. The Board can refer to them when formulating general recommendations aimed at the improvement of civil service through Report on the Civil Service Status Report, elaborating technical studies or drafting law drafts.

CONCLUSION

In the end, we can come to a conclusion that, from the perspective of the current application practice, the most important entity that contributes to the protection of the civil service principles is the Board. The Board, as an independent, coordinating and monitoring body seeking the protection of civil service principles, deals with the complaints of civil servants filed against Service Authorities the most (Service Authorities failed to handle complaints of civil servants within the statutory period of 60 working days, thus violating the principle of lawfulness), service appraisals (the principle of lawfulness was violated by the Service Authorities mainly as a result of incorrect

application of legal provisions regarding this principle), imposition of disciplinary measures upon civil servants, organisational changes, termination of civil service employment, changes to salary grades, granting personal supplementary allowance and selection procedures.

In cases where the Board, following the examination of the facts, found out the violation of any of the civil service principles, recommended the relevant Service Authority that it adopt corrective measures to remove unlawful state and ensure that such undesired state does not occur again. According to the statement of the Board, the violation of the civil service principles was a consequence of incorrect interpretation of some provisions of the Act, unprofessional or careless procedure applied by the civil servants in charge. There have been cases which raised suspicion that Service Authorities or specific employees proceeded deliberately in contradiction to law and civil service principles and even the measure recommended by the Board have not been received positively by a Service Authority. There is no doubt that majority of shortcomings by the Service Authorities can be avoided in the future, according to the Board. It requires for trainings in the problematic areas of legal regulations, professional approach to the performance of service duties, inspections by superiors and continuous development of skills and knowledge of civil servants.

The inquiries referring to the violation of civil service principles are, according to the Board, a good aid on the way to improve the functioning of civil service, since they offer data about specific problems based on direct experience. Their solutions can then help not only handle the case itself but they can reflect in the targeted measures in legislations or methodological guidelines. In assessing the number and types of inquires, it must be taken into account that it is relatively a new functioning of the institution and new element in the system of protection of civil service employment relationships and individual entities do not have sufficient experience with it. The experience of the Board shows that the inquiries are very different in terms of facts and legal matters, which can lead to various levels of difficulty and lengths of their handling. Some inquiries often contain allegations of violation of several principles concurrently. In 2018, the total number of submissions was 41, of which 22 were justified complaints. The Board found out the violation of civil service principles in six cases. In cases like this, it recommended that corrective measures be adopted, and in one case the Service Authority adopted other measures than those recommended by the Board. The number of unjustified complaints (request for interpretation of the provisions of the Act on Civil Service, submissions concerning employment relationships according to other laws etc.) is still high, however, it may be expected that the number of inquiries will even go up.

However, the main requirement of the Board remains that the Service Authorities fail and violate the civil services principles as less as possible, and

that in cases when such failures occur, the employees be not afraid to report them, thus contributing to better functioning of civil service.¹⁹

The Board also recommends civil servants that they use, in cases of any suspicion, means of protection in the Service Authority (e.g. a complaint in the matters relating to the exercise of civil service) and that they support their allegations by relevant evidence. In fact, investigation and handling of the complaint and its follow-up check by the Office of the Government or court proceedings are hindered by the time period from the moment of violation and its insufficient documentation.²⁰

REFERENCES

- Košičiarová, Soňa. 2012. *Princípy dobrej verejnej správy a Rada Európy*. Bratislava: Iura Edition.
- Košičiarová, Soňa. 2017. *Správne právo hmotné. Všeobecná časť*. 2nd edition. Plzeň: Aleš Čeněk.
- Kuril, Jozef. 2018. *Verejná a štátna služba. Výbrané otázky*. 1st edition. Bratislava: Wolters Kluwer.
- Trykar, Luděk. 2008. *Služební poměr státních zaměstnanců*. 1st edition. Praha: Leges.

¹⁹ From the beginning of its activity, the Board actively guided civil servants and citizens on how to lodge a complaint. At its website, it published a guideline for those who file a complaint and a form to file a complaint. Also, the Board adopted an internal procedure for the handling of complaints, which is to be followed by its members and experts. The Board Office provided e-mail and telephone consultations too.

²⁰ See also Civil Service Status Report 2018, https://radaprestatnuzbu.vlada.gov.sk/data/files/7194_sprava-o-stave-a-vyvoji-ss-2018.pdf [accessed: 30.05.2021] and Civil Service Status Report 2019, https://radaprestatnuzbu.vlada.gov.sk/data/files/7564_sprava-o-stave-a-vyvoji-ss-2019.pdf [accessed: 30.05.2021].