

# LEGAL FRAMEWORK FOR COMPETITIVE SELECTION FOR POSITIONS OF CIVIL SERVANTS UNDER THE LEGISLATION OF UKRAINE AND EUROPEAN COUNTRIES

**Pavlo Petrenko, Minister of Justice of Ukraine**

**Valentyna Stetsenko, National Pedagogical Dragomanov University**

**Andrii Fomenko, Dnipropetrovsk State University of Internal Affairs**

**Oleksandr Yunin, Dnipropetrovsk State University of Internal Affairs**

**Serhii Shevchenko, Dnipropetrovsk State University of Internal Affairs**

## ABSTRACT

*The article examines the experience of European countries in the selection of specialists for positions of civil servants and the legal framework of competitive selection under the legislation of Ukraine. In particular, the legal basis for the requirements and specifics of the selection of candidates for vacant positions of civil service in European countries is covered drawing on the example of France, Germany and the United Kingdom. The regulations of the existing Ukrainian legislation were analyzed determining the principles, legal and organizational basis for ensuring public, professional, politically impartial, effective, citizen-oriented civil service, including defining the requirements to candidates for a civil servant position, the procedure of the competitive selection and its main stages. According to the results of the study the characteristic features of competitive selection for vacant civil service positions are highlighted. Particular attention is paid to the need to implement the main aspects of European experience in the field of employment of civil servants, in particular, to take comprehensive measures to improve the selection of civil service on a competitive basis in Ukraine.*

**Keywords:** Civil Service, Preparatory Service, Civil Servant, Selection Board.

## INTRODUCTION

Building a modern and professionally capable state apparatus is an integral part of the development of a rule of law and democratic state. In line with European experience in civil service organization, one of the most effective ways to fill a vacancy is to hold a competition. In Ukraine, the civil service system reform requires effective steps towards creating a powerful state apparatus, forming a professional civil service, and therefore improving staffing potential. At the same time, the key to forming a highly qualified state apparatus is the transparency and publicity of the competitive selection of candidates for civil service positions.

Modern transformations in the development of Ukraine as a democratic rule of law state require improvement of the system of state bodies. This has the effect of increasing the requirements for candidates for civil service positions, since its qualitative composition and

efficiency of functioning affect the fulfillment of state-defined tasks. The involvement of highly qualified specialists in the civil service is an integral part of the formation of its human resources potential in order to prevent incompetence or unprofessionalism. That is why a comprehensive study of the experience of European countries in the selection of specialists for civil servant positions is needed to further adapt to Ukrainian realities.

## LITERATURE REVIEW

The study of the peculiarities of competitive selection for civil service vacancies requires the elucidation of the peculiarities of the experience of European countries in the selection of specialists for such positions.

Thus, in France, the admission of persons to the civil service is governed by the Law on the Rights and Obligations of Civil Servants dated July, 13 1983. In the Art. 13 of the said Law it is stipulated that the ranks and positions of the civil service are divided into three categories, indicated in descending hierarchical order by letters A, B and C. They are regulated by special statutes of a national nature establishing the classification of each body or framework of employment in one of these categories. The titles of each rank or position are accessible through competition, internal promotion or promotion under the terms and conditions set out in the special statutes (Law and Regulation, 1983). The analysis of the provisions of the Law on the Rights and Obligations of Civil Servants makes it possible to ascertain that civil servants are associated not with a position but with their rank, i.e., ranks are separated from positions. It is important to note that information on current civil service vacancies and their specifics is available on the website Edited by France-review independent website of the administration. One of the services of the site is to give a person the opportunity to pass a free personality test-Balance Sheet-Personality Analysis. The purpose of such testing service is to assist a person wishing to take part in a competitive selection for a civil service position to orient themselves and find employment in the civil service.

The legal framework of the civil service in Germany is established in the Basic Law. The specifics of the German civil service is the ambiguous attribution of persons to civil servants, as it actually covers three categories, among which are officials, civil servants and employees. If high-and highest-level positions are occupied by officials appointed for life, then an employment agreement, which can be terminated, is concluded with civil servants and employees. Admission to the civil service requires a mandatory knowledge of German language (Law and Regulation, 1949). In Germany, civil servants belong to one of three types of legal status, which have different levels of legal protection and a scope of functional responsibilities. In particular, these include:

1. Preparatory service-the least legal protection (possibility of dismissal for committing a disciplinary misconduct), going through theoretical and practical training;
2. Probation service-appointment to a position and one to five year probation;
3. Lifetime appointment-if at the time of appointment the person is 27 years old and has successfully passed the probation service.

Occupation of a permanent position in the civil service apparatus envisages passing by candidates of two state exams, the positive results of which give only the right to occupy the relevant position of a civil servant. After the announcement of the competition for the vacant

position of the civil service, a mandatory interview is conducted with applicants and the decision on appointment is made based on their results (Kizilov, 2016).

In the United Kingdom, the issues related to the organization and implementation of the civil service are regulated not by laws, but by regulations adopted by the government. The recruitment of civil servants in the UK also provides for competitive selection consisting of written exams and interviews conducted by independent commissions (Drobnyazko et al., 2019). It should be noted that just an interview (oral examination) has a deciding role. The rules and the selection of applicants are regulated by the Civil Service Commission. The selection procedure includes several stages:

1. A written report on a given topic;
2. Testing and interviews;
3. Interview.

Following the successful completion of competitive selection for the civil service the ministries and agencies are empowered to set a probation period for such persons, which may not exceed two years. Quite interesting in the competitive selection of applicants for the civil service in the UK is the practice of engaging in the selection boards of independent psychologists who have the right to vote. The main task of their participation in the selection is to independently assess the professional and personal qualities of applicants taking into account the civil service standards for a specific position (Vytko, 2018). The official website of the civil service provides people with information not only about the specifics of its implementation, but also about vacant positions and the ability to use the search engine based on the criteria for placement, position, desired salary, etc.

## METHODOLOGY

The study of the legal framework of competitive selection for civil service positions under the legislation of Ukraine and European countries was carried out using comparative legal, formal legal and systemic-structural methods. Thus, by means of the comparative legal method the legal basis for the requirements and specifics of selection of applicants for civil service positions in European countries (drawing on the example of France, Germany and the UK) were determined, as well as the state of regulation of such issues at the legislative level in Ukraine. The formal legal method allowed to find out the content of the relevant regulations of the existing Ukrainian legislation, which define the principles, legal and organizational basis for ensuring public, professional, politically impartial, effective, citizen-oriented civil service, as well as regulate the requirements for applicants for civil service positions, and the procedure of competitive selection and its main stages. Using the systemic-structural method, the characteristic features of competitive selection for vacant civil service positions were identified.

## FINDINGS AND DISCUSSIONS

According to the existing Ukrainian legislation, vacancies are filled on a competitive basis when hiring civil servants. It is important to note that previously the competition was also applied when hiring for work (service) in local governments (Yeromenko, 2018). However, with the adoption of the new version of the Law of Ukraine “*On Local Self-Government*” on May 1,

2016, the competitive procedure for filling vacancies in local governments is no longer applicable (Law of Ukraine, 2016).

In Ukraine, the special normative legal act regulating the issue of competitive selection for civil service positions is the Law of Ukraine “*On Civil Service*” dated December 10, 2015 (hereinafter-the Law). The peculiarities of admission to the civil service are established in Section IV of the Law, Chapter 2 of which separately regulates the procedure of the competition for filling a vacant civil service position (hereinafter-the competition). Art. 22 of the Law stipulates that the purpose of the competition is to select persons capable of professionally fulfilling their official duties. At the same time, the competition is conducted taking into account the level of professional competence, personal qualities and achievements of applicants for a vacancy. The procedure of the competition determines the following:

1. The terms of the competition;
2. Requirements for disclosure of information on vacant civil service positions and announcement of the competition;
3. The composition, procedure for formation and powers of the selection board;
4. The procedure for accepting and reviewing documents for participation in the competition;
5. The procedure for testing, interviewing, other types of evaluation of applicants for vacant civil service positions;
6. Methods of evaluation of applicants for vacant civil service positions.

The competition is conducted by the Senior Civil Service Corps Commission and the relevant selection boards (Law of Ukraine, 2015).

The first stage for the competition is the publication of information on the vacant position of the civil service and announcement of its holding. Information on the vacant position of the civil service is published on the official websites of the state body in which the competition is being held and of the central executive body responsible for the formation and implementation of state policy in the field of civil service (Law of Ukraine, 2015).

It is important to note that the Law contains general provisions regarding the competition for a vacant civil service position. At the same time, the specification of its provisions regarding the procedure for the competition is reflected in the Procedure for Holding a Competition for Public Service Positions (hereinafter-the Procedure), approved by the Cabinet of Ministers of Ukraine resolution No. 246 dated March 25, 2016. The main stages of the competition are defined in para. 6 of the Procedure and consist in:

1. Taking a decision on the competition announcement;
2. The announcement of the competition;
3. Acceptance of documents from persons wishing to participate in the competition;
4. Verification of the submitted documents for compliance with the statutory requirements;
5. Conducting a test and determining its results;
6. Solving situational tasks and determining their results (if necessary);
7. Conducting an interview and determining its results;
8. Calculating the results of the competition and determining the winner of the competition and the second winner of the competition;
9. Publication of the results of the competition (The Legislation of Ukraine, 2016).

Such negative phenomenon as corruption remains a global problem (Reznik et al., 2019). Therefore, it is very important for a positive decision to be made based on the results of selection

for a civil service position to pass a successful special screening of applicants in accordance with anti-corruption legislation.

In order to participate in the competitive selection, the person who has expressed a desire to participate in it is required to submit the relevant documents, namely:

1. A copy of the passport of a citizen of Ukraine;
2. A written application for participation in the competition stating the main motives for taking a civil service position, with a resume in an arbitrary form attached to it;
3. A written application, in which he/she states that the prohibitions laid down in the Law of Ukraine “*On Purification of Power*” do not apply to him/her and agrees to the screening and to the disclosure of information concerning him/her in accordance with the said Law;
4. Copy(s) of education document(s);
5. A certificate of state language proficiency;
6. A completed personal record of the established form;
7. In the case of a closed competition, other documents to confirm compliance with the conditions of the competition;
8. Declaration of the person authorized to perform the functions of the state or local self-government for the past year (Law of Ukraine, 2015).

In accordance with the existing Ukrainian legislation, maximum transparency of the competition for a vacant civil service position is ensured by conducting it with video recording, including simultaneous live broadcasting, unless otherwise provided by law. A test for knowledge of legislation is conducted to determine the level of knowledge of the Constitution of Ukraine, civil service legislation, anti-corruption and other legislation. A certain number of points is given based on the test results in accordance with the number of correct answers provided, and the results may be used by the applicant within six months from the date of the test. The rating of the applicant who successfully passed the competition depends on the total number of points he has earned. The procedure for publishing information on the results of the competition is carried out by a special structural unit of the National Agency of Ukraine for Civil Service (NACS). The results of the competition shall be announced within 45 calendar days after its announcement (The Legislation of Ukraine, 2016).

## **RECOMMENDATIONS**

According to the results of the conducted study, it should be noted that in Ukraine the issues of competitive selection of applicants for vacant civil service positions are regulated at the level of the existing legislation. At the same time, in the context of the strategic course of the country's accession to the European Community, it is important to implement the main aspects of the European experience in the field of employment of civil servants, in particular, to take comprehensive measures to improve the selection for the civil service on a competitive basis. The experience of European countries on the selection of specialists for civil service positions testifies to the effectiveness of the preparatory service, which is a prerequisite for permanent appointment to a relevant position. The introduction of the preparatory service will not only provide theoretical and practical training for the performance of official duties, but also determine the professional suitability of the future civil servant. It is also considered appropriate to engage independent professional psychologists in the selection boards. During the interview as one of the stages of competitive selection for the civil service, independent evaluation of the

applicant's professional and personal qualities can help determine his/her compliance with the standards of a civil servant.

## CONCLUSION

The analysis of the rules of the existing Ukrainian legislation regulating the issues of competitive selection for vacant positions of civil service, gives an opportunity to distinguish the following peculiarities of it:

1. Admission to the competition as a result of verification of all required documents submitted by the applicant;
2. The existence of appropriate stages of the competition, which are testing, solving situational tasks and interviews;
3. The formation of the final rating of the applicants by which the winner of the competition is determined;
4. The announcement of the results of the competition has a time limit, as it shall take place within 45 calendar days from the date of its announcement.

## REFERENCES

- Drobyazko, S., Makedon, V., Zhuravlov, D., Buglak, Y., & Stetsenko, V. (2019). Ethical, technological and patent aspects of technology blockchain distribution. *Journal of Legal, Ethical and Regulatory Issues*, 22(SI2), 1-6.
- Drobyazko, S., Potyshniak, O., Radionova, N., Paranytsia, S., & Nehoda, Y. (2019). Security of organizational changes via operational integration: Ensuring methodology. *Journal of Security and Sustainability Issues*, 9(1), 1595-1612.
- Kizilov, Y.Y. (2016). International experience of the civil service performance and possible ways of its application in Ukraine in terms of administration reform. *Aspects of Public Administration*, 6-7(32-33), 57-65.
- Law and Regulation. (1949). *Basic law for the federal republic of Germany: As amended up to Act of July 13, 2017*. Retrieved from <https://www.btg-bestellservice.de/pdf/80201000.pdf>
- Law and Regulation. (1983). *An act to establish the rights and obligations of public servants: As amended up to Act of August 12, 2019*. Retrieved from <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006068812&dateTexte=20190812>
- Law of Ukraine. (2015). *Civil Service: As amended up to Act of January 01, 2019*. Retrieved from <https://zakon.rada.gov.ua/laws/show/889-19>
- Law of Ukraine. (2016). *Local Self-Government: As amended up to Act of May 01, 2019*. Retrieved from <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80>
- Reznik, O., Shendryk, V., Zapototska, O., Popovich, E., & Pochtovyi, M. (2019). The features of e-declaration as an effective tool to prevent corruption. *Journal of Legal, Ethical and Regulatory Issues*, 22(2), 1-6.
- The Legislation of Ukraine. (2016). Decree of the cabinet of ministers of Ukraine on approval of the procedure for holding a competition for public service positions: *As amended up to Act of June 14, 2019*. Retrieved from <https://zakon.rada.gov.ua/laws/show/246-2016-%D0%BF#n10>
- Vytko, T.Y. (2018). The state personnel in conditions of reform of public administration in Ukraine. *Aspects of public administration*, 6(3), 39-47.
- Yeromenko, V.V. (2018). Competition as the basis of the initialization of individual labor relations with state employees. *Right of Innovation*, 2(22), 41-48.