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EMPLOYMENT IN THE CIVIL SERVICE

ZATRUDNIENIE W SŁUŻBIE CYWILNEJ

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Abstract

The article shall apply to basic problems regarding the function of the civil service in Poland. The civil service was established to ensure professional, reliable, impartial and politically neutral carrying out the state tasks. The members of the civil service corps are persons employed in clerical positions, both personnel employed on the basis on employment contract and officials employed by nomination, as well as persons occupying senior positions in the civil service staffed by appointment. In Poland, all Polish citizens who hold full civil rights have the right to access public service on equal terms. The implementation of this principle is of particular importance in the case of the civil service performing constitutionally defined tasks. The purpose of the article is to present the issues of the function of the civil service in Poland in the light of the applicable legal status, taking into account jurisprudence and doctrine achievements.

Keywords: civil service, clerical position, administration

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Streszczenie

Artykuł dotyczy podstawowych problemów związanych z funkcjonowaniem służby cywilnej w Polsce. Służba cywilna została powołana w celu zapewnienia profesjonalnego, rzetelnego, bezstronnego i politycznie neutralnego wykonywania zadań państwa. Członkami korpusu służby cywilnej są osoby zatrudnione na stanowiskach urzędniczych, zarówno pracownicy zatrudnieni na podstawie umowy o pracę, jak i urzędnicy zatrudnieni z nominacji, a także osoby zajmujące wyższe stanowiska w służbie cywilnej obsadzone z mianowania. W Polsce wszyscy obywatele polscy, którzy posiadają pełnię praw obywatelskich, mają prawo dostępu do służby publicznej na równych warunkach. Realizacja tej zasady ma szczególne znaczenie w przypadku służby cywilnej realizującej zadania konstytucyjnie określone. Celem artykułu jest przedstawienie problematyki funkcji służby cywilnej w Polsce w świetle obowiązującego stanu prawnego, z uwzględnieniem dorobku orzecznictwa i doktryny.

Słowa kluczowe: służba cywilna, stanowisko urzędnicze, administracja

Statement of the problem in general outlook and its connection with important scientific and practical tasks

To be able to perform its tasks, the state should be properly managed by the system of public administration bodies, which is a group of institutions and offices performing state tasks in many areas.

Nowadays, the goal of administration is not only administration in the narrow sense of the term. There is no doubt that a well-functioning civil service system is the basis of civil society and a democratic state. "By participating in the execution of the state tasks, the civil service becomes an element of the common good, which the state itself or, more broadly, all public authority is to serve" [1].

Public administration is divided into government administration, state non-governmental administration which consists of central authorities and self-government administration. According to art. 16 of the Constitution, "local government shall participate in the exercise of public power. The substantial part of public duties which local government is empowered to discharge by statute shall be done in its own name and under its own responsibility." [2]. Tasks commissioned by the government are performed by government officials.

Only the government administration has met the defined standards in the Constitution. The issue of employment in government administration is the subject of analysis and research from the perspective of labour law and administrative law.

The concept of government administration is inseparably connected with the civil service.

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The civil service performs an important function in our constitutional order and is often identified with the entire public administration.

The civil service should be seen on the one hand as the work of a modern democratic state, and on the other- its basic feature. The civil service is a separate squad employed on the basis of public or private law in order to implement tasks specified in law, guided by a system of norms, values and procedures, aimed at serving the society and maintaining important functions of the state [3].

The civil service carries out the public service mission, which is based on standards such as loyalty to the Constitution and the rule of law, political neutrality, impartiality, loyalty to superiors, stability of employment, and reliability and professionalism, equal opportunities, equal access and competitiveness in recruiting candidates for clerical positions. The civil service is understood as a service to citizens through conformant to the law and effective performance of state tasks. The civil service corps includes employees holding clerical positions in government administration offices.

Analysis of the latest research where the solution of the problem was initiated

The Constitution of the Republic of Poland states that in order to ensure professional, reliable, impartial and politically neutral performance of the state's tasks, there is a civil service corps in government administration offices.

Also in the current legal state, such an act is the Act of 21 November 2008, which regulates the civil service system and the employment relationships of the civil service members. It is worth emphasizing that the aforementioned act does not define the term of civil service, and in the doctrine of this term meaning is not interpreted uniformly. Many authors interpreted the concept of civil service in the literature (J. Itrich-Drabarek, 2010, M. Stec, 2008, H. Izdebski, 2010, W. Sokolewicz, 2002). However, the lack of a legal definition of civil service is indicated by J. Jagielski .

Aims of paper. Methods

The effective functioning of the state apparatus depends on professional staff employed in the performance of state tasks, whose legal status is regulated by the Act. The Civil Service Act precisely formulates the scope of duties of civil servants. This article concerns the essence of civil service in Poland. The civil service was established in order to ensure the professional, reliable, impartial and politically neutral performance of the state's tasks.

The aim of this article is to present the essence of the civil service in the light of the applicable legal status, taking into account the doctrine's achievements.

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When writing the article, an analysis of legal acts, literature on the subject in the field of civil service and Internet sources was conducted.

This article will introduce the essence of civil service in Poland. The authors are aware that due to the broad thematic scope, some issues related to civil service require further in-depth analysis and description. This is not only due to the changing legal provisions on the subject.

Exposition of main material of research with complete substantiation of obtained scientific results. Discussion

The concept of the civil service corps

The Constitution states that a corps of civil servants shall operate in the organs of government administration in order to ensure a professional, diligent, impartial and politically neutral discharge of the State's obligations (Constitution of the Republic of Poland of April 2, 1997 (Dz. U. [Journal of Laws] 1997, No. 78, item 483, art. 153)[4]. The provisions of the Constitution indicate that the sphere of activity of the civil service corps are government administration offices, and the Prime Minister shall be the superior of this corps.

There is no legal definition of government administration in Poland, but the concept of the constitution can be determined from the provisions of the Constitution and the taxonomy of the Basic Law. "To recognize an office as a government administration office, two conditions must be met: performance of public administration tasks and location in this segment of the state apparatus, headed by the government, i.e. the Council of Ministers" [5]. Organizational and functional organs of government administration are directly or indirectly subordinated to the Council of Ministers, the Prime Minister and individual ministers or voivodes. In accordance with the jurisprudence of the Constitutional Tribunal pursuant to art. 153 of the Constitution, the civil service must be the hard core of all government administration, and its institutional protection should be seen as a constitutional value. By participating in the performance of state tasks, the civil service becomes an element of the common good, which is to be served by the state itself or, more broadly - all public authorities (Judgment of the Constitutional Tribunal of 14 June 2011, ref. no. Kp1 / 11) [6].

The aims of the civil service listed in the Constitution must be guaranteed at the level of a legal act. In the current legal status, such an act is the Act of November 21, 2008 (Dz. U. [Journal of Laws], 2018, item. 106), [7] about the civil service, which regulates the civil service system and employment relations of civil service members. The Act

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does not define the concept of civil service, and in the doctrine the meaning of this concept is not interpreted uniformly.

According to J. Itrich-Drabarek: the civil service is a separate squad employed on the basis of public or private law in order to implement tasks specified in the law, guided by a system of norms, values and procedures, aimed at serving the society and maintaining important functions of the state” [8].

The cited author indicates that: in a modern democratic state the role of the civil service is clearly defined. The civil service is at the heart of the democratic system. This system should allow the exchange of ruling elites, but also be based on the assumption that its continuity is an essential element of state administration. Only a well-organized, competent, honest and independent of excessive political intervention civil service guarantees the continuity of public affairs in a democratic state” [9].

According to another definition, “the civil service is a system for filling public positions and performing the duties of a public official based on the principle of professionalism, apoliticality, impartiality and legality” [10].

H. Izdebski points out that a civil service is seen as: an indispensable institution of a democratic state ruled by law, ensuring separation of the administrative function from the political function, and thus constituting an element of the broadly understood division of powers, which must also be understood in the context of, also constitutional, the principle of cooperation between authorities [11].

In turn, M. Stec by the concept of civil service understands:

the system of values, principles, institutions and procedures created to perform the tasks of the state by a corps operating within its structures, consisting of administrative officials having, by virtue of belonging to that corps, a special legal status, defining their rights and responsibilities, conditions for joining it, and career development [12]. Sokolewicz defines the civil service corps as: all employed persons in government administration offices in clerical positions, not auxiliary or service positions, i.e. technical employees, due to such employment affecting the way the state's tasks are performed by exercising the competences of the government administration body to which the given office is assigned and on whose behalf the account operates [13].

J. Jagielski points to the lack of a legal definition of the civil service. According to the author in the current legal order, the civil service is not normatively unambiguously defined and in the light of both constitutional and statutory regulations, this category can be understood in a three-fold, i.e. subject-related sense (as just performing the tasks of the state in the formula of the service, ensuring specific standards and objectives in a way of achieving these tasks), subjective (as a civil service corps) or organizational

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(as specific entities participating in the practical creation of the civil service corps and managing its functioning) [14].

Article 2 of the Civil Service Act specifies in detail the subjective scope of the civil service. This regulation introduces the concept of the civil service corps, which consists of employees employed in clerical positions in the organizational units indicated in the regulation. The office is understood as the body's work apparatus, an organized squad and material means serving the body to help in fulfilling its tasks, operating in the area of competences legally assigned to that body. The concept of the civil service corps, accepted in the Civil Service Act, has its source in the Constitution and cannot be arbitrarily formed by the ordinary legislator. In accordance with Article. 2 of Civil Service Act, the civil service corps consists of employees employed in clerical positions in the following offices:

- 1) the Chancellery of the Prime Minister,
 - 2) offices of Ministers and Chairpersons of Committees which form part of the Council of Ministers and offices of central agencies of the Government administration,
 - 3) voivodships offices and other offices which are part of the apparatus supporting local agencies of Government administration subordinate to Ministers or central Government administration,
 - 4) headquarters, inspectorate offices and other organisational units which are part of the apparatus supporting heads of unified voivodships services, inspections and guards, as well as heads of powiat services, inspections and guards, unless otherwise provided by relevant statutory provisions of law;
 - 5) Forest Reproductive Material Office;
 - 6) State budgetary units that support state appropriated funds subordinated to organs of government administration;
- hereinafter referred to as "offices."

In addition, in accordance with art. 2 clause 2 of Civil Service Act, the civil service corps shall also comprise powiat and border veterinary officers and their deputies.

In the context of determining the subjective scope of the civil service corps, it should be noted that the members of this corps employed in the ministry serving the minister who is competent for foreign affairs, are part of the foreign service. The foreign service, although functionally and in terms of staff, is connected with the civil service, but it is a separate structure functioning in the government administration system. Organization and the functioning of the foreign service, as well as the special rights and obligations of its members are regulated by the Act of 27 July 2001 of foreign service



(Dz. U. [Journal of Laws], 2018, item. 2040)[15]. The civil service corps does not function in offices and units not mentioned in this regulation. Civil servants are not employed e.g. in state legal persons, such as the Agency for Restructurization and Modernization of Agriculture.

As pointed out by the Administrative Court in Gorzow Wielkopolski: the subjective scope of the Civil Service Act of 2008 and the Act of 2015 amending the Civil Service Act and some other acts do not include positions in ARMA, as they are not included in the civil service corps within the meaning of the Act. Thus, the norm of art. 153 of the Constitution does not apply to them (Judgment of the Administrative Court in Gorzow Wielkopolski of 6 July, 2016, II SA/GO 390/16, LEX number 210473) [16].

In accordance with the jurisprudence of the Constitutional Tribunal, "the location of the civil service corps in government administration offices and the establishment of its subordination to the Prime Minister precludes the statutory extension of this corps to segments of the State not belonging to government administration" (Judgment of the Constitutional Tribunal of 28 April 1999, ref. no. K3/99)[17].

The statutory guidelines of the subject boundaries of the civil service corps does not mean that solutions analogous to those used in the Civil Service Act cannot be applied on the basis of other acts regulating employment relations in the public sphere.

To determine the membership of a person employed in government administration structures in the civil service corps, not only employment in the offices listed in art. 2 of the Civil Service Act, but it is also necessary that an employment in the office of clerks occurs. The Act does not specify clerical positions, with the exception of senior positions in the civil service.

Other clerical positions are listed and classified in the Regulation of the Prime Minister of January 29, 2016 on determining clerical positions, required professional qualifications, civil servants' service ranks, multipliers to calculate the basic salary and detailed rules for determining and paying other benefits for members of the civil service corps. This act lists the following groups of clerical positions posts:

- 1) "senior positions in the civil service,
- 2) middle management positions in the civil service,
- 3) coordinating positions in the civil service,
- 4) supporting positions in the civil service" (Regulation of the Prime Minister of 29 January 2016, Dz.U. [Journal of Laws] 2016, item 125) [18].

When making clerical positions, the employer should not act arbitrarily. Qualifying positions as clerical, the tasks and competences that are assigned to them, as well as the importance of these positions in the structure of the office, should be taken into

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account. According to art. 99 of Civil Service Act, while establishing the list of clerical positions, the legislator should take into account the nature of work performed by civil service corps members and the need to ensure an adequate level of their job performance. In the light of the Constitution, the civil service in Poland is professional, reliable, impartial and politically neutral.

On the contemporary shape of the civil service in Poland, the assumptions adopted in classical clerical law, referred to as the career system, continue to influence.

This is particularly apparent in the context of specific principles in the civil service formulated in art. 153 such as professionalism, reliability, impartiality and political neutrality.

Professionalism is the first principle mentioned in art. 153 of the Polish Constitution. W. Sokolewicz draws attention to two ways of understanding the professional performance of tasks, complementary to each other.

First, professionalism can be understood as a profession and occupation providing civilian corps members with a source of income. Secondly, professionalism in the colloquial meaning signify performing state tasks with knowledge of things, using all available knowledge and the highest skills, in a competent manner [19].

Performing state tasks requires the employment of people who treat these tasks as a profession. This means that employment within the civil service is not temporary for them and is a continuous source of income and workplace, guaranteeing that competent persons can pursue a professional career.

According to the jurisprudence of the Constitutional Tribunal, members of the civil service corps should perform their tasks, i.a. professionally.

This means, above all, that they should have appropriate qualifications and professional background verified both before entering the service and during the implementation of their tasks at a later stage. Employment in the civil service should also not be a temporary occupation, but a permanent source of income and a place of work ensuring the possibility of pursuing a professional career and constantly improving qualifications during it (Judgment of the Constitutional Tribunal of 12 December 2002, ref. no. K9/02).

Professional above all in the sense that citizens (members of the civil service corps) participate in the performance of state tasks as persons employed in specific organizational units of government administration, undertaking this employment for commercial purposes and not treating it as a temporary occupation (Baran, Warsaw 2014, p. 29). Another element of the professionalism of the civil service is the need to provide



officers with professional qualifications and verification of these qualifications. General and specialist training is used for this [20].

Reliability is a principle of the civil service that relates to the substantive side of the performance of duties by members of the civil service corps.

The semantic scope of the principle of integrity is well reflected in the Codes of Ethics for Civil Servants (Ordinance No. 70 of the Prime Minister of October 6, 2011) in which it is emphasized that reliable performance of duties means: diligent work, rational management of property and public funds, being loyal to the office and superiors, not following emotions in proceeding cases, being ready to accept critics [21]. Integrity is a concept closer to the sphere of official ethics than law [22].

Impartiality defined as the desired property of the civil service is primarily associated with the order to carry out the tasks of the state, which is designated only by the provisions of applicable law and public interest, while respecting the principle of equal treatment.

A particular aspect of impartiality is the political neutrality of members of the civil service corps, but impartiality has a broader meaning than political neutrality.

According to the jurisprudence of the Constitutional Tribunal, “an integral component of the concept of impartiality is apoliticality, which means not a lack of political views, but their non-manifestation in professional work” (Judgment of the Constitutional Tribunal of 17 November 1998, ref. no. K42/97).

The performance of state tasks accomplished by employees and officials forming this corps “should be free from any influence, especially direct political pressure” [23].

As indicated by the Constitutional Tribunal, “Remaining in contact with a citizen the permanent fabric of the executive power in the form of governmental administration offices must be guided by the widely-understood common interest, public and general, superior to particular and specific interests” (Judgment of the Constitutional Tribunal of 12 November 2002, ref. no. K9/02) [24].

Political neutrality - is the fundamental principle of the civil service, defined as the apolitical nature of the civil service. Political neutrality chiefly provides that civil servants cannot in any way be determined in their actions by their own political, religious, ideological beliefs, interests of the party, interests of the group, etc. [25].

Rydlewski, defining the goal of shaping institutional and functional solutions in public administration which are jointly understood as the civil service, points to the strengthening of the guarantee that the employees of the administration offices will perform the tasks assigned to them in an impartial and professional manner.

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According to the author “The civil service is essentially a guarantee of professional and loyal service of changing political government groups by public administration officials and prepare them to act also in the conditions of political tensions” [26].

In the judgment of December 12, 2002, the Constitutional Tribunal emphasized that professionalism and apoliticality should be guaranteed in the Civil Service Act. Civil service provisions should provide objective, clear and precise criteria for the functioning of the institutional civil service. As the Tribunal pointed out:

any interference by the legislator, even of a temporary, episodic nature, in a coherent service system created, must be not only particularly justified, but above all not violate or lead to undermining established, transparent and guaranteeing the implementation of the constitutionally indicated objectives of the principles of service (Judgment of the Constitutional Tribunal of 12 December, 2002, ref. no. K9/02) [27].

The doctrine indicates that functioning within a democratic state of modern, constitutional civil service is possible only if the following conditions are jointly met: separation of the public sphere from the private sphere is ensured, development of individual reliability of employees of these services is ensured, adequate continuity and protection of work of an adequate level of earnings, recruitment and promotion principle based on knowledge and skills are provided [28].

Summarizing all the above, it is worth to present the catalog of constitutional obligations that distinguishes the civil service from other categories of public sector employees developed by B. Kudrycka. The duties mentioned by the author:

- 1) loyalty to the constitution and every government in power,
- 2) impartial, straight dealing requiring resolution of all kinds of conflicts of interest, and above all conflicts of public and private interests for the benefit of the public,
- 3) professionalism of activities determined by the substantive system of admission to the service and official career based on substantive criteria,
- 4) political neutrality that means a prohibition on following your own political views or a prohibition on succumbing to informal party influence while performing official duties [29].

Senior positions in the civil service

The Civil Service Act indicates senior positions in the civil service in art. 52. Other official positions are not directly mentioned in the Act. Senior civil service positions include:

- 1) the Director General of Office;
- 2) directors of departments or equivalent units in the Chancellery of the Prime Minister, Minister Offices, offices serving the Chairperson of Committees which form

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part of the Council of Ministers, offices of central agencies of the Government administration and also individuals managing units or equivalent units in the Voivodship Offices, and their deputies;

- 3) voivodship veterinary officers and their deputies;
- 4) heads of organisational units in Forest Reproductive Material Office and their deputies
- 5) director of the National Revenue Information, director of the tax administration chamber, head of the tax office, head of the customs and tax office, as well as their deputies.

According to the OECD definition, the higher civil service is:

ordered and a recognized personnel system comprising senior civil service positions, staffed with officials who do not carry out operational or service-providing activities. Services performed by senior staff are centrally managed through central institutions and procedures to ensure stability and professionalism of high-ranking government officials, but also allow the flexibility necessary to change the government frame while maintaining the appropriate processes [30].

The employment relationship in senior positions in the civil service is established by appointment. The concept of appointment does not always refer to the basis of the employment relationship. In the case of senior positions in the civil service, the legislator clearly determined that it was about the basis of the employment relationship as defined in Article 68 of the Labour Code [31].

In addition to the conditions to be met by the person joining the recruitment in the civil service listed in art. 4 of the Civil Service Act, a candidate for a senior position in the civil service, in accordance with Article 53, must meet the additional conditions, i.e.:

- 1) holds an MA degree (or its equivalent);
- 2) was not punished with a prohibition to hold managerial positions in the public authority offices or to exercise functions related to disposition of public funds;
- 3) holds managerial skills;
- 4) meets requirements specified in the description of the position and in the separate provisions.

Senior positions in the civil service, due to their importance for the functioning of the entire corps, should be staffed by recruitment of a special nature, different from the procedures applied to official positions that do not have the qualities of managerial positions. The recruitment should also have the features of a competitive procedure that gives the opportunity to select the best candidate. Until recently, the legislator



envisaged such a procedure for staffing senior positions in the civil service, but legal status in this field has changed radically.

“In the current legal status, senior positions in the civil service were staffed during separate recruitment in the form of a competition (repealed Article 56 (2) of the Civil Service Act) and not general recruitment.

The amendment from 2015 (Dz. U. [Journal of Laws], 2018, item. 106) established that “staffing these positions does not require a recruitment procedure, and the basis of the employment relationship is appointment” [32]. Employment in senior positions in the civil service by appointment means that both the decision of assigning to a given position as well as recalling may be motivated by non-territorial factors of a political nature.

The staffing of persons holding senior positions in the civil service who perform a particularly important role in the civil service corps is made on the basis of appointment. As indicated in the doctrine:

persons holding senior positions in the civil service are the top management staff in the clerical corps, occupying the highest position in the clerical hierarchy. Only persons who perform the functions of administrative bodies remain (e.g. ministers or heads of offices) or their deputies to whom political selection mechanisms apply [33]. Under the amendment of December 2015 until the repeal of Art. 56 (2) of Civil Service Act, senior positions in the civil service were staffed by means of a competition. Currently, the staffing of these positions does not require a competition and there is no recruitment procedure in the Act [34]. From January 23, 2016, all senior positions in the civil service and managerial positions in the foreign service are staffed by appointment (Article 53a of the Civil Service Act).

Senior positions in the civil service are:

- 1) the Director General of Office,
- 2) head (and deputies) department or an equivalent unit in central government administration offices (this includes the Chancellery of the Prime Minister, Ministers Offices, offices serving the Chairperson of Committees which form part of the Council of Ministers, offices of central agencies of the Government administration)
- 3) The head (and deputy faculties or an equivalent unit in the Voivodship Offices
- 4) voivodship veterinary officers and their deputies;
- 5) heads of organisational units in Forest Reproductive Material Office and their deputies [35].

The criterion for employment in a senior position in the civil service (apart from the formal requirements related to citizenship, education and criminal record discussed

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above) is previously having managerial competence (Article 53 (3) of the Civil Service Act).

Senior positions in the Civil Service may be held by a person who:

- 1) holds an MA degree (or its equivalent);
- 2) was not punished with a prohibition to hold managerial positions in the public authority offices or to exercise functions related to disposition of public funds;
- 3) holds managerial skills;
- 4) meets requirements specified in the description of the position and in the separate provisions.

The legislator in art. 53 specified the conditions to be met by a person applying for a senior position in the civil service as well as a person who already holds this position. Undoubtedly, such a person must also meet the general conditions of employment in the civil service, as specified in art. 4. (The condition of having Polish citizenship, the condition of holding full civil rights, not being penalised for committing a wilful offence or a wilful fiscal offence, the condition of possessing the qualifications required for a given position and an impeccable reputation).

Managerial competencies required from applicants for senior positions in the civil service should be referred to the ability to lead and manage projects, people and organization.

The amendment abolished the obligation of candidates for senior positions in the civil service to have seniority in managerial or independent positions in units of the public finance sector. However, please note that these requirements have been included in the job descriptions. The resignation from the requirement to prove a person appointed by such seniority requires changes to the job description.

In the case of retaining the job description, the requirements regarding seniority must be met by the appointed person (www.inforkf.pl). It should also be noted that this amendment retains the obligation for a person appointed to a senior position in the civil service to have managerial competences, but does not specify the manner or form of checking compliance with this condition.

Therefore, it should be recognized that the Director General of Office (or the person appointing the Director General) assesses the fulfilment of this requirement in any way that makes it possible to determine whether a given person meets these requirements (e.g. conducting a test, analysing the candidate's professional experience). Managerial competences are therefore not verified in practice, nor checked under the selection procedure.

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The current legal status justifies the conclusion that appointment to senior positions in the civil service takes place on a discretionary basis, without the need for a competitive procedure or any formalized recruitment procedure. This means a breach in the rules of recruitment for civil servants in the civil service, for which it is difficult to find a justification.

Belonging to the category of clerical positions in the civil service corps, senior positions in the civil service have formally become political positions, which is at odds with the constitutional values declared by the civil service [36].

The legislator has included senior positions in the civil service in the civil service corps, persons occupying these positions should also comply with the general selection restrictions specified for all members of the civil corps included in art. 4 of the Civil Service Act, including the condition of holding full civil rights, not being penalised for committing a wilful offence or a wilful fiscal offence, and an impeccable reputation.

In the case of senior positions in the civil service in the current legal status, recruitment is not carried out and verification of persons applying for employment in a senior position in the civil service through the prism of the selection restrictions specified in art. 4 and art. 53 of Civil Service Act is carried out by entities authorized to be appointed, not by a commission, competition squad, etc.

This verification is therefore of a low formal nature, which raises the real danger of employing persons who do not comply with statutory conditions.

Currently, senior positions in the civil service, as well as before the amendment, can be staffed by both persons coming from the members of the civil service corps, as well as by persons not employed in the civil service so far (Civil Service Act, 2008) [37].

Before the amendment to the Civil Service Act, members of the civil service corps were employed in senior positions by means of transfer, which concerned not only appointed civil servants, but also civil servants employed on the basis on employment contract and maintained the current basis of the employment relationship.

Assumption a senior position in the civil service only led to a change in the content of the employment relationship in terms of the position, which could involve a change in the place of work and remuneration.

Under the new legal status, assumption a senior position in the civil service leads to a new employment relationship by appointment, however, it does not result in termination of the existing employment relationship (Civil Service Act, 2008).

As already mentioned, the lack of stabilization of the employment relationship by appointment is indicated by:

art. 70 § 1 of the Labour Code. An employee employed on the basis of appointment may be dismissed from office by the authority which appointed him at any time - immediately or within a specified period. This also applies to an employee who, pursuant to the special provisions, has been appointed for a fixed-term [38].

Conclusions

To sum up the considerations of the civil service in Poland, it should be stated that the status of a member of the civil service corps is granted only to employed persons in the types of offices listed in the Act on positions defined as clerical.

Persons employed in other positions in government administration offices are not members of the civil service corps and are not subject to the rigors of this Act.

The terminology convention used in the Act of November 21, 2008 renders numerous discussions and disputes in doctrine and practice.

It was pointed out that the literal wording of the provisions of the Act indicated that employee status was vested only in civil servants employed under an employment contract, excluding appointed officials.

Considerations on the term of a civil service corps should be supplemented for information on the employment status of the number of persons employed in this corps.

In recent years, there has been a negative trend related to the lack of interest in working in the civil service. The number of applicants for a job is falling and it is getting harder and harder to recruit employees with adequate preparation and competence for the civil service.

According to the report of the Head of the Civil Service for 2018, average employment in the civil service decreased by 2017 by 1,418 job positions (1.2%) - to the level of 117964 job positions. This was due to the exclusion from the civil service of the National Water Management Authority along with regional managements (Report of the Head of the Civil Service). In conclusion, the specifics of work in government administration means that the civil service corps is primarily to serve the state and society, comply with the Constitution and other sources of law, and submit to restrictions resulting from being a civil servant.

References

1. *Act of 21 November 2008 on Civil Service* (Dz. U. [Journal of Laws] No 227, item 505)
2. *The Constitution of the Republic of Poland of April 2, 1997* ((Dz. U. [Journal of Laws] 1997 No 78, item 483) articles 161

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Jakubiak E., Chodkiewicz A., (2022). Employment in the Civil Service

International Journal of Legal Studies, 1(11)2022: 145- 162

DOI 10.5281/zenodo.6891926

3. Jtrich – Drabarek, I., (2010), *Uwarunkowania, standardy i kierunki zmian funkcjonowania służby cywilnej w Polsce na tle europejskim* [Conditions, standards Judgment of the Constitutional Tribunal of 14 June 2011, ref. no. Kp1 / 11.
4. Graczyk, M., (2014), *Ustawa o służbie cywilnej. Komentarz* [Civil Service Act. Comment], Warsaw: INFOR Biznes Sp. z o.o.
5. Judgment of the Administrative Court in Gorzow Wielkopolski of 6 July, 2016, II SA/GO390/16, LEX number 2104738.
6. *Act of 21 November 2008 on Civil Service* (Dz. U. [Journal of Laws] No 227, item 505)
7. Itrich- Drabarek, J., (2012), *Służba cywilna w Polsce- Koncepcje i praktyka* [Civil service in Poland - Concepts and practice], Warsaw: ELIPSA
8. Itrich- Drabarek, J., (2012), *Służba cywilna w Polsce- Koncepcje i praktyka* [Civil service in Poland - Concepts and practice], Warsaw: ELIPSA
9. Gąciarz, J., (2003), *Organizacja i zasady działania administracji publicznej w Polsce* [Organization and principles of public administration in Poland],[in:] *Administracja publiczna* [Public Administration], J. Hausner, Warsaw
10. Izdebski, H., (2010), *Kodyfikacja etyki w służbie publicznej- doświadczenia Kodeksu Etyki Służby Cywilnej I*
11. Stec, M., (2008), *Opinion on draft bills: 1) on the amendment to the Civil Service Act and on the amendment of some other Acts*, print No. 595, 2) *on the amendment to the Civil Service Act and on the amendment of some other acts* (Prints No. 125 and 125 - A) Warsaw, September 15, 2008
12. Jagielski J., Rączka K., *Ustawa o służbie cywilnej. Komentarz*, Warsaw 2010.
13. *Act of 21 November 2008 on Civil Service* (Dz. U. [Journal of Laws] No 227, item 505)
14. Wyrok SA w Gorzowie Wielkopolskim z dnia 6 lipca 2016r., II SA/GO 390/16, LEX nr 2104738.
15. Wyrok Trybunału Konstytucyjnego z dnia 28 kwietnia 1999r., sygn.K3/99.
16. Ordinance No. 70 of the Prime Minister of October 6, 2011 *on guidelines with respect to compliance with the principles of civil service and on the rules of ethics of the civil service corps*, Official Journal of the Republic of Poland (*Monitor Polski*), No. 93.
17. Sokolewicz, W. (2002), (in:) *Konstytucja Rzeczypospolitej Polskiej. Komentarz* [Constitution of the Republic of Poland. Comment], ed. Garlicki, L., Warsaw
18. Dostatni, G., (2011), *Koncepcje służby cywilnej a realizacja konstytucyjnego celu jej działania* [Civil service concepts and the implementation of the constitutional purpose of its objectives], Warsaw: Lex Wolters Kluwer business
19. Dostatni, G., (2011), *Koncepcje służby cywilnej a realizacja konstytucyjnego celu jej działania* [Civil service concepts and the implementation of the constitutional purpose of its objectives], Warsaw: Lex Wolters Kluwer business

ISSN 2543-7097 / E-ISSN 2544-9478

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Jakubiak E., Chodkiewicz A., (2022). Employment in the Civil Service

International Journal of Legal Studies, 1(11)2022: 145- 162

DOI 10.5281/zenodo.6891926

20. Górzyńska, T., [in:] Hauser, R., Niewiadomski, Z., Wróbel, A., (2012), *System prawa administracyjnego. t. 2, Konstytucyjne podstawy funkcjonowania administracji publicznej* [Administrative law system. Vol. 2, Constitutional basis for the functioning of public administration], Warsaw: C.H. Beck, Instytut Nauk Prawnych PAN, and directions of changes in the functioning of the civil service in Poland in the European background], Warsaw
21. Wyrok z 12 sierpnia 2015, sygn. akt. II SA/WA 633/15. Centralna Baza Orzeczeń Sądów Administracyjnych.
22. Wyrok Trybunału Konstytucyjnego z 14 czerwca 2011 r., sygn.. akt.Kp1/11.
23. Drabarek, J., (2012), *Służba cywilna w Polsce- Koncepcje i praktyka* [Civil service in Poland - Concepts and practice], Warsaw: ELIPSA
24. Kurdycka, B., (1998), *Neutralność polityczna urzędników* [Political neutrality of officials], Warsaw 1998
25. Itrich- Drabarek, J., (2012), *Służba cywilna w Polsce- Koncepcje i praktyka* [Civil service in Poland - Concepts and practice], Warsaw: ELIPSA
26. [Codification of ethics in public service - experience of the Civil Service Code of Ethics], *Diametros*, no 25
27. Jagielski, J., Rączka, K., (2010), *Ustawa o służbie cywilnej. Komentarz* [Civil Service Act. Comment], Warsaw
28. Stec, M., (2008), *Opinion on draft bills: 1) on the amendment to the Civil Service Act and on the amendment of some other Acts*, print No. 595, 2) *on the amendment to the Civil Service Act and on the amendment of some other acts* (Prints No. 125 and 125 - A) Warsaw, September 15, 2008
29. Jagielski, J., Rączka, K., (2010), *Ustawa o służbie cywilnej. Komentarz* [Civil Service Act. Comment], Warsaw
30. Sokolewicz, W. (2002), (in:) *Konstytucja Rzeczypospolitej Polskiej. Komentarz* [Constitution of the Republic of Poland. Comment], ed. Garlicki, L., Warsaw
31. Dostatni, G., (2011), *Koncepcje służby cywilnej a realizacja konstytucyjnego celu jej działania* [Civil service concepts and the implementation of the constitutional purpose of its objectives], Warsaw: Lex Wolters Kluwer business
32. Ordinance No. 70 of the Prime Minister of October 6, 2011 *on guidelines with respect to compliance with the principles of civil service and on the rules of ethics of the civil service corps*, Official Journal of the Republic of Poland (*Monitor Polski*), No. 93.
33. Baran, K.W., (2014), *Prawo urzędnicze* [Magisterial Law], Warsaw: Lex Wolters Kluwer business
34. Dubowik, A., (2016), *Zatrudnienie na stanowiskach urzędniczych- aktualne problemy, Studia z zakresu prawa pracy i polityki społecznej* [Employment in clerical positions - current problems, Studies in the field of labor law and social policy], ed. Baran, K.W., Cracow

ISSN 2543-7097 / E-ISSN 2544-9478

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Jakubiak E., Chodkiewicz A., (2022). Employment in the Civil Service

International Journal of Legal Studies, 1(11)2022: 145- 162

DOI 10.5281/zenodo.6891926

35. Stelina J., *Prawo urzędnicze*, Wyd.3, C.H.Beck, 2016.
36. Dubowik, A., (2016), *Zatrudnienie na stanowiskach urzędniczych- aktualne problemy*, *Studia z zakresu prawa pracy i polityki społecznej [Employment in clerical positions - current problems, Studies in the field of labor law and social policy]*, ed. Baran, K.W., Cracow
37. Stelina J., *Prawo urzędnicze*, Wyd.3, C.H.Beck, 2016.
38. Dubowik, A., (2016), *Zatrudnienie na stanowiskach urzędniczych- aktualne problemy*, *Studia z zakresu prawa pracy i polityki społecznej [Employment in clerical positions - current problems, Studies in the field of labor law and social policy]*, ed. Baran, K.W., Cracow.

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