FACTA UNIVERSITATIS
Series: **Law and Politics** Vol. 13, N° 2, 2015, pp. 139 - 147

Original Scientific Paper

LEGAL STATUS OF CIVIL SERVANTS: BASIC LEGISLATIVE SOLUTIONS

UDC 342.98:35.08

Aleksandra Ilić Petković

University of Niš, Faculty of Occupational Safety, Niš, Republic of Serbia

Abstract. *Different bodies of state administration employ a large number of people of different qualifications and different jobs. Some of them perform simple tasks, while others perform more complex managerial ones. The issue of legal status of civil servants has been thoroughly regulated by the Civil Servants Act of 2005 but individual issues are regulated by other laws. As the status of civil servants is regulated by many laws, the legal provisions seem to be inconsistent and unharmonized. Questions of legal status of civil servants are complex and may be discussed from various aspects. There are different standards and comparative experiences as well. A comprehensive understanding of the position of civil servants creates conditions for further improvement of the civil service system in the state administration and paves the way towards the creation of a new legal discipline: civil service law.*

Key words: *civil servants, legal position, basic law, special laws.*

GENERAL REMARKS

State administration is an area of particular importance for the functioning of each state, including the Republic of Serbia. In Serbia, it is not a separate branch of government, as it once was; but, according to its responsibilities, it is very important for the exercise of citizens' rights, for the state itself and for the employees who work there.

Different bodies of state administration employ a large number of people of different qualifications and different jobs. Some of them perform simple tasks, while others perform more complex management activities. For this reason, the term "administrative personnel" refers to those people who perform professional tasks, and civil servants have the most important position in the hierarchy of administrative personnel. The issue of legal status of civil servants is regulated in detail by the Civil Servants Act, which was adopted in 2005[1].

Received November 30th, 2015 / Accepted December 18th, 2015
Corresponding author: Aleksandra Ilić Petković, LL.D.
University of Niš, Faculty of Occupational Safety, Čarnojevića 10a, 18000 Niš, Republic of Serbia
E-mail: aleksandra.ilic@znrfak.ni.ac.rs
[1] Civil Servants Act, Official Gazette RS, 79/2005, 81/2005, 83/2005, 64/2007, 67/2007, 116/2008, 104/2009

Individual issues are regulated in other legislative acts, such as the State Administration Act[2], which can be considered as an umbrella law in this area. Some aspects of the status of civil servants are regulated by the Government Act[3] or the Ministries Act[4]l these acts are usually adopted after the completion of the election for the National Assembly, and before the election of the Government.

The state administration employs two types of professional staff: civil servants and clerks[5]. There are two types of positions that civil servants can occupy: appointed positions and executive positions[6]. Appointed (managerial) positions are subject to appointment by the Government, a state authority or body; executive job positions are classified according to ranks[7].

As the status of civil servants is regulated by a number of legislative acts, there is an impression that the legal provisions are inconsistent and unharmonized. The Civil Servants Act is a special "*sui generis*" law which regulates the legal status of employees in state administration. However, if the issue is not regulated by this law, then the Labor Act[8] applies in terms of labor relations in state administration (as a general law); as for the civil servants employed in some special areas (police, army, etc.), their employment status is regulated by subject-specific legislative acts (e.g. the Police Act[9], the Act on the Armed Forces[10], etc.). It should be noted that the position of some categories of administrative staff , such as those employed in the bodies of territorial autonomy and local self-government, has not been regulated at all; the adoption of a special legislative act on this issue is to be expected.

The legal status of civil servants involves many complex issues. Many of them can be discussed from different aspects. There are different standards and comparative experiences as well. Yet, a comprehensive understanding of the position of civil servants creates conditions for further improvement of the civil service system in the state administration and paves the way towards the creation of a new legal discipline: civil service law.

1. ORGANIZATION AND FUNCTIONING OF THE ADMINISTRATION: ASSUMPTIONS FOR DEFINING THE STATUS OF CIVIL SERVANTS

1.1. Definition of administration

In order to establish the concept and definition of administration it should be noted that in Serbia, as in many other countries, there are two principles of power organization: fusion of powers and separation of powers. The principle of separation of powers implies

[2] Law on State Administration, Official Gazette RS, 79/2005, 101/2007, 95/2010
[3] Government Act, Official Gazette RS, 55/2005, 71/2005, 101/2007, 65/2008, 16/2011, 68/2012, 72/2012, 7/2014, 44/2014
[4] Ministries Act, Official Gazette RS, 44/2014, 14/2015, 54/2015
[5] Civil servants perform essential tasks under the responsibility of the administrative bodies, which are related to general, legal, financial, administrative and similar tasks, and clerks perform supporting, technical and other tasks in administrative bodies.
[6] An appointed position is a managerial position and all the other jobs are executive.
[7] Executive job positions are: Senior Adviser, Independent Adviser, Adviser, Junior Adviser, Associate, Junior Associate, Clerk and Junior Clerk.
[8] Labor Act, Official Gazette RS, 24/2005, 61/2005, 54/2009, 32/2013, 75/2014
[9] Police Act, Official Gazette RS, 101/2005, 63/2009, 92/2011, 64/2015
[10] Act on the Armed Forces, Official Gazette RS, 116/2007, 88/2009, 101/2010, 10/2015, 88/2015

the existence of the legislative, the executive and the judicial powers. The administrative authority is considered part of the executive power, which previously existed independently as a fourth branch of government. A frequently asked question refers to the difference between executive and administrative powers. Today, these accruals are quite clear as the executive power implies implementing policies whereas the administrative power implies adopting administrative acts and performing administrative actions.

In our political system, the unity of state power existed in former periods, but since the introduction of a multiparty system,[11] there has been a system of separation of powers. Thus, the Constitution of 1990 stipulates that in our constitutional system, there are legislative, executive and judicial branch, but not separate administrative power. The legislative power is exercised by the National Assembly, the executive power is exercised by the Government and the President of the Republic, and the judicial power is exercised by courts[12].

The Constitution of the Republic of Serbia presumes the existence of constitutionality and legality in the exercise of state authorities. The principle of constitutionality implies the obligation that all legislative acts and regulations of "lower" legal force must be in accordance with the Constitution, while the principle of legality implies the obligation of all by-laws and acts of "lower" legal force to comply with the law. If this is tranferred to the administration, it means that all administrative acts must be in accordance with the Constitution and the applicable law[13].

The concept of administration is not easy to define. The issue has been discussed by many scholars. The Serbian word "*uprava"* (*administration*) has the same meaning as the German term "*verwaltung*" or the French term "*administration*"; the word "*uprava*" (*administration*) has its roots in the verb "*upravljati* " (*administer*)**.** [14]

The term "administration" can be observed from the theoretical, functional, organizational and legal point of view. The theoretical definition is based on the criteria determined by certain legal theorists, while the legal definition is based on the current Constitution and law. There are four criteria necessary for defining the notion of *administration:* who performs administrative activities, how are they performed, what kind of acts are passed in this proceeding, and who controls these activities[15].

There is also a division into positive and negative definitions of the theoretical concept of administration (Tomić, 1998:36-72). According to the positive definition, *administration* is a state function which entails an administrative activity where an authorized body decides on the rights, obligations and legal interests of particular entities in the course of administrative procedure, by adopting administrative acts and performing administrative actions which can be controlled in the second-instance administrative proceedings or administrative dispute proceedings. In the negative sense, the concept of administration implies everything that

[11] See: Article 2, Constitution of the Republic of Serbia, Official Gazette RS, 1/1990

[12] The executive power is bicephalous. Thus, taking into account the local government units, it is performed by mayors (presidents of municipalities) and the city (municipal) councils. The administrative function, which is a state function but not a separate branch of government, is performed by administrative bodies and holders of public powers. The judicial power is exercised by regular courts and the Constitutional Court.

[13] Article 198, Constitution of the Republic of Serbia, Official Gazette RS, 98/2006

[14] In Serbian legislation, the term "*uprava"* was used for the first time in 1956 in the Law on State Administration. In a theoretical sense, it was first defined in Germany in the 19th century.

[15] Entities performing administrative activities are administrative bodies and holders of public powers; administrative activity is carried out through administrative procedures; administrative matters are decided by administrative acts, and there are administrative and judicial control of the exercise of administrative activities.

is outside the legislative, executive and judicial function of the state. From the position of positive law, the concept of administration presupposes a valid practice. The Constitution does not contain a full and clearly specified definition of administration[16], and the character of administration is clearly determined by the State Administration Act.[17].

Therefore, administration can be seen as performing administrative functions by competent authorities. Performing administrative tasks is entrusted to the administrative authority and non-state subjects, under certain conditions.

In recent times, legal theorists have dealt more with the analysis of forms in which the administrative power is exercised, i.e. whether administration is a form of governance or organization for providing public services. The modern concept of administration is inclined toward the administration as a form of providing public services; in Serbia, it is still seen as a form of governance.

1.2. Normative framework of administration

Based on the Constitution of the Republic of Serbia (2006) and the implementation of the Constitution Act[18], a number of laws was enacted, including the laws regulating certain aspects of state administration. However, laws in the field of state administration are generally adopted before the adoption of the Constitution, so that after its adoption, there were subsequent changes and amendments to these laws.

The basic law regulating state administration, the on State Administration Act, adopted in 2005. The second most important legislative act is the Civil Servants Act, adopted in 2005, but there are some subject-specific laws that govern certain issues of special character related to civil servants (wages, for example). Laws on local self-government were adopted at the end of 2007.

The administrative procedure as an important criterion for the existence of administration is governed by the General Administrative Procedure Act[19], and the Administrative Dispute Proceedings Act[20]. The legislative act on labor relations pertaining to the employees in the bodies of territorial autonomy and local self-government has been drafted but not enacted yet; thus, it is necessary to complete the legal framework in the field of state administration in the Republic. Other laws which either directly or indirectly regulate specific issues of the organization and functioning of state administration were also adopted[21]. The Government Act and the Ministries Act are always adopted after the election (as they modify the existing laws), where every new government makes its own organization of the Government and ministries.

---

[16] Article 136 of the Constitution of the Republic of Serbia states that state administration tasks are performed by the ministries, and these tasks and the number of ministries are determined by law.

[17] Article 1 of the State Administration Act implies that the state administration is part of the executive power that performs administrative tasks.

[18] The Constitution Act on the Implementation of the Constitution of the Republic of Serbia, Official Gazette RS, 98/2006

[19] General Administrative Procedure Act, Official Gazette FRY, 33/1997, 31, 2001, Official Gazette RS, 30/2010; as a paradox, the FRY regulation of a non-existant federal state was initially applied to relations in the Republic of Serbia; thus, a new legislative act was subsequently drafted and adopted.

[20] Administrative Dispute Proceedings Act , Official Gazette RS, 111/2009, was long applied in the same manner as the General Administrative Procedure Act of FRY, but a new legislative act was adopted later.

[21] Communal Police Act, Official Gazette RS, 48/2009, Ombudsman Act, Official RS, 79/2005, 54/2007, Public Agencies Act, Official Gazette RS, 18/2005, 81/2005, Electronic Signature Act, Official Gazette RS, 135/2004

A large number of legislative acts and by-laws lead to the conclusion that our legislative framework in the field of state administration is well-equipped and in compliance with European standards and the European Union laws. It is evident in the fact that key laws in this area were adopted even before the adoption of the current Constitution, and there was no need for their substantive changes after the adoption of the Constitution in force.

The issues related to the position of employees are mainly regulated by a number of legislative acts, but the basic law is considered to be the Civil Servants Act, which regulates the general system of civil servant employment relations, while the individual, "sectoral" laws govern special schemes for civil service relations. If these laws do not regulate certain issues, then the Labor Act applies or the Special Collective Agreement[22], which may provide a wider scope of rights for employees than the laws. The Civil Servants Act has a special status in relation to the Labor Law and special laws; thus, if it regulates certain relations in detail, the Labor Act does not apply; but if there is a specific law regulating certain issues related to civil service relations, then the Civil Servants Act does not apply.

1.3. Legal entities performing administrative activity

The principal legal entities engaged in legal activities are administrative bodies, the most important of which are ministries. The Constitution stipulates that state administration tasks are performed by the ministries and other administrative bodies established by law[23]. Their main activity is to administer the state affairs.

In addition, the government is authorized to delegate some of its tasks to certain public agencies and organizations which are entrusted to perform some state administration activities, provided that the delegated tasks are performed by the given entity as part of its subsidiary rather than primary business activity. These organizations are referred to as "the holders of public authorities"[24]. These entities have the same rights and duties as administrative authorities; they only differ in the manner and form of execution of their administrative tasks. This delegation of the state authority may be performed only according to the law, and provided that the delegated tasks are functionally associated with the core activity of the public authority holders. These tasks may also be conferred to non-state entities to facilitate effective execution of specific activity, but they cannot be performed without the explicit authorization of the state authorities, in compliance with the applicable law.

1.4. Tasks performed by the administration

The State Administration Act explicitly defines the tasks performed by the bodies of state administration. Thus, administrative bodies may participate in shaping the Government policy by preparing draft acts and other regulations, and proposing development strategies and other measures, which are subsequently decided by the Government or the Assembly. [25]

---

[22] Special Collective Agreement for State Authorities, Official Gazette RS, 95/2008, 86/2011

[23] Articles 63 and 64 of the Constitution of the Republic of Serbia refer to state administration bodies.

[24] The term "*public authority holder*" was first mentioned in the Constitution of 1963 and in the Public Administration Act of 1956, which provided for the first time that some administrative tasks may be conferred to some other independent bodies which are not state administration bodies.

[25] Article 12, State Administration Act

State administration authorities shall monitor and assess the situation in the fields from their scope of work, and undertake or propose measures to the competent authorities on the basis of observed circumstances. [26]

State administration authorities shall enforce laws, other legislation and general acts of the National Assembly and the Government by passing legislation, deliberating in administrative matters, keeping records and issuing public documents, and undertaking administrative actions[27], conducted by ministries in particular.

The activities pertaining to preparing legislation[28] involve drafting the laws, other legislation and other general acts, collecting relevant material and studying it from the standpoint of comparative practices, analyzing the situation and formulating the legal text to be submitted for further procedure.

The most important activity of administrative bodies refers to deliberation in administrative matters[29] in the course of administrative procedure, and adoption of administrative acts. They may also decide upon appeals and extraordinary legal remedies.

Supervision[30] is primarily related to the inspection activities. State authorities shall supervise the implementation of laws and other regulations by direct scrutiny of management and actions of both natural persons and and legal entities.

State administration authorities shall ensure that the work of public services is conducted in accordance with the law.[31] They shall collect and examine data from their scope of work[32], prepare analyses, reports, information and other materials, and perform professional and other expert work which is the basis for various analysis and decision-making processes.

2. CIVIL SERVICE LAW

Civil service law is a relatively new scientific discipline. It was not singled out as a separate discipline, but it was studied within the administrative law, and partly labor law. It certainly is a new area of study within the broader field of public administration. Civil service law issues still do not attract the attention of many scientists and theoreticians, but they are gaining in relevance and becoming an object of interest in science.

The question that shall be addressed first is whether civil service law predominantly represents the border area of administrative law, if civil service law is already considered a special discipline, or whether it is a border area of labor law. That is, what are the criteria for this demarcation?

When answering these questions, the first step is the fact that the employment status of civil servants is regulated by a special Civil Servants Act, and this status is the essence of civil service law. Thus, it can be estimated that civil service law is part of labor law. On the other hand, it is evident that all the issues which are not regulated by a special Civil Servants Act are regulated by the Labor Law. However, these are subsidiary solutions. For that

[26] Ibid, Article 13
[27] Ibid, Article 14
[28] Ibid, Article 17
[29] Article 18, Civil Servants Act
[30] Article 18, State Administration Act; *inspectory* supervision shall be regulated by a special law.
[31] Ibid, Article 19
[32] Ibid, Article 21

reason, some scholars believe that civil service law is part of labor law. It seems that the former assumption is more acceptable, although opinions are divided[33].

3. CIVIL SERVICE SYSTEM

In civil service law, the basic category for further analysis of the status of civil servants is the civil service system. It represents a set of concepts and institutes which are related to the status of civil servants. Traditionally, the civil service system is divided into: classification system, payment system and promotion system (Vlatković, 2009:40-47).

The classification system means grouping employment positions on the basis of performing the same or similar tasks, the same rank and work experience. It refers to classifying employees with regard to the type of work, professional qualifications and work experience, but also the importance of these tasks.

The payment system implies that the civil service employees receive their salary depending on their professional qualifications, work experience and type of work they perform.

The promotion system means the advancement of civil servants to "higher" ranks or an increase in salary for the work they perform (Krbek, 1948:81). There are two types of promotion: open and regular. The open promotion is based on job assessment; thus, the promotion is recommended if the results are positive. The regular promotion means that promotion depends years of work experience, time spent at work, professional qualifications and other criteria. In this case, the quality of work and its evaluation are not taken into consideration.

There is another division of civil service systems. Depending on the national legislation which regulates this matter, civil service systems can be career-based, contracting and mixed.

In the career-based (closed) system, civil servants are employed in a civil service at the beginning of their career. It is assumed that they shall stay in the civil service until the end of their career, and the admission of people to civil services is limited.

In the contractual (positional) system there is no promotion within the civil service and all the posts are filled on the basis of public competition.

Mixed systems exist almost everywhere. An exclusively contractual or career system is rare to find. It means that employees are admitted to the civil service bodies on the basis of public competition and that the promotion is achieved within the internal competition (Vlatković, 2009:44).

CONCLUSION

Civil service bodies in Serbia employ a number of people with various qualifications, who perform diverse tasks of different levels of complexity, ranging from simple tasks to complex managerial tasks. The term “administrative personnel” encompasses all these categories and it is appropriate for the context in which it is used.

[33] Nikola Tintić, Zoran Tomić, Stevan Lilić, Ratko Mitrović, Dragan Milkov, Milan Vlatković, Živko Kulić – all have a specific approach to this matter.

The legal position of civil servants in Serbia is regulated by a number of legislative acts, which gives an impression that legal provisions are inconsistent and unharmonized. The basic law in this area is the Civil Servants Act of 2005, which primarily regulates the legal status of employees in state administration. However, tit has the character of a special "*sui generis*" legislation, which means that, if an issue is not regulated by this Act, then the Labor Act applies to labor relations in state administration, given the fact that it is a general legislative act regulating this matter. The Serbian legislation includes a number of other subject-specific legislative acts regulating the specific position of civil servants employed in particular areas, such as: the police, armed forces, foreign affairs, etc. These laws have the character of "*lex specialissimus*" in relation to the Labor Law.

The position of some of the administrative staff is not regulated by the Civil Servants Act. These are civil servants employed in the administrative bodies of autonomous province and local self-government, which this Act does not apply to. For this reason, the adoption of a special legislative act governing this matter is expected in the near future, as it has already been drafted. The adoption of this new legislative act will provided for a comprehensive regulations of the legal status of civil servants in our country. Moreover, it will certainly significantly contribute to the development of the civil service law as an independent legal discipline.

REFERENCES

1. Krbek, I. (1948). *Lica u državnoj službi* (Public Servants). Zagreb: Jugoslovenska akademija znanosti i umjetnosti.
2. Tomić, Z. (1998). *Upravno pravo* (Administrative Law). Beograd: Javno preduzeće Službeni list SRJ.
3. Vlatković, M. (2009). *Službeničko pravo* (Civil Service Law). Banja Luka: Besjeda.
4. Ustav Republike Srbije (Constitution of the Republic of Serbia). *Službeni glasnik RS*. Br. 1 (1990).
5. Ustav Republike Srbije (Constitution of the Republic of Serbia). *Službeni glasnik RS*. Br. 98(2006)
6. Ustavni zakon za sprovoČenje Ustava Republike Srbije (Constitutional Act on the Implementation of the Constitution of the Republic of Serbia). *Službeni glasnik RS*. Br. 98 (2006).
7. Poseban kolektivni ugovor za državne organe (Special Collective Agreement for State Authorities). *Službeni glasnik RS.* Br. 95/2008, 86/2011.
8. Zakon o državnim službenicima (Civil Servants Act). *Službeni glasnik RS.* Br. 79 (2005), 81(2005), 83(2005), 64(2007), 67(2007), 116(2008), 104(2009).
9. Zakon o državnoj administraciji (State Administration Act). *Službeni glasnik RS*. Br. 79/2005, 101/2007, 95/2010.
10. Zakon o elektronskom potpisu (Electronic Signature Act). *Službeni glasnik RS*. Br. 135(2004).
11. Zakon o javnim agencijama (Public Agencies Act). *Službeni glasnik* RS. Br. 18(2005), 81(2005).
12. Zakon o komunalnoj policiji (Communal Police Act). *Službeni glasnik RS*. Br. 48 (2009).
13. Zakon o ministarstvima Republike Srbije (Ministries Act). *Službeni glasnik RS*. Br. 44(2014), 14(2015), 54(2015).
14. Zakon o opštem upravnom postupku (General Administrative Procedure Act). *Službeni glasnik FRJ.* Br. 33(1997), 31(2001); Službeni glasnik RS, br. 30(2010).
15. Zakon o policiji (Police Act). *Službeni glasnik RS*. Br. 101(2005), 63(2009), 92(2011), 64(2015).
16. Zakon o radu (Labor Act). *Službeni glasnik RS*. Br. 24(2005), 61(2005), 54(2009), 32(2013), 75(2014).
17. Zakon o upravnim sporovima (Administrative Proceedings Act), Službeni glasnik RS, br. 111(2009).
18. Zakon o vladi Republike Srbije (Government Act). *Službeni glasnik RS*. Br. 55(2005), 71(2005), 101(2007), 65(2008), 16(2011), 68(2012), 72(2012), 7(2014), 44(2014).
19. Zakon o vojsci Srbije (Armed Forces Act). *Službeni glasnik RS*. Br. 116(2007), 88 (2009), 101(2010), 10(2015), 88(2015).
20. Zakon o zaštitniku graĆana (Ombudsman Act). *Službeni glasnik RS*. Br. 79(2005), 54(2007).

PRAVNI POLOŽAJ DRŽAVNIH SLUŽBENIKA: OSNOVNA ZAKONSKA REŠENJA

U različitim organima državne uprave zaposlen je veliki broj lica različitih kvalifikacija i na različitim poslovima. Neki od njih obavljaju jednostavne, neki obavljaju složene poslove, pa i poslove rukovodećeg karaktera. Problematika pravnog položaja državnih službenika detaljno je uređena posebnim zakonom - Zakonom o državnim službenicima iz 2005. godine. Pojedina pitanja su uređena i drugim zakonima. Dakle, status državnih službenika je uređen većim brojem zakona, pa se stiče utisak nehomogenosti regulative.

Pitanja pravnog položaja državnih službenika su kompleksna. O mnogima se može razgovarati sa različitih aspekata. Različita su komparativna iskustva i standardi. U svakom slučaju, sveobuhvatno sagledavanje položaja državnih službenika stvara uslove za dalju dogradnju službeničkih sistema u našoj državnoj upravi i utire put ka stvaranju jedne nove pravne discipline, kao što je službeničko pravo.

Ključne reči: *državni službenici, pravni položaj, osnovni zakon, posebni zakoni*.