RIGHT OF ACCESS TO PUBLIC SERVICE

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The article notes that the European integration of Ukraine, the post-war reconstruction of Ukraine are the factors that actualize the issue of creating effective regulatory and organizational guarantees of the right of every citizen to access the civil service. It is noted that the right to access the civil service is not absolute - it can be limited, but such a restriction must be provided for by law, pursue a legitimate goal, and the measures applied must be proportional. Attention is drawn to the fact that the decisions of the Constitutional Court of Ukraine, which contain legal positions on the right to access the civil service, are a guideline in improving the existing regulatory and organizational mechanisms for ensuring the right of a citizen to access the civil service, developing new mechanisms, as well as in developing the practice of the Constitutional Court of Ukraine. The following decisions of the Constitutional Court on human rights are highlighted: the decision of the Constitutional Court of Ukraine in the case on the certification of civil servants of July 8, 2003. No. 15-rp/2003; Decision of the Constitutional Court of Ukraine in the case on the age limit for civil service and service in local government bodies dated October 16, 2007 No. 8-rp/2007. The legal positions of the Constitutional Court of Ukraine on the right of a citizen to access the civil service have been identified: 1) certification is one of the methods of checking and assessing the qualifications of an employee, his knowledge and skills. It must be provided for by the law of the state, the provisions of which also apply to civil servants; 2) certification must take into account the peculiarities of the civil service, which are established by a special law on civil service; 3) certification may be conducted by: the owner; a body authorized by him (all state authorities; local self-government bodies); 4) the right of equal access to the civil service and to service in local self-government bodies is a legal possibility, but at the same time does not mean its immediate and unconditional implementation; 5) it is not a violation of the principle of equality for the legislator to establish age limits for holding positions by civil servants and employees of local self-government bodies within the framework of the exercise of their powers; 6) the retirement age is the age limit for staying in the civil service and in service in local self-government bodies; 7) the age limit for public service and service in local government bodies may be established by the state, the entity vested with such authority is the Parliament of Ukraine.

Keywords: the right to participate in the management of state affairs, the right to access the civil service, civil service, the Constitutional Court of Ukraine, interpretation, the right to interpretative activity, the decision of the Constitutional Court of Ukraine, legal position, restriction of the right to access the civil service, certification of civil servants, service in local government bodies.

Formulation of the problem

Effective public administration is the key to the development of any state. Currently, Ukraine is integrating with the EU and this requires the presence in the civil service of such employees whose qualifications, knowledge and skills are capable of ensuring the interests of the state and society, implementing in

practice the principle of the rule of law as an EU value. For this, the civil service in Ukraine has been reformed and is currently undergoing its further development. Of course, when improving the current legislation on civil service and developing new legislation, the positions of the Constitutional Court of Ukraine should be taken into account. They are the guidelines, as scientists correctly point out in their studies [1-5], in the development of the above-mentioned legislation of Ukraine. The above indicates that the chosen research topic is relevant, has theoretical and practical value.

The purpose of this article is to identify decisions of the Constitutional Court of Ukraine that contain legal positions on the right of access to civil service, as well as to identify in these decisions the legal positions of the Constitutional Court of Ukraine itself.

Presenting main material. In accordance with paragraph 10 of Art. 116 of the Constitution of Ukraine The Cabinet of Ministers of Ukraine, in addition to the functions stipulated by the Constitution of Ukraine, performs other functions determined by the laws of Ukraine and acts of the President of Ukraine [6]. That is, the list of functions of the Cabinet of Ministers of Ukraine contained in the Constitution of Ukraine is not exhaustive. The provisions of the Constitution of Ukraine are developed in the legislation of Ukraine, and therefore the laws of Ukraine and acts of the President of Ukraine may enshrine other functions of the Cabinet of Ministers of Ukraine, in addition to those specified in the Constitution of Ukraine. At the same time, these cannot be functions that would contradict the norms of the Constitution of Ukraine.

The Law of Ukraine "On Civil Service" defines the principles, legal and organizational foundations for ensuring a public, professional, politically impartial, effective, citizen-oriented civil service that functions in the interests of the state and society, as well as the procedure for exercising by citizens of Ukraine the right to equal access to civil service based on their personal qualities and achievements [7].

Regarding the law on civil service that preceded this law, the Constitutional Court of Ukraine in its decision in the case on the certification of civil servants dated July 8, 2003 No. 15-рп/2003 [8] noted that "a systematic analysis of this law showed that this Law, defining the general principles of activity and the status of civil servants working in state bodies and their apparatus, entrusts the Cabinet of Ministers of Ukraine with the implementation of regulatory and legal regulation of a number of issues in the field of civil service, aimed, in particular, at increasing its efficiency, selecting competent and dedicated personnel" [8] and emphasized that "this is the establishment of additional, in addition to those provided for by law, procedures for selecting citizens for civil service (Article 4), career advancement (Article 27), conditions for remuneration of civil servants (Article 33), approval of the procedure for conducting a competition for entry into the civil service and provisions on the civil service personnel reserve (Articles 15, 28), etc. [8].

That is, it follows from this that the law of the state may entrust the Cabinet of Ministers of Ukraine with the implementation of regulatory and legal regulation of a number of issues in the field of civil service, and the range of these issues includes, among others, the procedures for selecting citizens for civil service.

Also in its decision, the Constitutional Court of Ukraine noted that:

1) the civil service is unified in its foundations, which means that it is not divided into service in the legislative, executive and judicial bodies;

2) the civil service covers employees of the entire state apparatus;

3) civil servants have a general legal status with the peculiarities of legal regulation of the status of individual categories of civil servants; and it also follows from this decision of the Constitutional Court of Ukraine that

4) the state must ensure the implementation of a unified state policy in the field of civil service and functional management of the civil service, including by creating an organizational and legal mechanism for such provision.

It is well known that certification is one of the methods of checking and assessing the qualifications of an employee, his knowledge and skills [8]. It may be provided for by state legislation. The approval by the Cabinet of Ministers of Ukraine of the provisions on the

certification of civil servants does not establish certification as an element of the civil service. Similar regulatory legal acts (regulations on certification) only regulate the procedure for conducting certification of civil servants.

The decision of the Constitutional Court of Ukraine also states that the Cabinet of Ministers of Ukraine has the duty to pursue state policy in the field of civil service, the main direction of which is to ensure the effective work of all state bodies in accordance with their competence [8].

That is, we are not talking about the right of the Cabinet of Ministers of Ukraine, but rather about its duty. Accordingly, the Cabinet of Ministers of Ukraine bears constitutional and legal responsibility for improper fulfillment of this duty. The legal position of the Constitutional Court of Ukraine is that a regulatory legal act that determines the procedure for conducting certification of civil servants, adopted by the Cabinet of Ministers of Ukraine, must be adopted by the Cabinet of Ministers of Ukraine within its competence and develop the provisions of the Constitution of Ukraine and the Law of Ukraine «On Civil Service».

Also, regarding access to civil service, the Constitutional Court of Ukraine in its decision formulated a legal position according to which the results of the attestation are not grounds for dismissing a civil servant.

The Decision of the Constitutional Court of Ukraine in the case on the constitutional submission of 47 people's deputies of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of the provisions of Article 23 of the Law of Ukraine "On Civil Service", Article 18 of the Law of Ukraine "On Service in Local Self-Government Bodies", Article 42 of the Law of Ukraine "On Diplomatic Service" (case on the age limit for civil service and service in local self-government bodies) dated October 16, 2007 No. 8-rp/2007 contains the following legal positions of the Constitutional Court of Ukraine:

1) the right of equal access to civil service and service in local self-government bodies is a legal possibility;

2) the right of equal access to civil service and service in local self-government bodies does not mean its immediate and unconditional implementation;

3) the establishment by the legislator of age limits for holding positions by civil servants and employees of local self-government bodies within the framework of the exercise of their powers cannot be regarded as a violation of the principle of equality;

4) the age limit for civil service and service in local self-government bodies is in fact the retirement age for this category of employees;

5) the legislator may establish an age limit for civil service and service in local self-government bodies;

6) the establishment by the legislator of an age limit for service in the relevant service is a matter of social or economic expediency;

7) special rules and conditions based on specific requirements for work do not limit the right to work and the guarantee of equal opportunities in choosing a profession and type of work [9].

Conclusions

1. Certification is one of the methods of checking and assessing the qualifications of an employee, his knowledge and skills. It must be provided for by the law of the state, the provisions of which also apply to civil servants. Certification must take into account the peculiarities of the civil service, which are established by a special law on civil service. Certification may be carried out by: the owner; the body authorized by him (all state authorities; local self-government bodies).

2. The right to equal access to civil service and service in local self-government bodies is a legal possibility, but this does not mean its immediate and unconditional implementation. It is not a violation of the principle of equality for the legislator to establish age limits for holding positions by civil servants and employees of local self-government bodies within the framework of the exercise of their powers. The retirement age is the age limit for staying in civil service and service in local self-government bodies. The age limit for public service and service in local government bodies may be established by the state, the entity vested with such authority is the Parliament of Ukraine.

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ПРАВО ДОСТУПУ ДО ДЕРЖАВНОЇ СЛУЖБИ: ПРАВОВІ ПОЗИЦІЇ КОНСТИТУЦІЙНОГО СУДУ УКРАЇНИ

У статті зазначається, що європейська інтеграція України, повоєнне відновлення України є тими чинниками, які актуалізують питання створення ефективних нормативно-правових та організаційно-правових гарантій права кожного громадянина на доступ до державної служби. Зазначається, що право на доступ до державної служби не є абсолютним – воно може бути обмежене, але таке обмеження має бути передбачене законом, переслідувати легітимну мету, а заходи, які застосовуються, мають бути пропорційними. Звертається увага на той факт, що рішення Конституційного Суду України, які містять правові позиції щодо права на доступ до державної служби, є орієнтиром при вдосконаленні чинних нормативно-правових та організаційно-правових механізмів забезпечення права громадянина на доступ до державної служби, розробці нових механізмів, а також при розвитку практики Конституційного Суду України.

Виділено такі рішення Конституційного Суду з прав людини: рішення Конституційного Суду України у справі про атестацію державних службовців від 8 липня 2003 р. № 15-рп/2003; рішення Конституційного Суду України у справі про граничний вік перебування на державній службі та на службі в органах місцевого самоврядування від 16 жовтня 2007 р. № 8-рп/2007. Виявлено

правові позиції Конституційного Суду України щодо права громадянина на доступ до державної служби: 1) атестація є одним (але не єдиним) із способів перевірки та оцінки кваліфікації працівника, його знань і навичок. Вона має бути передбачена законом держави, положення якого поширюються і на державних службовців; 2) атестація має враховувати особливості державної служби, які встановлені спеціальним законом про державну службу; 3) атестацію можуть проводити: власник; уповноважений ним орган (всі органи державної влади; органи місцевого самоврядування); 4) право рівного доступу до державної служби та до служби в органах місцевого самоврядування є юридичною можливістю, але при цьому не означає його негайної та беззастережної реалізації; 5) не є порушенням принципу рівності встановлення Парламентом України граничних вікових обмежень на зайняття посад державними службовцями та працівниками органів місцевого самоврядування в межах реалізації своїх повноважень; 6) пенсійний вік є граничним віком перебування на державній службі та на службі в органах місцевого самоврядування; 7) граничний вік перебування на державній службі та на службі в органах місцевого самоврядування може встановлюватись державою, суб'єкт, наділений таким повноваженням – Парламент України.

Ключові слова: право на участь в управлінні державними справа, право на доступ до державної служби, державна служба, Конституційний Суд України, тлумачення, право тлумачна діяльність, рішення Конституційного Суду України, правова позиція, обмеження права на доступ до державної служби, атестація державних службовці, служба в органах місцевого самоврядування.