THE REFORM OF PUBLIC SERVICE IN LITHUANIA

Ieva Deviatnikovaitė[1]

Abstract: A new law on Public Service will enter into force on January 1, 2024. The concept of Lithuanian public service is closely related to the concept of public administration. Previously, public administration activities meant the adoption of administrative and internal administration acts. From now on, internal administration no longer falls within the scope of public administration activities, so those who will perform the function of internal administration will no longer have the status of public servants. The article reviews how the institute of public service was formed in Lithuania. The chronological boundaries of the article cover period from 1918 to 2024.

Keywords: public service, public servant, public administration, Lithuania

Development of Public Service in Lithuania

During the period of 1918 to 1940 in Lithuania, there was no legal act governing the institute of public service and the legal status of a public servant. There were just several legal acts that regulated the vacations, business trips, pensions, allowances of public servants[2]. However, in 1939 and 1940 the Law on Public Service was being intensively drafted, which had to define both the concept of civil service and the legal status of civil servants (recruitment, dismissal, promotion, disciplinary liability, etc.)[3]. It was conceivable that this law would be passed. However, in 1940 the

[1] Mykolas Romeris University, Vilnius, Lithuania.

[2] Law on the Remuneration of Public Officials. *Official Gazette*, 1919, No 8; Law on the Remuneration of the Ministries and the State Comptroller. *Official Gazette*, 1924, No 168-1184; Law on the Remuneration of Public Servants. *Official Gazette*, 1922, No 88-751; Law on the Remuneration of Employees of Missions and Consulates. *Official Gazette*, 1924, No 159-1129; Law on the Payment of Holiday Allowance. *Official Gazette*, 1931, No 372-2547; Law on the Pensions and Allowances of Public Servants. *Official Gazette*, 1926, No 221-1443; Law on the Reimbursement of Travel Expenses. *Official Gazette*, 1931, No 351-2398.

[3] Deviatnikovaitė, Ieva. Administracinės teisės institutų ir administracijos reformos Lietuvoje 1918–1940 m. *Teisės apžvalga*, Nr. 2 (26), 2002, 135-160.

state order changed, and socialist totalitarian regime was introduced in Lithuania. Therefore, this legal act was never adopted.

During the Soviet period, the Law on Public Service was not adopted either, and the legal status of persons working in state, municipal institutions and establishments was regulated by the Code of Labor Law.[4]

After the collapse of the Soviet Union, the public service institute continued to be regulated by the revised Law on Labor Contract.[5] This act was revoked in 1995 when the Law on Officials was passed.[6]

According to the Law on Officials, public service was understood very broadly, i. e. public servants were all persons who worked in state, municipal institutions, and establishments, including teachers, medical workers, etc. Nevertheless, the Law on Officials governed the legal status of only officials, i.e. of persons who were appointed by the Seimas (Parliament of the Republic of Lithuania), the President of the Republic, the Government and others who assisted politicians in the performance of their functions.

In 1999 the reform of the public service institute took place. A new law was adopted, and it was called the Law on Public Service. In the same year, the Law on Public Administration and the Law on Administrative Justice were adopted. Moreover, administrative courts were established. They were the ones who had to deal with public service disputes. The Law on Public Administration established the areas of public administration from which administrative courts had to deal with disputes arising from them. However, all these things took shape gradually. In 1999 the reform was aimed at increasing the number of public servants and expanding the concept of public service.[7] However, the concept of public service was too abstract, too broad. It was defined as the totality of operational relations in the service, regulated by state legislation, determining the acquisition, change and loss of the status of a public servant. According to N. Glebovė, the Law on Public Service did not ensure consistent governing of public service relations, its scope of application was too broad, and caused

[4] Lapinskas, Kęstutis, Petkevičius, Pranas. *Tarybinė administracinė teisė*. Vilnius: Mintis, 1980, 147.

[5] Law on Labour Contract of the Republic of Lithuania. *Official Gazette*, 1991, No. I-2048.

[6] Law on Officials of the Republic of Lithuania. *Official Gazette*, 1995, No. I-836.

[7] Glebovė, Neringa. Valstybės tarnybos samprata ir valstybės tarnautojo statuso ypatumai. *Teisė*, 2010, 76, 133.

difficulties in the application of the Law. Therefore, a more suitable functional model of the public service system was being sought.[8] Thus, in 2002 a new edition of the Law on Public Service was adopted.[9] At that time the concept of public service is closely connected with the spheres of public administration governed by the Law on Public Administration. The concept of public service was as follows: "legal relations that arise after acquiring, changing or losing the status of a public servant, as well as arising from the public servant's public administration activities in a state or municipal institution or institution in the implementation of a policy in a certain area of state governance or ensuring the coordination of its implementation, coordinating the activities of institutions in a certain area of state governance, managing, allocating financial resources and controlling their use, performing audits, adopting and implementing legal acts, decisions of state and municipal institutions or institutions in the field of public administration, preparing or coordinating legal acts, drafts of contracts or programs and providing conclusions about them, managing personnel or having public administration powers in relation to non-subordinate persons, the whole."[10]
In 2018 a new version of the Law on Public Service was adopted again.[11] The concept of public service was related to the activity of public administration and assistance to persons exercising state or local authority to perform the functions assigned to them.

Reform of the Public Service after 2020

After the adoption of the Law on Public Administration in 1999, areas of public administration meant mainly the adoption of administrative acts (regulations and decisions) and internal administrative acts, and this was considered the main activity of public administration entities, i. e. of public servants. However, in 2020 a new edition of the Law on Public Administration[12] entered into force, according to which internal

[8] *Ibid*., 134.
[9] Amendment of the Law on Public Service of the Republic of Lithuania No IX-855. *Official Gazette*, 2002, No 45-1708.
[10] *Ibid.*
[11] New Edition of the Law on Public Service of the Republic of Lithuania No VIII-1316. *Official Gazette*, 2018, No 12037.
[12] Law on the Amendment of the Law on Public Administration of the Republic of Lithuania No VIII-2987. *Official Gazette*, 2020, No 12819.

administration was no longer considered an activity of public administration. The Law on Public Service was also amended accordingly[13] and public service was defined as professional activities of persons holding positions in state and municipal institutions and institutions, which perform public administration functions or ensure the management of diplomatic service institutions or trade representations or help persons exercising state or local authority to perform the prescribed functions, except for functions of an economic and/or technical nature. Since then, the concept of public service has narrowed, along with the concept of public administration, excluding internal administrative activities. It meant one thing, that persons performing internal administration functions could no longer be considered public servants and their legal status had to be regulated outside the provisions of the Law on Public Service.

After the amendments to the Law on Public Administration and some minor amendments to the Law on Public Service, it was decided to change the legal regulation of public service in general. However, the reasons for the reform are unclear to the author of the article. These reasons are inspired by the managerial mechanism of the private sector, rather than by the idea of fundamentally improving and strengthening the foundations of public law in Lithuania. In the explanatory note of the Law on Public Service there are a numerous modern and unclear terms, for example, "to transform the ecosystem of the public sector – services, institutions, processes, and people".[14] To the ears of a lawyer, the reasons for such a reform sound unclear, complicated, and unfounded. According to the explanatory note, the civil service is planned to be improved in six directions: centralized management of the public service leadership corps; development of competencies of public servants; modern and unified human resources management processes; strategic analysis and performance evaluation; increasing wage competitiveness; management of public service.

[13] Law on the Amendment of Article 2 of the Law on Public Service of the Republic of Lithuania No XIII-2898. *Official Gazette*, 2020, No 12821.

[14] Explanatory Note to the Draft Law on Public Service No VIII-1316. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/1cc1a751640911edad44ca0eeb008140?positionInSearchResults=23&searchModelUUID=92ed98c9-5767-42b8-8a2c-396d00418321>. Accessed: 8th of October, 2023.

One of the prominent features of public service, retained from 19th century, is that the amount of salary is influenced by the length of the service. The reform proposes to abolish this criterion. It was decided to refuse the seniority supplement paid to all public servants, including heads of public service institutions. This was decided because, according to the organizers of the reform, the bonus paid for the seniority becomes a redundant part of the wage that is not linked to performance results (however, in the end, the seniority criterion will remain in the new law coming into force). Hence, one of the purposes of the reform is to solve the wage competitiveness problem and to create results-oriented public service. In a new edition of the Law on Public Service the concept of public service no longer exists. However, its essence can be seen in the concept of a public servant. And it is very similar to the amendment in the concept of public service carried out in 2020. A public servant is a person holding a position in a state or municipal institution and performing public administration functions or ensuring the functioning of diplomatic service institutions or trade missions abroad, or helping persons exercising state or local authority to perform the functions assigned to them, with the exception of internal administration functions, as defined in the Law on Public Administration. It is evident that internal administration no longer belongs to the concept of public administration. The authors of the reform of public service think that "the internal administration (general) functions of a public administration entity do not have special features that would distinguish these functions from analogous functions performed in other legal forms, both public and private legal entities that do not have public administration powers, therefore, there is no objectively justified need to impose special requirements on personnel performing these functions".[15] However, internal administration ensures the independent functioning of a public administration entity with the status of a public legal entity so that it can perform public administration. In addition, public administration means making decisions that affect us. Thus, those who supposed to ensure independent functioning of public administration are no longer public servants. Therefore, these public servants will lose their special status. Their status will be stipulated by the provisions of the Labor Code.

[15] *Ibid.*

There is no clarity because the authors of the reform think that there must be certain rivalry between public and private sector. Why those who perform internal administration in public administration sector must compete with those who perform internal administration in the private sector? The authors of the reform write: "Such differences in the status of personnel performing analogous functions do not create conditions for fair competition between the public and non-public sectors, which could lead to a better quality of performance of internal administration (general) functions."[16] Why are the reform makers so sure that the example of the private sector is to be followed? After all, the aspirations of the private sector are completely different. Their main goal is the protection of private interest. And the main goal of public administration bodies is to protect public interest. Is it true that a person who has lost that special legal connection with the state, which helps to better understand his/ her importance and status, will better defend the public interest? Is the private sector functioning mechanism suitable for public sector functioning? Does the private sector at least know what the principles of good administration are? Does the private sector know what the legality is? The author of the article strongly doubts it. In the private sector, there is generally little protection, not only of the public interest, but also of human status. There is no understanding of what legality, good administration, impartiality, objectivity is. It should be the other way around: the principles of the public sector must be transferred to the private sector. But lately, things have been going the other way around. The author of the article discerns threat to the rule of law in such a new legal regulation.

A new Law on Public Service will enter into force on January 1, 2024.[17]

Conclusion

In Lithuania, the public service model is being changed for no good reason to adapt the private sector's functioning mechanism to it. The number of persons with public servant status working in public administration entities is being reduced. The classic European career public service model is gradually being abandoned. The main features of

[16] *Ibid.*

[17] New Edition of the Law on Public Service of the Republic of Lithuania. No XIV-1985. *Official Gazette*, 2023, No 11556.

public service are more and more negated. The reform makers think that public service must be result-oriented. But can those results be calculated so easily? In the private sector, it is very simple: how much you sold, how much you produced, what income you received. And what are those results in public administration? How many legal acts have you adopted, how many changes in the legal acts have you proposed? It means that from now on, the public service in Lithuania will not be engaged in the real defense of public interest but will put ticks and count how many legal acts it has adopted. The scope of Lithuania's public administration is already narrow: the functional spectrum of public administration does not include the provision of public services. Accordingly, persons working in public schools, universities, hospitals, clinics, or libraries are not public servants, but employees subject to the provisions of the Labor Code. However, from now on, there will be even fewer public servants, because the internal administration of the public administration entity will not be performed by public servants, but by employees who are subject to the provisions of the Labor Code. Thus, the persons who must ensure the consistent and smooth functioning of the public administration entity will no longer have the status of public servants.

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Obsah

Princíp rešpektovania ľudských práv a základných slobôd v činnosti stavovských a profesijných organizácií.....6

Soňa Košičiarová

ADR as a function of energy regulators in the selected EU member states and Ukraine.....16

Yuliia Vashchenko

Plnohodnotné správne súdnictvo ako garant zákonnosti verejnej správy 26

Juraj Vačok

Srávna žaloba a ochrana verejných subjektívnych práv 34

Róbert Jakubáč

Powers of constitutional courts in Central Europe, with special regard to the adjudication concerning the functioning of the state and election disputes 43

Zoltán J. Tóth

Proportionality in Romanian administrative law: a State and tendencies 54

Violeta Stratan

The reform of public service in Lithuania 63

Ieva Deviatnikovaité

Povinnosť správneho orgánu viesť konanie v jazyku, ktorému účastník konania rozumie v praxi 71

Mária Srebalová

Záruky principiálnosti a modernizace vereřejné správy 83

Jozef Staša

Nástroje kontroly akademické samosprávy při uskutečňování vzdělávací činnosti 93

Jana Jurníková

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