

Features of Legal Regulation of Labor Relations in Civil Service

Oruj Jamil oglu Mammadov¹

Abstract

The purpose of the research is to analyze the legal regulation of labor relations in the civil service system, to identify the features that characterize civil service as a special type of professional labor activity, and to study the experience of the Republic of Azerbaijan and some foreign countries in this field. In the course of the research, theoretical-conceptual perspectives and legal acts regarding the legal regulation of labor relations in civil service are reviewed, civil service is characterized as a special type of professional labor activity, and civil service is analyzed as one of the opportunities of exercising citizens' constitutional right to work. The results of the research indicate that the foundation of the professional activities of civil servants is labor legal relations. The labor-legal character of the activities of civil servants directly stems from the content of civil service. Labor legal relations exist within the civil service system, and the labor-legal subjectivity of civil servants is inevitable. It is considered impossible to implement civil service without labor legal relations. The foundation of civil service relations is labor legal relations. Civil service acts as a component of labor legal relations.

Keywords: labor law, constitutional law, civil service, civil servant, labor law relations

Introduction

The state-building process in the modern Republic of Azerbaijan develops within national characteristics and is based on tested international experience. The Azerbaijani model of development is based on a constitutional reform model. The foundation of the constitutional reform model was laid by the national leader Heydar Aliyev. This model is successfully continued and developed by the President of the Republic of Azerbaijan Ilham Aliyev. Systematic improvement of civil service occupies one of the central places in the modern public policy successfully implemented by the President of the Republic of Azerbaijan Ilham Aliyev. The "Strategy for the Development of Civil Service in the Republic of Azerbaijan for 2019-2025" approved by the Decree of the President of the Republic of Azerbaijan (November 23, 2018) is of great significance (Strategy for the Development of Civil Service in the Republic of Azerbaijan for 2019-2025,

¹Associate professor, Azerbaijan State University of Economics (UNEC), Baku, Azerbaijan.
oruc_mammadov@mail.ru, Orcid: <https://orcid.org/0000-0002-3743-3024>

2018). The aim of adopting the strategy is to “improve governance in the civil service system, develop the human resource potential of state bodies, and increase the efficiency of state bodies by forming a corps of civil servants distinguished by high moral and ethical values, knowledge, skills, and positive personal qualities” (Strategy for the Development of Civil Service in the Republic of Azerbaijan for 2019-2025, 2018). The elements of the strategy’s objectives are directly labor-legal. This factor confirms the legitimacy of labor legal relations in civil service.

The legal activity of civil servants in Azerbaijan has constantly been in the focus of the country's leadership. President of the Republic of Azerbaijan Ilham Aliyev considers that: in our country at a time of dynamic development processes, perspective implementation of socio-economic development programs in all spheres of life in our country, completely new and modern requirements are set for civil servants. By setting an example of high professionalism, competence, morality and ethics, they must respect the authorities with their decisions and actions, and instill in citizens the goals and objectives of public policy. In their activities, civil servants must be guided by the principles of the rule of law, loyalty to duty, humanism, social justice, and reconcile the interests of citizens and the state (Aliyev 2014, p.77).

Civil service occupies an important place in the public administration system of the Republic of Azerbaijan and foreign countries. Civil service acts as a complex field of science (Ivanovsky, 1896; Eichelman, 1890; Gradovsky, 1907; Korkunov, 1909; Thomas et al., 2022; Galnoor & Oser, 2015; Dunleavy, 2018). At the same time, civil service as a legal category attracts considerable attention. Civil service has entered scientific circulation as a legal institution. As a type of professional activity, civil service has a labor-legal character. (Rzayev, 2011a; 2012b; Rahimov, 2018; Mammadov, 2018a; 2019b; 2023c; Moldabekov et al., 2023; Atamanchuk, 2008; Bartsits & Boshno, 2007; Channov & Presnyakov, 2019; Ershova, 2008; Starilov, 1996a; 2015b; Chikanova, 2005).

The norms related to labor relations of civil servants are reflected in the International Labour Organization’s Convention № 151 on “Labour Relations (Public Service)” (June 27, 1978) (Labour Relations (Public Service) Convention, 1978).

The modern civil service legal institution has several problems that require scientific analysis. One of these problems is the legal regulation of labor relations in civil service. One of the main subjects of civil service is civil servants. Both classical and modern approaches to the legal regulation of labor relations of civil servants are of scientific interest. Based on the current scientific views and normative provisions, it is possible to express the modern model of legal regulation of labor relations in civil service (Mammadov, 2019b, pp. 77-90). The

issue of the legal regulation of labor relations in civil service is particularly relevant in the modern era and holds significant practical importance. This reflects the relevance of the selected topic.

The issue of the legal regulation of labor relations in civil service has been studied to some extent in Azerbaijan and foreign countries. However, comprehensive scientific analyses have not been conducted, and its modern model has not been fully established. This fact highlights the relevance of the chosen topic for civil service law, the necessity of its comparative-legal analysis, scientific novelty, and practical significance (Mammadov, 2019b, pp. 77-90).

The purpose of the research is to analyze the conceptual and normative provisions regarding the characteristics of the legal regulation of labor relations in civil service. To achieve this goal, the research has set the following tasks: regarding the legal regulation of labor relations in civil service: to summarize conceptual views; to determine the legislative framework; to analyze international practices; to conduct comparative-legal analyses; to distinguish the components of the legal regulation of labor relations of civil servants; to express considerations regarding the formation of its modern model.

Literature review

During the research, references were made to international and national legislation on civil service, the legal components of labor relations in civil service, and the works of foreign and local researchers in the field of civil service. During the research, greater preference was given to modern and classical works and scientific studies published in reputable sources. (Rzayev, 2011a; 2012b; Rahimov, 2018; Mammadov, 2018a; 2019b; 2023c; Moldabekov et al., 2023; Ivanovsky, 1896; Eichelman, 1890; Gradovsky, 1907; Korkunov, 1909). During the research, confirmed studies were relied upon, considering the relevance of the sources, and the status of the publications and authors.

The legal relations of civil service have been studied by many authors. A.H. Rzayev (2012b) has examined the constitutional legal issues of civil service in the Republic of Azerbaijan, while foreign authors such as Thomas et al. (2022), Galnoor & Oser (2015), Dunleavy (2018), Moldabekov et al. (2023), Atamanchuk (2008), Barcits & Boshno (2007), Channov & Presnyakov (2019), Ershova (2008), Starilov (1996a; 2015b), and Chikanova (2005), and others have investigated various problems of civil service.

A.H. Rzayev rightly notes that in the study of civil service issues, the essence of manifestations such as “State”, “State Power”, “Government institutions”, and “Public Administration”, which form the primary methodological basis and characterize its important state-legal institutions, as well

as the interactions and impacts of civil service with these manifestations are investigated using various methods. (Rzayev, 2011, p. 19). V.V. Ivanovski characterized civil service as a “unilateral public obligation relationship created by a free contract for the implementation of its will by special individuals representing supreme authority” (Ivanovsky, 1896, p. 121). According to O.O. Eichelman, civil service is an activity in which an individual, by their consent and appointed by state authority, holds a permanent position in public administration institutions, either within or outside the official staff, with certain duties and responsibilities, receiving a salary, and acquiring ranks, distinctions, and pensions with equal rights. (Eichelman, 1890, p. 76). A.D. Gradovski believes that under the term civil service, we understand the legal relationship that arises as a result of an individual’s appointment to a specific state position. (Gradovsky, 1907, p. 47). N.M. Korkunov characterizes civil service as “a special public-legal relationship between the state and the servant, based on compulsory activity and subordination, performed on behalf of the state and directed towards the implementation of a specific state function, with its content” (Korkunov, 1909, pp. 400-401).

In the scientific literature, reflections on the essence of the concepts of employment contract and contract within the system of legal relations in civil service have been expressed. A.A. Grishkovets indicates in his scientific works that, in practical experience, no differences are observed between an employment contract and a service contract. (Grishkovets, 2002a, p. 20; 2004b, p. 35). L.A. Chikanova has extensively analyzed the role of the employment contract in determining the content of the service contract and service-employment legal relations. (Chikanova, 2005, pp. 182-205). The views of A.A. Grishkovets and L.A. Chikanova on the essence of the concepts of employment contract and service contract in civil service are almost identical. Despite this alignment, researchers have expressed opposing provisions. During his research, A.A. Grishkovets has extensively analyzed the characteristics specific to the labor legal institution within the system of civil service relations. A. Grishkovets believes that it is necessary to abandon the regulation of civil service relations radically through labor law and shift to the imperative regulatory methods characteristic of administrative law (Grishkovets, 2004b). This proposal cannot be agreed upon. Practically, it is impossible to implement or even conceive of civil service without labor law. According to S.V. Kachushkin, the application of this principle as a fundamental principle for civil service relations is highly controversial. ... this principle is applied during the mutual relations of special rights of citizens and juridical people with state bodies and officials with judicial powers (Kachushkin, 2011, p. 56). T.V. Ivankina believes that, in reality, the state does not engage in specific relations with civil servants. It realizes its legal subjectivity through a

system of state bodies that perform state administration functions. State bodies, in turn, exercise their administrative-legal and labor-legal subjectivity by possessing specific authorities, and the labor-legal subjectivity of a state body is realized through the conclusion of employment contracts (service contracts) by the management of the relevant state body. (Ivankina, 2008, pp. 277-284).

A.M. Gasimov writes: labor legal relations and other closely related legal relations are the result of the impact of labor law norms on the relationships of subjects in the field of labor application. As a result of the influence of labor law norms, social relations arising during labor application take on a legal form and become legal relations (Gasimov, 2016, p. 173). These scientific provisions are of great practical importance to civil service and civil servants.

As a legal category, civil service, in terms of content and essence, primarily operates in constitutional, administrative, and labor law aspects. Additionally, since civil service constitutes the basis of public administration, it has been studied as part of administrative law, and this approach continues in the modern era. In our opinion, it is not possible to completely remove civil service from the scope of administrative law. At the same time, as an independent legal category, the civil service functions in interaction with constitutional, administrative, labor, and social rights.

Methodology

Civil service is included in the research subject of various scientific fields. Law plays a crucial role in the system of factors that determine civil service. In other words, the law constitutes the basis of civil service. As a legal category, civil service encompasses various branches of law. Therefore, in scientific and normative sources, civil service is characterized as a complex legal institution. Additionally, it should be noted that civil service is a specific type of professional labor activity. In the system of legal norms regulating the activities of civil servants, civil service and labor law are particularly distinguished.

The methodology applied in the research has been based on scientific abstraction and employs a comparative analysis method to model the legal regulation of labor relations within the civil service system, considering the Azerbaijani experience. The basis of the research consists of theoretical provisions, legal norms, and labor law elements of the legal status of civil servants that condition the legal regulation of labor relations in the civil service system. The analyses have provided the opportunity to study the international experience of legal regulation of labor relations, the characteristics of labor relations in civil service, the current situation, and the national model. This method has identified the positive aspects of international experience in the legal regulation of labor

relations in civil service and has evolved into a comparative-legal analysis method.

Thus, specialists analyzing civil service as a legal institution have repeatedly attempted to define the concept of civil service. In the content of these concepts, the labor-legal nature of civil service is expressed in one aspect or another.

Results and discussion

The main part of civil service activity consists of labor activity. As a special type of professional activity, civil service is included in the system of public relations of a labor-legal nature. Civil service forms an interrelated unity with various branches of law. In our opinion, one of the main branches of law that enshrines the norms related to civil service is constitutional law, and the other is labor law.

Until modern times, a unified approach to the legal regulation of labor relations in civil service has not been formed. Additionally, it should be noted that in scientific discussions regarding civil service, the activities of civil servants are characterized as a labor law category. In our opinion, in the context of scientific views on civil service, it is possible to form a modern concept of the legal regulation of labor relations in civil service (Mammadov, 2019b, pp. 77-90).

The implementation of civil service is not possible without the human factor. Civil service, as a special type of professional labor activity, is carried out by a citizen with the status of a civil servant. Consequently, civil service mainly constitutes the subject of constitutional law, administrative law, labor law, and social rights and is carried out within the framework of labor relations of civil servants (Mammadov, 2019b, pp. 77-90). This can be clearly seen from both the scientific and legally defined concepts of civil service. The labor law nature of the professional activity of civil servants directly stems from the content of civil service. This means that the existence of labor relations in civil service and the labor law subjectivity of civil servants is essential. It is impossible to carry out civil service without labor law relations.

The next stages in the development of the civil service were diffused, but a few milestones can be presented, all of them related to the attempt to create an institutional instrument with acquired experience in running state affairs. The dissimilar features should also be noted as each civil service is also a product of its particular environment, and the human composition of each of them reflects recurring attempts of social groups to enter the ruling elites of their respective states (Galnoor & Oser, 2015, p.696).

The main legal document that confirms civil service as part of labor relations is the International Labour Organization's Convention № 151, "Labour Relations (Public Service) Convention". The inclusion of this Convention in the national legislative system is of great importance. Based on the norms established in the "Labour Relations (Public Service) Convention," the following can be expressed:

- Civil service is accepted as part of labor relations;
- State bodies act as employers;
- The international labor legal status of civil servants is determined;
- Civil servants are characterized as a special category of employees with a unique status;
- Civil servants are officially recognized at the international level as special subjects of labor law;
- It has a positive impact on the development of national legislation on civil service.

In our opinion, the work of the bearers of state power is determined by professionalism, responsibility for the task assigned to them, and requirements determined by the features of public administration (for example, administration in the field of military service).

Based on the Russian experience, I.N. Bartsits writes: According to the legislation of the Russian Federation, the professional service activity of an employee of one type of civil service can encompass the function of another type of civil service. The superiority of one type of civil service function over others is the basis for determining which type of civil service a particular civil servant belongs to (Bartsits, 2011b, p. 276).

Based on the scientific and normative definitions of civil service, its three main features as a legal institution can be indicated:

The first main feature is professionalism. The characteristic features of professional activity are expressed in civil service. The concept of civil service as a professional activity is determined by normative provisions, including the legal status of the civil servant, the requirements imposed on them, professionalism, salary, working hours, rest time, etc. These provisions pertain to labor legislation.

The second main feature is related to the content of civil service activity. The content of their activities is determined to ensure the execution of the authorities of state bodies. The constitution divides state authority, and specific powers are granted to each state authority.

The third main feature pertains to the implementation of civil service within state authority and administrative bodies. The goals and functions of the state, as defined by the constitution and laws, are carried out through civil servants. Civil

servants engage in professional civil service activities within their powers. In other words, a citizen exercises the right to work in the status of a civil servant within a state body (Mammadov, 2019b, pp. 77-90).

Article 35 of the Constitution of the Republic of Azerbaijan is titled “Right to Work”. According to this article: “Labor is the foundation of individual and public welfare. Everyone has the right to freely choose activity, profession, occupation, and place of work, based on his/her abilities. Nobody may be forced to work. Employment contracts shall be concluded voluntarily. Nobody may be forced to conclude an employment contract. ...” (Constitution of the Republic of Azerbaijan, 2024).

The Constitution of the Republic of Azerbaijan establishes the labor-law character of civil service and the constitutional elements of labor relations for civil servants. Article 55 of the Constitution of the Republic of Azerbaijan is titled “Right to Participate in Administration of the State”. It states: “Citizens of the Republic of Azerbaijan have the right to freely participate in administration of the state. They may exercise this right directly or through their representatives. Citizens of the Republic of Azerbaijan have the right to serve in state bodies. Officials of state bodies are appointed from among citizens of the Republic of Azerbaijan. Foreign citizens and stateless persons may be accepted into the public service in accordance with the procedure prescribed by law. (Constitution of the Republic of Azerbaijan, 2024).

Several provisions of the Constitution of the Republic of Azerbaijan establish the fundamental principles of civil service, the basics of civil service legislation, including the legal status of civil servants. Article 1 of the Law of the Republic of Azerbaijan on Civil Service defines the following concepts related to “civil service”, “special type of civil service”, and “civil servant” (Law of the Republic of Azerbaijan on Civil Service, 2000):

“Civil service” refers to service in a public service position in the field of implementation of the purposes and functions of the state following the Constitution of the Republic of Azerbaijan and other normative legal acts (Article 1.1.1.). The content of the concepts established in Article 1 of the Law of the Republic of Azerbaijan on Civil Service clearly reveals the labor-law elements of civil service. It is rightly stated that a civil servant is an employee of a state body. In other words, civil service is legally presented as a special type of labor relation.

The main characteristics of civil service in some countries are of scientific and practical interest. Thus, it is necessary to create a general understanding of civil service by examining the examples of countries such as Great Britain, Germany, France, and the USA. Therefore, when discussing developed civil service, reference is typically made to the practices of these countries.

Civil servants are servants of the Crown. For all practical purposes the Crown in this context means and is represented by the Government of the Day. The civil service as such has no constitutional personality or responsibility separate from the duly constituted government of the day (Thomas et al., 2022, p.11). The UK civil service model has a long tradition of being very politically controllable and accountable. Its culture is generalist and non-partisan, able to work with governments of different partisanship and to tackle new issues with some competence. Departmental viewpoints are strongly held in Whitehall, but less so than in many other liberal democratic countries thanks to cross-departmental movements of personnel over their careers (Dunleavy, 2018, p.227).

In Great Britain, the role of civil service involves assisting the government in shaping overall state policy and implementing it in practice, meaning carrying out political decisions and providing public services to the population. Civil servants are viewed as “Servant of the Throne”. Civil servants are in service (“as long as it is needed by the Throne”). An “open structure” in the senior echelons of civil service allows individuals, regardless of their education, specialization, or work experience, to be appointed to high positions. In our opinion, this model can be considered excellent.

In Germany, civil service has developed over several centuries. In this country, the understanding of public service has evolved from “prince’s servant” to “public servant” during the monarchy era. The duty of a public servant is not to an individual but to the state, involving loyalty and obedience. Professional civil service is enshrined in the constitution of Germany. Traditional principles related to the legal status of civil servants include lifetime appointment, duty of loyalty to duty, party-political neutrality, service hierarchy, and others. Representatives from all federal territories are proportionally represented in the highest administrative bodies in Germany. Civil servants are given appropriate ranks.

In France, civil servants are also given ranks. A rank grants its holder the right to hold certain positions. There is a principle of participation in self-management and in determining labor conditions. This is carried out within the framework of collegial advisory bodies established on a parity basis with the participation of civil servants.

In the United States, part of the system for appointing civil servants includes the “spoils system” principle. This means that government positions are distributed to representatives of the winning party. Personnel management is organized according to the “merit system”. The organization of federal civil service is based on two categories: “competitive” and “patronage” categories. The “competitive” category of civil servants serves according to the merit system. The “patronage” category includes positions held by individuals who assist in the

organization of the work of the President or heads of federal executive agencies (advisors, secretaries, etc.). There are restrictions on the number of high-ranking officials who may enter office without having five years of continuous civil service experience (no more than 30%). Each agency (organization) develops its special hiring program. This program should provide opportunities for both individuals currently in civil service and those not in civil service to obtain positions. Each administrative institution (agency) has its special system for evaluating civil servants. A council made up of representatives from various political parties addresses issues related to the merit system (Rzayev, 2011a, pp.451-456).

There are bodies that regulate public service matters and resolve disputes between public servants and heads of state bodies in all of those countries.

Civil service in developed countries has evolved through long-standing traditions and under the influence of developed state and civil society institutions. In developing countries, however, civil service practices and civil society institutions of modern democratic states are not yet fully established. An analysis of the main approaches to the reform of legal regulation in civil service leads to the conclusion that all of them accept the general legal essence of modern civil service and see the purpose of civil service activity in serving society and the state. Additionally, some researchers refer to the experiences of countries like the USA and Great Britain and consider the application of “managerial model” elements in the legal regulation of civil service to be necessary. Others, however, consider the regulation of civil service in countries like Germany and France to be successful and propose establishing a “lifetime” status for civil servants (Thomas et al., 2022).

Conclusion

The foundation of civil service legal relations is labor activity. Civil service is a special type of professional labor activity. Civil service is part of a system of public relations with a labor-law character. Civil service is interconnected with various branches of law. Civil service has formed as a complex legal institution. The two main areas of law that contain norms on civil service attract more attention. One of them is constitutional law, and the other is labor law. The key legal document that confirms civil service as a component of labor relations is the International Labour Organization’s Convention № 151 on “Labour Relations (Public Service)”.

The foundation of civil servants’ legal status is based on constitutional norms. Some of these norms encompass the possibilities for the realization of constitutional labor law for civil servants. Scientific and theoretical perspectives

on civil service and the legal status of civil servants, including classical and modern concepts, methodological approaches, and legal norms, serve as the basis for the formation of a contemporary concept for the legal regulation of labor relations in civil service. Up to the modern era, a unified approach to the legal regulation of labor relations in civil service has not been established. In scientific discussions about civil service, the activities of civil servants are often characterized as a labor law category.

In the content of various concepts of civil service, the labor-law character of civil service is expressed in one aspect or another. The content of labor relations in civil service is determined by professionalism, the duties assigned to them, the responsibilities arising from these duties, and the characteristics of state administration. This approach reflects the key components of labor relations in civil service and the characteristics of the legal status of civil servants. The labor-law character of the professional activities of civil servants directly stems from the content of civil service. The existence of labor relations in civil service and the labor-law subjectivity of civil servants are essential. It is considered impossible to carry out civil service without labor-law relations.

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