

Artyukhov V. S., Kositsin I. A.

## THE SAFEGUARDS OF ENSURING EQUAL ACCESS OF CITIZENS TO THE FILLING OF JUNIOR POSTS IN PUBLIC SERVICE

*Artyukhov Vladimir*

*Semenovich*

*Member of the qualification  
commission of Lawyer Chamber  
of Omsk region;*

*Kositsin Igor'*

*Alekseevich,*

*c.j.s. (PhD in law), Associate  
professor, Associate professor of  
the Chair of constitutional and  
administrative and financial law  
at Omsk Law Academy, Omsk,  
Ikosicin@yandex.ru*

Some of the problematic aspects of exercising the constitutional right of Russian citizens to equal access to public service are considered in the article. The authors analyze the situations precluding for applicants an equal opportunity in the filling of junior posts in civil service.

**Keywords:** public civil service, public civil service posts, junior public civil service posts, filling of a post in civil service.

Article 32 of the Constitution of the Russian Federation [1] establishes the right of citizens of the Russian Federation to participate in the management of state affairs and the right to equal access to public service.

Federal Law of the RF No. 79-FL from July 27, 2004 "On the Public Civil Service of the Russian Federation" [2] (hereinafter - Federal Law "On the Public Civil Service of the Russian Federation") in general normatively regulates fundamental issues related to entering and passage of the public civil service in the Russian Federation.

However, there is a lack of adequate attention and normative regulation of some problem situations that question the right of a Russian citizen to have equal access to the filling of certain groups of posts in the public service.

Article 22 of the Federal Law “On the Public Civil Service of the Russian Federation” concretizes the right of citizens to equal access through the indication that “the entering of a citizen to the civil service to fill a post of civil service is carried out on the basis of a competition, unless otherwise is provided in this article”.

Thus, the competition for the filling of a vacant post of public service is the primary means of ensuring such right for citizens.

It is the decision of the competition commission determines the appointment to a certain post of public service or refusal of such appointment.

But how should the right of citizens to equal access to public service be ensured in “the other” cases?

According to article 4 of the Federal Law “On the Public Civil Service of the Russian Federation”, the public service in the Russian Federation is based on a principle of equal access for the citizens in accordance with their professional abilities.

The text of the Decree of the President of the Russian Federation No. 112 from February 1, 2005 [3] and the Provision on the filling of a vacant position of the public civil service of the Russian Federation, which is approved by the Decree, also explicitly emphasizes that “the contest for the filling of a vacant position of the civil service provides the constitutional right of citizens of the Russian Federation to equal access to public service”.

In our view, it follows that in all “other” cases, i.e. when the contest may not be carried out, there must be also provided legal and other guarantees of ensuring the constitutionally declared right of citizens on equal access to public service. Moreover, the priority of the rights and freedoms of man and citizen is an undeniable constitutional principle.

However, the practical implementation of these fundamental rules for the so called “other” cases of filling civil service posts is not provided with appropriate guarantees, and may lead to violations of citizens’ rights to equal access to public service.

An example is the lack of clarity in the regulation of issues relating to the filling of vacancies and formation of personnel reserves for the junior group of posts in the civil service.

Legislation stipulates that all the posts of public civil service are classified into five groups: top, main, leading, senior and junior. Posts of the junior group of

posts in the civil service belong to the category “ensuring specialists”. Part 4 article 22 of the Federal Law “On the Public Civil Service of the Russian Federation” establishes that under the decision of employer’s representative the contest may not be carried out in case of appointment to civil service posts that relate to the junior group of posts in the civil service. By the decision of the Constitutional Court of the Russian Federation No. 2-P from 03.02.2009 [4] this norm of the law is recognized complying with the Constitution of the Russian Federation.

It seems that the provision of the Federal Law and the position of the Constitutional Court yet do not entirely conform with the Constitution of the Russian Federation, because they express unfair attitude to those Russian citizens, who have the desire to do public service, but under the subjective discretion of the so-called “representatives of employers” may be deprived of this possibility.

The problem is that when there are vacancies in the junior group of post in the civil service, the right to declare or not declare contests on their filling without any reservations belongs only to the representatives of employer – the heads of state bodies.

However, there are not any legal mechanisms to guarantee the avoidance of prejudice, partiality and even abuse this right in making the final decision.

Thus, the principle of equal access to public service enshrined in the Federal Law “On the Public Civil Service of the Russian Federation” becomes a mere formality.

In practice, these decisions are not always documented in legal acts. Announcements about each vacant post are not made, what allows the representative of employer to appoint on a vacant junior post of public service any person in its sole discretion.

In our opinion, it is not acceptable to allow the possibility of taking managerial decisions in the formation of public service personnel just on the basis of subjective interest of one official.

The significance of the raised problem is not overblown.

The mentioned legal “outgoings” can be attributed to the so-called corruption factors that allow “representatives of employers” to act at their discretion. At that, the “mindset” of the representatives of employers is not adjusted. Thus, there still remains one more legislatively enshrined loophole for potential corrupt officials.

Particularly, we must bear in mind that the true employer to the public civil service by law is, first of all, the State represented by the Russian Federation or its constituent entities.

However, the right of the choice “carry out or not carry out the contest for the vacant junior post in civil service” belongs not to the employer, but to its representative, what is not the same.

Representatives of the employer – the heads of many public authorities in the constituent entities of the Russian Federation are public servants, which also concluded service contracts with other officials that act on their own behalf, and not on behalf of a corresponding constituent entity of the Russian Federation. A similar situation exists at the federal level in relation to the representatives of employer of federal territorial bodies of executive power. All of this shows the mediated nature of such representation.

We believe that the announcement of carrying out or not carrying out of contests for the vacant junior civil service posts should be made mandatory, thus, it will guarantee the realization of the right of citizens to equal access to public service.

The duty of obligatory informing of the population about the availability of vacant positions relating to junior group, even if the representatives of employers have taken preliminary decisions about not holding the contests, should be reflected in part 4 article 22 of the Federal Law “On the Public Civil Service of the Russian Federation”.

A decision of the representative of employer about not holding the contest should be taken only in exceptional cases and must be confirmed by the legal act of the public authority specifically adopted on each such case, what should also be enshrined in part 4 article 22 of the mentioned Federal Law.

The legal act must mandatory reflect the reason for impossibility of the contest, at that, the exclusiveness of such reasons should be obvious.

Of course, the proposed procedure does not solve the whole problem, but there is a sufficient guarantee of citizens’ right to equal access to public service in case of its normative consolidation.

Unfortunately, there is still no a legislative guarantee of equal entering the public service through the inclusion of citizens in personnel reserve for the filling of junior group posts.

According to part 1 article 64 of the mentioned Federal Law a personnel reserve for filling civil service posts is formed only on a competitive basis, with taking into account a written application by a citizen.

In accordance with part 1 article 22 of the Federal Law “On the Public Civil Service of the Russian Federation”, competition is an assessment of the professional level of candidates for filling of a certain civil service post, their conformity to the qualification requirements of the post.

It is obvious that the competition involves the assessment of conformity of a candidate to the requirements for a certain post in civil service. By virtue of this, the formation of personnel reserve for the junior group posts also requires announcement of the contest in generally established and mandatory procedure.

The very way of the official announcement about the formation of personnel reserve for the junior group posts will indicate its public nature and the fact that it is addressed to everyone who meets the professional requirements to mentioned public civil service posts.

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