

LEGAL ISSUES AND ASPECTS RELATED TO THE HUMAN RESOURCES MANAGEMENT REGARDING THE SELECTION OF CIVIL SERVANTS

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ABSTRACT: *Public administration selects its servants exclusively on competence criteria (the so-called merit system). The selection of civil servants is performed by contest, organized within the limit of vacant public positions provided annually for this purpose, by the plan for occupation of public positions. As a general rule, the contest is organized on a quarterly basis. Any individual who meets the general conditions provided by law and the specific conditions established by law for occupying a certain public position may participate at the selection contest organized for the occupation of a public position. Among other aspects, in this study we underline an inconsistency regarding the recruitment defined in the field of Human Resources Management and its definition from The Statute of the Civil Servants.*

KEY WORDS: *civil servant's career; public interest; recruitment; personnel selection.*

JEL CLASSIFICATION: *O15; H83.*

An important aspect in the field of the civil servant's career is „**the recruitment of civil servants**”. Currently, it is generally accepted the theory pursuant to which they have to be selected exclusively on competence criteria (the so-called merit system). All countries with a stable democracy, as well as those in transition have tried to solve this problem by developing legislation to regulate this aspect. However, experts are unanimous in recognizing that even in countries with advanced democracies (the United States and Great Britain, for example), there are ways to circumvent the legal provisions, without becoming a general phenomenon (in fact, this practical possibility of circumventing the provisions of the merit system is one of the most important reproaches against it).

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In order to create a body of civil servants with a solid and recognized professional competence, in practice was used the system for selecting public servants through contest, or by selecting from among several candidates for the same position, of the candidate who proves to have the skills and highest professional competence.

“The Statute of the Civil Servants provides that the occupation of vacant public positions shall be performed solely by advancement, transfer, redistribution, recruitment, and other ways provided by law” (Preda, 2006, p.89).

Article 57 of the Civil Servants’ Statute stipulates that *the recruitment in view of entering the body of civil servants is performed through contest, organized within the limit of the number of vacant public positions provided annually for this purpose in the plan for occupation of public positions*”, elaborated by the National Agency of Civil Servants.

With respect to this provision we feel bound to bring some clarifications in the field of Human Resources Management.

Although the Civil Servants’ Statute addresses the recruiting of civil servants by contest, we believe that the term of recruitment is not consistent with the components of the Human Resources Management activities.

Thus, in the field of Human Resources Management, **recruitment** means *the activity of identifying individuals who possess the necessary characteristics for occupying the vacant positions and attracting them to the organization*. Recruitment can be performed from external sources, namely from the external environment of the organizational system or from internal sources, accordingly, an employee even within the organization, shall occupy a vacant position.

On the other hand, the **selection** is *the process of selecting the future employee of the organization*, based on specific criteria. This process is carried out immediately after recruitment, and based on the decision taken by the management of the organization, is followed by the employment.

We observe in the study of Human Resources Management component activities a clear distinction between recruitment and selection stages, which unfortunately is not as clear in the Civil Servants’ Statute. Therefore in our paper we refer to the selection of civil servants in respect to what the law provides as being the recruitment of civil servants, as we believe that this term superiorly meets the requirements of the scientific rigor.

Authorities or public institutions may organize or request the organization of contests, provided the public positions become vacant during the year and have not been envisaged as vacant public positions in the plan for occupation of public positions. Thus, the contest is organized after the advancement, transfer and redistribution of civil servants under the law. This method of civil servants’ recruitment is currently regulated by Government Decision no. 611 of 4th June, 2008 on the approval of the rules regarding the organization and development of civil servants’ career (published in the Official Gazette no.757 of 29th October, 2003).

Thus, the selection of civil servants is performed by contest, organized within the limit of vacant public positions provided annually for this purpose, by the plan for occupation of public positions. As a general rule, the contest is organized on a quarterly basis.

Any individual who meets the general conditions provided by law and the specific conditions established by law for occupying a certain public position may participate at the selection contest organized for the occupation of a public position (Iancu, 1999, pp.63-69).

The specific conditions for participation in the selection contest for occupying a vacant public position shall be established pursuant to the job description, as follows:

a) for the public positions for which the competence of organizing the contest belongs to the Agency, the specific conditions shall be approved by the Agency, at the request of the public authorities and institutions;

b) for the public positions for which the competence of organizing the contest belongs to the public authorities and institutions within the central public administration, the specific conditions shall be established by the public authorities or institutions of whose title lists comprise the vacant public position for which the contest shall be organized, with the approval of the Agency.

c) for the public positions for which the competence of organizing the contest belongs to the public authorities and institutions within the local public administration, the specific conditions shall be approved by the head of the public authority or institution of whose title list comprises the vacant public position for which the contest shall be organized, with the notification of the Agency.

At least 30 days before the date established for the written test, based on the approval or, where appropriate, with the proof of having notified the Agency, the public authority or institution organizing the contest shall ensure the publicity of the contest, under the law.

The contest notice shall be published by the organizing public authority or institution in the Official Gazette of Romania, Part III, and in a widely read daily newspaper, at least 30 days before the date of the written test.

At least 30 days before the date established for the written test, the public authority or institution shall post at its registered office the participation conditions and the conditions for the conduct of the contest, the bibliography, content and other information necessary for the organization of the contest.

The public authority or institution shall post these information on its website, if owns one, in the section specifically designed for this purpose. The information shall be kept in the place where it was posted until the completion of the contest. Supposing the public authorities or institution deem as necessary, they can ensure the publication of the notice through other forms of publicity.

The recruitment contest consists of 3 consecutive stages, as follows:

- a) selection of the application files to enter for the contest;
- b) written test;
- c) interview.

Only the candidates who passed the previous test may enter the following one.

The stages of the contest shall be assessed independently by each member of the Contest Commission, respectively each member of the Appeal Commission.

In order to participate in the contest, within 20 days from the date of the notice publication in the Official Gazette of Romania, Part III, candidates shall submit the contest application file, which shall contain mandatorily the followings: a) application

form provided in Annex No. 3 b) copy of the identity card c) copies of study diplomas and other documents certifying the graduation of some specializations d) copy of the employment record or, where applicable, a certificate attesting the accumulated service; e) criminal record f) certificate attesting proper health, issued at the most 6 months before the organization of the contest by the family doctor of the candidate or a certified sanitary unit; g) statutory declaration or a certificate attesting that the candidate did not conduct political police activities.

In order to organize and conduct contests for the selection of civil servants, at least 20 days before the contest, shall be created Contest Commissions, respectively Appeal Commissions, by administrative act of the head of the public authority or institution organizing the contest, under the present decision. The president of the Contest Commission and the president of the Appeal Commissions respectively, shall be nominated from within its members through the administrative act of establishing the commission (Preda, 2006, pp. 321-323).

Each Contest Commission, namely Appeal Commission shall have a nominated secretary. Ordinarily, the secretary of the Contest Commission and the secretary of the Appeal Commission are ensured by the civil servants within the Human Resources Department or by civil servants with responsibilities in this field, provided in the job description, within the public authority or institution organizing the contest.

For the contests organized for the purpose of occupying leadership public positions, the Contest Commission and the Appeal Commission shall consist of 5 members, nominated as follows:

a) 3 members shall be representatives of the public authority or institution of whose title list comprises the vacant public position for which the contest shall be organized or, where appropriate, shall be nominated from within then superior hierarchical public institution.

b) 2 members shall be representatives of the Agency.

For the contests organized for the purpose of occupying executive public positions, the Contest Commission and the Appeal Commission shall consist of 3 members, nominated as follows:

a) 2 members shall be representatives of the public authority or institution of whose title list comprises the vacant public position for which the contest shall be organized;

b) 1 member shall be a representative of the Agency.

At the request of the representative trade union organizations¹ of the civil servants, addressed to the public authority or institution organizing the contest, with the approval of the Agency, a member of the commission shall be nominated from among them.

For contests organized by public authorities and institutions of local public administrations and decentralized public authorities and institutions, the representative of the Agency may be nominated from within the Institution of the Prefect or County

¹ *The request of the representative trade union organization of civil servants shall be submitted no later than the last day for submitting the files by the candidates for occupying a vacant public position for which the contest shall be organized.*

Council from the county in which the public institution has its registered office and of whose title lists comprise the vacant public position for which the contest shall be organized. The nomination of the representatives of the Agency shall be performed with the approval of the public authority in which the civil servant conducts its activity.

Members of other public authorities or institutions may be nominated when the establishment of a Contest Commission and Appeal Commission public authority or institution can not be performed pursuant to the legal provisions, due to the small number of civil servants, at the request of the public authority or institution of whose title lists comprise the vacant public position for which the contest shall be organized.

Only definitive civil servants may be nominated as members of the Contest Commissions or Appeal Commissions. The civil servants to be nominated in the Contest Commissions and Appeal Commission must meet the following conditions simultaneously:

- a) shall have extensive knowledge in one of the fields of the public positions for which the contest is organized or general knowledge in public administration;
- b) shall have training and/or experience in one of the fields of the public positions for which the contest is organized, Human Resource Management or public administration;
- c) shall have a recognized probity;
- d) shall hold a public position at least in the same class with the vacant public position(s) for which the contest shall be organized;
- e) shall not comply with the cases of incompatibility or conflict of interest provided by law.

In the case of contests organized for the purposes of occupying leadership public position, at least 2 of the members of the Contest Commission, the Appeal Commission respectively, shall be civil servants in leading positions.

If the commission tests specific skills or competencies in the information technology, foreign languages, national minority language or other specific competencies, at least one of its members shall have knowledge or experience in these fields. The Contest Commission or Appeal Commission may benefit from the advice of certain experts in that field. The civil servant who has been disciplined, and the penalty has not been withdrawn, may not be nominated as a member of the Contest Commission or Appeal Commission. The membership in the Contest Commission shall be incompatible with the membership in the Appeal Commission.

The civil servant to be nominated as a member to the Contest Commission or Appeal Commission shall not fall under the conflicts of interest cases enlisted below:

- a) has patrimonial relations with any of the candidates or its property interests or the property interests of its spouse may affect the impartiality and objectivity of the assessment;
- b) is the spouse, close relative or related until the IV grade including, with any of the candidates or with another member of the Contest Commission or Appeal Commission;
- c) is, or will be, in the situation of occupying a leadership public position for which the contest shall be organized, being directly hierarchical subordinated to any of the candidates.

The non-compliance with the conditions referring to the incompatibility of the members of the Contest Commission and Appeal Commission shall constitute misconduct and shall be punished by law.

Public authorities and institutions have the duty to ensure the training of the civil servants, which may become members in the Contest Commission and Appeal Commission, as well as of the persons with responsibilities in providing the secretariat of these commissions in fields specific to recruitment and personnel selection (Preda & Stecoza, 2000, pp. 63-73).

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