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Research Article

THE ADMINISTRATIVE-LEGAL NATURE OF THE SERVICE CONTRACT IN THE PROCESS OF CIVIL SERVICE EXECUTION

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Sardorjon Rakhmonov
Independent researcher of Tashkent State University of law, Uzbekistan

ABSTRACT

This article explores the intersection of labor and administrative law in the regulation of public service relationships, emphasizing the distinctions and overlaps between labor contracts and service contracts. The author highlights that while labor law has a private legal nature and is characterized by equality between parties, public service relations are rooted in administrative law, reflecting the subordination of public servants to the state and serving public interests.

The article examines the nature and features of service contracts, presenting them as administrative-legal instruments crucial for public service regulation. Scholars' differing perspectives on whether service contracts should be classified under labor or administrative law are discussed. The study also considers the legislative frameworks in Uzbekistan and other countries, suggesting reforms to align service contracts more closely with administrative law.

Additionally, the concept and characteristics of administrative contracts are analyzed, with comparative insights drawn from European legal systems. The author advocates for legislative amendments to recognize service contracts as a distinct category within administrative law, ensuring a more precise legal framework for public service regulation.

This work contributes to the scholarly debate on the legal regulation of civil service by providing a comprehensive analysis of service and administrative contracts, highlighting their significance in public administration.

KEYWORDS

Public service regulation, Administrative law, Public servant, Service contract, Civil service relations.

INTRODUCTION

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One of the most pressing issues in the legal regulation of the public service process is related to regulating this process within the domain of labor law or administrative law. It should be emphasized that the most intersecting point between administrative and labor law specifically pertains to civil service relations.

Several scholars (S.A. Ivanov, A.M. Kurennoi, S.P. Mavrin, E.V. Khokhlov, L.A. Chikanova) consider the relationship between a public servant and a state body to fall within the scope of labor law relations. Accordingly, they emphasize that such relations should be regulated by the norms of labor legislation, taking into account the specific features outlined in special laws on public service. G.S. Skachkova interprets contracts concluded with public servants as a type of labor contract with an administrative-legal character. In general, these contracts have two features: first, the individual enters into labor relations as an ordinary citizen when joining civil service, and second, after joining the civil service, they acquire administrative-legal relations by assuming the authority of the state body.

A representative of labor law, R.Z. Livshits, emphasizes that labor law is a field that branched out from civil law, while not denying that administrative law is one of the legal fields most closely related to labor law.

Other scholars (Yu.A. Starilov, A.A. Grishkovets, A.F. Nozdrachyov) consider the service contract to possess administrative-legal elements. This approach is based on the premise that public service is an integral system founded on public law, representing an institution of public law.

B.N. Gabrichidze emphasizes that the administrative legal norms regulating public service and the labor law norms governing the procedures for entering and performing public service are so closely interconnected that it is sometimes difficult to draw clear boundaries between them. He asserts that this field should be regulated from an administrative legal perspective.

It should be added that the essence of the issue regarding the interconnection between administrative and labor law lies in the method that should be applied to regulate the work of public servants. In other words, the legal regulation of public service is based on a combination of imperative and dispositive approaches. Today, labor law is increasingly adopting a dispositive character. However, civil service is leaning more toward an imperative approach. In the civil service, additional social guarantees are provided by establishing specific restrictions, which help prevent conflicts of interest and corruption.

A significant part of the legal provision for public servants involves employees of the state's executive bodies, which fall within the regulatory domain of administrative law. This creates a need for administrative-legal regulation in this area.

In our opinion, the relations governing the performance of public service should be regulated by administrative law, and this can be justified as follows:

Firstly, these relations are directly connected with the subjects of administrative law, including executive authorities and officials.

Secondly, these relations are linked to key institutions of administrative law, such as administrative justice and public service.

The legal relations within public service are those between the state as an employer and the public servant. During the execution of these legal relations, a specific function of state policy is implemented. Public-service relations must be distinct from labor

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relations. Labor legal relations are of a private legal nature, and their subjects are equal in status. For labor relations to arise, the legal fact of concluding and signing a single labor contract is sufficient. The entry into force of a labor contract marks the point at which a citizen obtains the status of an employee and, therefore, must adhere to the organization's internal labor regulations and work regime.

Public-service relations, on the other hand, are administrative legal relations. Unlike labor relations, which are based on private interests, public-service relations serve the implementation of state and public interests. The parties to such legal relations are not equal in terms of authority; the public servant is subordinate to the state.

The key differences between public civil service and labor law primarily relate to the distinctions between labor contracts and service contracts. This has led to an increased need for scientific research into service contracts.

In the scientific literature, the following distinctive features of service contracts are noted:

- Concluding a service contract is mandatory for every citizen entering public service. Failure to conclude the contract results in liability.

- The service contract is considered an act that establishes the legal fact of entering public service and regulates the rights and obligations under public service legislation.

- Although a service contract is a form of contractual relationship, its main requirements are defined by the state authority.

- The service contract specifies personalized terms of public civil service relations.

- An essential condition of the service contract is that it must not deviate from the legislation governing public civil service.

According to A.A. Osin, a service contract is a temporary relationship. It primarily imposes an obligation to comply with the legislation on public civil service. Overall, it serves as a confirmation of consent. This opinion can be partially agreed with. However, the service contract should not be viewed solely as a means of confirming the fulfillment of an obligation.

Although A.V. Gusev does not prohibit the inclusion of additional terms in the service contract that do not worsen the condition of the public servant, the actual possibility of applying such terms is very limited. In this regard, it is difficult to expect that the contract will become an effective means of encouraging the efficiency of employees' professional activities. In our opinion, a service contract can be viewed both positively and negatively. It both restricts rights and protects them at the same time.

It is emphasized by S.E. Channov that a service contract is considered a true expression of the intent to perform the service. From a legal point of view, this opinion can be agreed with. L.A. Chikanova believes that the party to a service contract should not be “abstract” and the inclusion of the state as a party to the contract increases its ambiguity. In this case, the scholar approached the issue from a general perspective.

It should be emphasized that approaches to the service contract are of various natures. The main reason for this is that the legislative basis for this relationship is not perfect. Usually, the legislator tries to solve this issue through labor contracts.

Another distinctive feature of the service contract is related to its conclusion and termination. The issues of concluding and terminating the service contract have

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two aspects: material and procedural. From the material-legal side, it involves clarifying the legal essence of the concepts of "concluding" and "terminating" the service contract, as well as their legislative foundations and principles.

From the procedural-legal side, it concerns the procedure for the actions carried out by the employer's representative and public servants in concluding and terminating service contracts.

Acceptance into public service is a complex legal structure, and as a result of this process, an administrative-legal relationship arises. This can be clarified through the elements of the service contract. The service contract includes elements such as participation in the selection for entering civil service, the issuance of an act by the employer, and the conclusion of the service contract.

The service contract is concluded in the following stages:

Submitting the relevant documents to the government agency;

Presenting the draft service contract to the citizen and familiarizing the citizen with the official rules, service regulations, and other documents that regulate the performance of duties by the public servant;

Confirming the terms of the service contract;

Signing the service contract and its entry into legal force.

Based on the above, the service contract can be divided into the following types: primary and new. The primary service contract is concluded with a citizen who is entering public service for the first time, thus the citizen acquires the special legal status of a public servant when concluding the primary service contract. A new contract implies the continuation of the citizen's public service but does not involve changing positions.

At this point, it is worth noting that according to the Law of the Republic of Uzbekistan on "State Civil Service", the relations regarding the passage of public civil service are regulated by a labor contract. As analyzed above, state service relations are not suitable to be studied within the scope of labor law. Therefore, the second part of Article 33 of the Law should be amended as follows: "Public civil service is carried out based on a service contract".

It is important to emphasize that another crucial aspect of regulating public service relations is related to administrative contracts. Administrative contracts have been used in daily relations for a long time, and the experience of countries where their existence is undisputed can always be very beneficial. In many Western European countries, most administrative contracts concluded on behalf of government agencies go beyond private law norms. These contracts are administrative contracts, which correspond to various norms of the obligation law in civil and partially commercial codes. The majority of contracts concluded by the French administration are called administrative contracts, and although they are regulated by the general (civil) law and commercial law, they have characteristics that take them out of the realm of private law. In France, for a contract to be classified as administrative, it must have at least one of two characteristics: it must either contain specific conditions that take it out of the scope of private law or aim to regulate public service.

Paragraph 62 of the German Administrative Procedure Code is dedicated to administrative contracts, specifying the possibility of using certain provisions of the Civil Code that complement and clarify the legal

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regulation of administrative-contractual relations. The administrative procedural law defines only the basic principles of the administrative contract. In general, in some European countries, legislative consolidation for the application of administrative contracts has been developed.

In legal literature, the term "administrative contract" is generally used to designate the relevant relations between a state body and a citizen, and the term "administrative contract" is used to designate such relations between two collective subjects of administrative law. In the cases under consideration, the mere presence of certain elements of a contractual nature justifies using the term "administrative-legal contracts" for generalized designation. At the same time, the contract not only contains the usual elements for labor relations but also defines executive functions and their corresponding scope of authority, which are highly significant from both an administrative and legal perspective.

According to general legal theory, the following general principles of a contract exist: 1) the dispositiveness of legal regulation (freedom of contract terms); 2) the autonomy of the parties' will (voluntary agreement); 3) the formal legal equality of the contracting parties; 4) equality of rights; 5) mutual responsibility of the parties. These general principles of contract law, based on the specific characteristics of administrative-legal regulation, are applied to administrative contracts with certain limitations. These characteristics are mentioned in the definition of administrative contracts provided by various scholars.

D.N. Bakhrach defines an administrative contract as an agreement based on administrative-legal norms, where the state always participates as a party. It is developed as a result of the voluntary coordination of the will of the parties and establishes mutual rights and obligations.

The most comprehensive definition of an administrative contract is given by V.A. Yusupov, who defines an administrative contract as an agreement between two or more subjects established by administrative legal norms, one of which must be a state administration body or its legal representatives. This contract is aimed at determining, altering, or terminating the administrative rights and obligations of state administration bodies, the subjective property or non-property rights of citizens, and their social structures.

Based on the above, the following characteristics of an administrative contract can be distinguished:

- Administrative contracts generally have an organizational structure, and their purpose is to achieve results of social importance.
- Within the scope of an administrative contract, the relationship between the parties is not based on subordination, meaning it is formed between administrative law subjects.
- An administrative contract is not an absolute form of public administration but an action.
- The normative basis of administrative-contractual practice is not civil law, but the norms of administrative law.

In conclusion, it should be emphasized that the service contract is a form of administrative contract, and incorporating this concept into the current legislation is crucial for regulating the process of civil service in a legal framework.

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