Civil Service Act – Opportunity or Threat for Public Administration of the Czech Republic

Lenka Matějová, and Jana Godarová

***Abstract*—**A professional civil service is the cornerstone of an effectively performing public sector. Status of officers developed in accordance with the needs and development of the state and society. However, the Czech Republic, as the only EU state, has no effective the civil service law which may entail negative consequences. How can we assume that non-transparent civil service would create and manage transparent state system or state policy? The aim of the paper is to identify and discuss threads of lack of public service law in the Czech Republic and its context.

***Keywords*—**Civil service act, Czech Republic, Public administration, Responsibility.

I. Introduction

A PROFESSIONAL civil service is the cornerstone of an effectively performing public sector. The officers as real executors of public administration activities are one of the most important components of public administration. In the framework of their activities they represent an important determinant of quality, anyhow this quality is defined. Status of officers developed in accordance with the needs and development of the state and society. It reflected the historical, political, economic and cultural conditions of each country [1].

Public officials may exercise considerable powers. Therefore, civil service should be governed by legal rules which ensure loyalty, political neutrality and impartiality of public officials and make sufficient restraints to any abuse of such powers for personal interests on one hand, and on the other, compensate public officials' greater responsibility and accountability for their decisions by specific rights granted to them. As such, the rules should ensure stable efficient and professional administration service [2].

Historically, the civil service on Czech territory was based on a career system inherited from the Austro-Hungarian monarchy. In those days the public officials has real seriousness and prestige. Today profession of official received rather pejorative character. One of the reasons is the lack of civil service act. Exceptions for civil servants, a uniform labour law status of all employees applies in the Czech Republic. It means that it allows non-transparent recruitment and remuneration, promotion upon popularity, etc. This deficiency is related to the frequent cases of corruption at all levels of public administration in the Czech Republic and it means possible threads for policy formulation and implementation.

The aim of the paper is to identify and discuss threads of lack of public service law in the Czech Republic and its context.

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II. Methods and Methodology

The paper is focused primarily on theoretical arguments and this way also the conclusions are made. This paper uses positive and qualitative approaches and also some normative recommendations as research outcomes. The core of the research is based on literature review of foreign and domestic sources with recent and historical knowledge from theory and practise. The methods of deduction and synthesis of acquired knowledge were used to identify of research outcomes.

III. Civil service

Czech legal theory defines civil service by four characters [3]: there is an employment relationship with the State or another public subject which has certain permanence; it is the professional delivery of public issues and salaries are paid from public funds. Determining of the actual number of employees in public administration, i. e. in the central authorities, and which meet the definition, is not simple due to absence of civil service law. Special statistics are not available. Official numbers based on government documents [4].

According to the Final State Budget for 2012 there are 413,892 function positions in the authorities and their organization units and budgetary organizations in the Czech Republic. These employees work in central government bodies – ministries, the Cabinet Office and other, listed in the Competence Act of the Czech Republic, such as the Czech Statistical Office, State Office for Nuclear Safety, Energy Regulatory Office etc. Among them directly employees of subordinate administrative authorities and budgetary organizations should be added (people from tax offices, labour offices, diplomats, hygienists etc.). This number also includes employees in education and in security forces such as police officers, fire-fighters and the Army of the Czech Republic. After deduction of employees who do not meet the above definition of civil service and employees in security forces, there are 71,000 employees working in civil service.

There is another category of officials of public administration – employees of municipalities and regions. These people perform autonomous powers, but due to the

combined model of public administration in the Czech Republic, also delegated powers for territory of the municipality or region. Self-governments units employ about 85,000 officials. Their status is regulated by Act No. 312/2002 Coll., on Local Government Officials and amending certain Acts [5]. It is special to the Labour Code which applies only when Act. No. 312/2002 Coll. does not contain its own special provisions. This is the only part of the issue of civil service that is actually regulated by laws in the Czech Republic.

A. Current civil service law in the Czech Republic

The territory of the Czech Republic was one part of the Austro-Hungarian Empire until 1918. In 1918 the Czechoslovak State came and this status continued until 1968 when the Czechoslovak Federal Republic was created. In 1989 there was the so-called Velvet Revolution and political regime was changed from one-party rule to democratic regime. Finally, January 1st 1993 the Czechoslovakia was split into Czech Republic and Slovak Republic with the agreement between Prime Ministers of both countries.

The Czech Republic has never had a functioning central structure [6]. As mentioned above, the civil service on Czech territory was based on a career system inherited from the Austro-Hungarian monarchy. The most important aspects of this system were tenure and progressive promotion [7]. It continued after the World War I. to the World War II. Thereafter, during the communist area, a law status civil servant was involved among all employees and it was and still is controlled by the Labour Code. This uniformity and egalitarianism was very strong even in comparison to other CEE countries [8]. Also due to the fact, there was no experience to draw new legislation. The issue was politically sensitive, and any draft law was criticized for lack of conception, content or for legislative errors [2]. The status of officials was unbearable and it was clear that the necessity of change is obvious.

The grounds of civil service are found in the Czech Constitution. It said that the legal status of government employees in ministries and other administrative authorities shall be defined by law. Also in connection with the planned accession of the Czech Republic among countries of the European Union, such general law was adopted ten years later, in 2002, as Act No. 218/2002 Coll., on Service of Civil Servants in Administrative Offices and Remuneration of such Employees and Other Employees in Administrative Offices (the Civil Service Act [9]). However, the Act has not become effective yet and its date of effectiveness has been deferred many times. In 2013, there was the effort to replace the ineffective law by new law – the Officials Act approved by the government. But the law was not passed in Parliament of the Czech Republic. Finally, the current government wants to completely abolish this Act and to replace it with a new one.

In European Union the principles of public officials' status are summarized in two documents drafted by the Council of Europe [10, 11]. They are based on either the contractual or the career system. Thus the Czech law shall follow the European recommendations in any future legal acts.

In the Czech Republic there are at least rules applicable to civil servants stemming from Ethical Code of Officials and Public Administration Employees. The first code was adopted in 2001 and was replaced by new code in 2012. Its aim is to develop and promote desirable standards of behaviour for public officials, such as principle of legality, impartial service for public the most important seem to be parts dealing with conflict of interest etc.

B. Are there only benefits of civil service law?

Because the current state of civil service regulation is unsustainable, it is necessary to search for better and more optimal solutions. One of them may be valid but still ineffective Civil Service Act which has strong support in Czech society. But what are its positives and negatives? And due to the development of social reality, is it not better to adopt a completely new law?

The concept of inefficient Act is based on public law method of regulation. It is focused on professionalism, political neutrality, loyalty, stabilization and no unfair discrimination. But this law envisages of career model of civil service. This is a major differentiation compared to the current situation and it does not reflect the current trend in European public administration. Significant negative is the weak possibility for increasing the quality of education for officials. Not all employees in Czech public administration will understand their work as a lifelong mission. The problem may also be a lack of motivational ability of career system.

On the other hand, the issue of largely politicization of public administration in the Czech Republic currently appears to be the most significant impediment to its performance and it is in direct conflict with concept of Good Governance [12]. At the same time, there is increasing level of corruption. In the environment of public administration in the Czech Republic is unusual that the head office is management expert who is independent on political representation. Often it is elected representative – a politician who is not required to prove the necessary expertise to perform this function. These negative effects, however, can be significantly eliminated just by system changes that ineffective Act could bring.

High quality and well-chosen legal regulation of rights and obligations of officials is one of the three fundamental pillars of quality and efficient public administration [13]. Other elements are transparency, continuity and predictability. There is the irreplaceable role of officials. To achieve these objectives there is necessary to create optimal conditions for officials. The conditions have to include a clear set of rights and obligations of officials and to ensure legal protection before stakeholder influences. Poorly adjusted organization of public administration and poor legal protection of civil services is reflected in the high staff turnover which is often purposeful and in fear of officials to take responsibility for their own decisions.

It is essential to select the most appropriate form of the legal regulation of contract of employment. There are to possible options – private law or public law. Ineffective Act has chosen public regulation.

The contract of employment created according public regulation allows a greater range of restrictions on the rights of target group of officials but also a greater range of compensation for them. Increased obligations of officials must be compensated especially financially. The main positive is ability to precisely regulate the conditions of employment and

the rights and obligations of public officials with respect public regulations and state needs. On the other hand this method allows high level of officials' protection and depoliticisation of public administration in the Czech Republic.

The main negative of "public law model" is the high burden on public budgets and the creation of a hierarchical structure, which greatly limits the entry of new participants from the private sector. It follows that private employment relationship is more flexible and such a variant is cheaper for the public budgets.

Despite the significant advantages of ineffective law, as already mentioned, its principles are not still implemented. The deferral is officially reasoned by enormous costs. But it is clear that this situation and this explanation are very advantageous for political parties. They benefit from situation when selection for service or promotion is not based on merits, education and experiences but rather on connections with politicians. This even leads in some cases to corruption and misuse of public funds [2]. And it is clear, that unclear rules bring the question of responsibility for decision-making at all levels of public administration.

Finally, the conclusion is that due to the absence of Civil Service Act, there is a lack of adoption and promotion procedures of officials in the Czech Republic. Therefore, political interference and clientelism and nepotism are not limited. This situation leads to a high fluctuation of officials (e.g. in 2011 and 2012 about 44% [4]). Head of department may be immediately removed for any reason (e.g. he refuses to sign the offending material. Remuneration is dependent on the will of head of office.

IV. Conclusion

Czech Republic has never had a functioning central structure. There is some effort to reform, but it is weakly implemented. The main part of reform is the Civil Service Act that is unfortunately ineffective. The Act has some advantages and disadvantages.

We can mention among the main benefits of still ineffective Civil Service Act its public law character. That means certainty, stability, clear rules and the possibility of conceptual development of civil service in the Czech Republic. At the same time it is a return to the status at the turn of the 19th and 20th centuries when the profession of officials enjoyed high esteem.

Coming into effect of the Civil Service Act would also mean reducing the negative effects of blending politics and performance of public administration, such as nepotism, politicization or clientelism.

The main negative of "public law model" is the high burden on public budgets and the creation of a hierarchical structure, which greatly limits the entry of new participants from the private sector.

In conclusion we can say that each solution – method of public law or private law – has its own advantages and problems, but the choice of one or the other is often dictated by politics or doctrine.

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References

[1] A. Laurinavičius, "Civil Service Law and Innovative Paradigm of Administration in Governmental Institutions," in *Business, Management and Education*. vol. 9, issue 1, pp. 50-66, June 2011

[2] J. Janderová, M. Skřivánková, "Czech Civil Service in Context of Selected Recent European Courts' Decisions," in Recent Researches in Law Science and Finances. *Proceedings of the 4th International Conference on Finance, Accounting and Law*. Stevens Point: WSEAS Press, 2013. pp. 151-159.

[3] D. Hendrych et al., 2003 "Správní věda: teorie veřejné správy (Management science: the theory of public administration)." Aspi Publishing. 2003

[4] The Chamber of Deputies of the Czech Republic: "Státní závěrečný účet 2012 (National Accounts 2012)." [online]. Available from WWW: <http://www.psp.cz/sqw/text/tiskt.sqw?O=6&CT=1010&CT1=0>.

[5] Zákon č. 312/2002 Sb.,o úřednících územních samosprávných celků a o změně některých zákonů (Act No. 312/2002 Coll., on Local Government Officials and amending certain Acts.)

[6] M. Sahling, J. Hinrik. "Sustainability of civil service reforms in Central and Eastern Europe five years after EU accession." No. 44. OECD Publishing, 2009. http://dx.doi.org/10.1787/5kml60pvjmbq-en

[7] M. Sahling, J. Hinrik. "The institutionalization of political discretion in post-communist civil service systems: The case of Hungary," *in Public Administration*, vol. 84, issue 3, pp. 693-715, 2006 http://dx.doi.org/10.1111/j.1467-9299.2006.00608.x

[8] T. Čebišová, "Veřejná služba na prahu 21. Století. Vybrané otázky správního práva (Public Service on the threshold of the 21st century. Selected questions of administrative law)." AUC Juridica 2001, pp. 9-39.

[9] Zákon č. 218/2002 Sb., Zákon o službě státních zaměstnanců ve správních úřadech a o odměňování těchto zaměstnanců a ostatních zaměstnanců ve správních úřadech (Act No. 218/2002 Coll., on Service of Civil Servants in Administrative Offices and Remuneration of such Employees and Other Employees in Administrative Offices)

[10] Council of Europe. Recommendation No. R(2000)6 of the Committee of Ministers to Member states on the status of public officials in Europe. [online]. Available from WWW: <https://wcd.coe.int/ViewDoc.jsp?id=340693&Site=CM>.

[11] Council of Europe. Recommendation No. R(2006)10 of the Committee of Ministers to Member states on codes of conduct for public officials. [online]. Available from WWW: <https://wcd.coe.int/ViewDoc.jsp?id=353945>.

[12] D. Špaček, D. Špalková. "Civil Service Reform in the Czech Republic - Unsolved Issues," in *Garry Lee. Lecture Notes in Management Science - ICMIBI 2013.* vol. 15, pp. 566-571, 2013

[13] F. M.Van Der Meer, C. F. Van Den Berg, G. S. Dijkstra. "Rethinking the 'Public Service Bargain': the changing (legal) position of civil servants in Europe," in *International Review of Administrative Sciences*, vol. 79, issue 1, pp. 91-109, [online]. March 2013