

Review of the Law of the Republic of Belarus “On Public Service” (2022)

INTRODUCTION

On September 1, 2022, the provisions of the new Law of the Republic of Belarus No. 175-Z “On Public Service”, which was adopted on June 1, 2022, came into force.

Unlike the Law of the Republic of Belarus of 2003 “On Public Service in the Republic of Belarus” of June 14, 2003 (hereinafter the 2003 Law), the Law of the Republic of Belarus No. 175-Z “On Public Service” of June 1, 2022 (hereinafter the 2022 Law) consists of 11 Chapters (compared to 10 in the previous law), divided into 79 articles (compared to 64 in the previous law) and annexes. Two new chapters appear in the 2022 Law: “Civil Service” and “Specific Features of Admission, Performance and Termination of Civil Service, as Well as Disciplinary Liability of Persons Holding Civil Posts Included in the Personnel Register of the Head of State of the Republic of Belarus”. The chapter “Appointment and Payment of Pensions to Public Servants and Financing of Expenses for Their Payment” is missing in the 2022 Law.

Out of the 13 principles of the 2003 Law, 10 have remained mostly unchanged in the new law; the principle of “publicity” was replaced with the principle of “openness and transparency”; the principle of “effectiveness” was added; the principles of “humanism and social justice”, “unity of public service and its differentiation based on the concept of separation of powers into legislative, executive and judicial”, and “voluntary participation of citizens in public service” were not included in the system of principles of the 2022 Law. In our opinion, the exclusion of such principles as “publicity”, “humanism and social justice”, “unity of the public service system and its differentiation based on the concept of separation of powers into legislative, executive and judicial”, “voluntary admission of citizens to public service” indicate the trajectory set for the public service system to exercise state power according to a certain top-down scenario. The principle of separation of powers loses its significance, the possibility of free expression of personal opinion disappears.

PUBLIC SERVICE SYSTEM: TERMINOLOGY AND CONCEPTS

The definitions of public service in both documents are virtually the same, but the 2022 Law provides for the performance of functions not only by state agencies, but also by officials. That is, the legislation enshrines what is already indisputable - a public servant always represents a state body, and has certain authority themselves, but within the limits of the authority of that body.

One of the fundamental novelties of the 2022 Law is that the public service is presented as a unified system, composed of three subsystems: civil service, military service, and service in paramilitary organizations, which include, for example, the Investigative Committee, the financial investigation agencies of the State Control Committee, etc.

The 2022 Law also enshrines the concept of public service system and concepts of each type of public service: civil, military, and paramilitary (Articles 4 - 6 of the 2022 Law). Thus, public civil service is a type of public service, which is the professional activity of citizens of the

Republic of Belarus in public civil offices, as well as in military positions to be filled by officers, and the positions of middle, senior, and higher commanding staff, when they are held in accordance with the legislation by public civil servants in state agencies (Article 4 of the 2022 Law). The concept of public office in the 2022 Law is outlined taking into account the types of public service existing in the Republic of Belarus (paragraph 2, Article 8). Article 8 defines positions classified as the highest government positions. Other key concepts used in this law (“state body”, “public servant”) have not been fundamentally changed (Articles 7-9 of the 2022 Law). It is worth noting that the previous Law on Public Service did not contain detailed regulation of public service depending on its type.

The notion of “personnel register” is specified in the new law, that “personnel register” is not just a registration system (list) of managerial positions, but a registration system (list) of managerial positions for which a special selection procedure is established, including special requirements for professional and personal qualities, appointment (dismissal)”, paragraph 1 of Article 11 of the 2022 Law. Paragraph 4 of Article 11 stipulates that the President of the Republic of Belarus determines the list of posts of executive officials of state bodies included in the personnel register of the Head of State of the Republic of Belarus, subject to medical examination when they are appointed to a post, the healthcare organization where medical examination and medical and social examination are carried out.

The procedure of preparation and verification of information about candidates for positions included in the personnel registers (paragraph 2 of Article 12) was left to the approval of the President of the Republic of Belarus (whereas the former 2003 Law did define the main procedure of preparation and verification of information about candidates), also the new Law did not include a very important, in our opinion, principle, which should be enshrined in law (as in the former law), which states that “when preparing information about candidates for public office included in personnel registers, it is prohibited to collect information about the personal lives of candidates or members of their families or other close relatives, as well as information about their religious beliefs and membership in political parties and other public associations pursuing political goals, except in cases provided for by the Constitution of the Republic of Belarus and other legislative acts”.

The definition of a public civil service position and the list of agencies in which they exist are found in Article 14 of the 2022 Act. However, the list of 10 items is not exhaustive, as it also includes other agencies. In this regard, problems may arise with proving one's public employment.

At the same time, the 2022 Law, as before, mainly affects civil servants and does not apply, except for general provisions of the law (Chapter 1 of the 2022 Law), to persons performing military service and service in paramilitary organizations. The activity of the latter is regulated, as in the past, by norms of special legal acts that stipulate their legal status (Article 10, paragraph 2, of the 2022 Law).

REGISTER OF POSITIONS AND GRADES OF CIVIL SERVANTS

The 2022 Law provides for an updated grade system for public civil servants. According to it, each civil position corresponds to one particular civil servant grade (paragraph 1 of Article 17 of the 2022 Law). For civil servants, it also establishes the highest grade, which is divided into three ranks, as well as nine grades, of which the ninth grade is the lowest (paragraph 2 of Article 17 of the 2022 Law). This will make it possible to differentiate the grades of public servants depending on the level of work intensity and responsibility. For comparison: the 2003 Law established the highest grade and 12 grades, the lowest of which was the 12th grade (paragraph 2, article 11 of the 2003 Law).

In addition to work IDs, public civil servants will receive breast badges (paragraph 2 of Art. 19 of the 2022 Law).

Assignment of grades to state civil servants occupying respective positions in a state agency as of 01.01.2023, as well as when entering a state civil servant position, will be carried out in accordance with:

- a registry for a public civil service position;
- by equating or correlating the grades set forth in subparagraphs 2.2, 2.3 of paragraph 2 of Decree No. 195, if a public civil servant's current grade (class rank, personal rank, diplomatic rank, qualification class) is equated (correlated) to a higher grade of the public civil servant as compared to the grade determined in the Register (subparagraph 3.3, paragraph 3 of Decree No. 195).

The correlation of grades is presented in the table.

Class of public servant before 01.01.2023	Class of public civil servant
Highest - held by persons who hold (held) the highest public position	Highest Grade of Rank 1
Highest	Highest Grade of Rank 2
1	Highest Grade of Rank 3
2	First

3	Second
4	Third
5	Fourth
6	Fifth
7	Sixth
8	Seventh
9	Eighth
10	Ninth
11	Ninth
12	Ninth

ADMISSION TO AND DISMISSAL FROM PUBLIC SERVICE

Article 29 of the 2022 Law contains an open list of documents (unlike the previous law), which may be required for entry into public service. The Law of 2022 (Article 34) expands the list of grounds on which a probation period for admission to civil service is not established; the probation period for admission to civil service is reduced to three months (previously - from three to six months).

Also, we should note that the 2022 Law proposes some innovations related to the contracts of public servants. Whereas the 2003 Law provides 5 paragraphs defining the content of this document, and it is stated that other conditions are established by mutual agreement of parties (in accordance with the legislation), the 2022 Law, in turn, provides 8 paragraphs, which establish the regime of work and leisure and remuneration of labor. That is, the regulation of these legal relations is included in the special legislation on public service along with the general norms that fall under the regulation of labor law.

Also, unlike the 2003 Law, the 2022 Law establishes a broader list of grounds for refusal of admission to public service. Additional grounds for the refusal to employ are citizenship (nationality) of another state, unless otherwise provided for by international treaties of the Republic of Belarus (paragraph 1.7 of Article 38), and failure to fulfill the obligations to observe the restrictions provided for by Article 16 of the Law of the Republic of Belarus “On Combating Corruption” (paragraph 1.10 of Article 38). Note that the 2022 Law in principle excludes the possibility of holding civil service positions for persons who have citizenship (nationality) of another country, unless otherwise provided for by international treaties, whereas previously the 2003 Law had established a ban only for persons who lacked Belarusian citizenship (subparagraph 1.7 of paragraph 1 of Article 33 of the 2003 Law).

The 2022 Law establishes a ban from September 01, 2022, on employment in the civil service of persons dismissed under any discrediting circumstances within two years after such dismissal, and to civil positions included in the personnel registers - within five years after such dismissal, unless otherwise established by the President of the Republic of Belarus (subparagraph 1.11, paragraph 1 of Article 38 of the 2022 Law). A complete list of discrediting circumstances of dismissal is given in paragraph 6 of Decree No. 5¹.

Paragraph 4 of Article 47 of the 2022 Law sets a limit - up to 5 years - for which civil servants holding positions on personnel registers who have reached the age limit for civil service (65 years) may be retained in the civil service upon their consent. Civil servants appointed to civil service positions included in the personnel register of the Head of State who have reached the age limit for civil service may be retained in civil service without restrictions upon their consent (paragraph 2 of Article 55 of the 2022 Law).

PERSONNEL REGISTRY: SPECIFICS

The 2022 Law has introduced Chapter 7, regulating the peculiarities of entry, performance, and termination of civil service, as well as disciplinary liability of persons holding civil offices included in the personnel register of the Head of the State of the Republic of Belarus (Articles 49 - 57). The previous law only determined that the President of the Republic of Belarus establishes the peculiarities of the certification of civil servants whose posts are included into the personnel register of the Head of the State of the Republic of Belarus.

Persons appointed to civil positions included in the personnel register of the Head of State of the Republic of Belarus, when entering the civil service, are exempted from a competition for the relevant civil position, as well as from taking a qualification exam. No probation period is prescribed for these persons. No contract is concluded with persons appointed to civil positions by the President of the Republic of Belarus (Article 50 of the Law 2022).

Civil servants occupying the highest public offices of the Republic of Belarus are entrusted with additional powers, in particular:

- to give the heads of the national bodies of state administration, local executive and administrative bodies, other state bodies and other organizations binding instructions to eliminate the identified faults, to bring to justice those who have committed them;
- if necessary, participate in meetings of local executive and administrative bodies, boards of state bodies and state organizations, coordination meetings without any additional confirmation of their authority;
- involve representatives of local executive and administrative bodies, state mass media, as well as public associations in holding personal meetings with citizens

¹ Decree of the President of the Republic of Belarus of December 15, 2014, No. 5 “On strengthening the requirements for managerial personnel and employees of organizations”.

and representatives of legal entities, other meetings with the population, groups of employees, press conferences (Art. 51 of the Law 2022).

IRREGULAR WORKING HOURS

The 2022 Law establishes irregular working hours for all civil servants without the provision of additional leave (Article 45.2). There is no exception to this norm. This means that civil servants will be able, from time to time, by written or verbal order (instruction), regulation of the employer or on their own initiative, with the knowledge of the employer or an authorized official of the employer, to perform their work duties outside the established standard working hours. It should be noted that the irregular working hours for civil servants are not mentioned either in Regulation No. 1271, or in the sample contract template, so contracts with civil servants should be brought in line with the new legislation (part 4 of Art. 19 of the Labor Code). In addition, for those public servants who have not been previously established a non-standardized working day, its establishment, in our opinion, will be a substantial change in working conditions (part 2 of Article 32 of the Labor Code).

GUARANTEES OF MATERIAL AND SOCIAL BENEFITS

Paragraphs 2 and 3 of Article 60 establish additional guarantees of material and social benefits of civil servants, namely:

- registration of civil servants in need of better housing conditions at their place of work in state bodies located in the city of Minsk and Minsk District settlements, without taking into account the length of service in organizations located in these settlements, on the grounds set forth by legislative acts;
- the right to priority provision of rental housing to civil servants according to the list of government positions that entitle them to rental housing, as determined by the President of the Republic of Belarus, under conditions and in the manner prescribed by the President of the Republic of Belarus.

Civil servants have received an increase in their monthly length of service allowance. Thus, if they have 3 to 8 years of civil service record, the bonus will be 25% of the estimated official salary (previously 15%); if they have 20 years or more, the bonus will be 40% of the estimated official salary (previously 30%).

"Being listed on honor boards" has been added to the list of incentives for public servants, while "early assignment of a civil servant's grade for the position held" was excluded from the list (paragraph 1 of Art. 62 of the 2022 Law).

WORK DISCIPLINE, RESPONSIBILITY, AND PROFESSIONALISM OF PUBLIC SERVANTS

Chapter 7 of the 2022 Law defines a special procedure for entry into performance, and termination of public service, as well as disciplinary responsibility for persons holding public civil service positions included in the Head of State's personnel register.

A distinctive feature of the new law is that its authors proposed a systemic approach to the legislative regulation of all types of public service and the convergence of requirements for the organization of the work of civil servants and members of the Armed Forces. The 2022 Law introduces a definition of the concept of work discipline (paragraph 1 of Article 72 of the 2022 Law). It also provides for strengthening requirements for discipline and responsibility of civil servants.

The 2022 Law introduces a new disciplinary measure for public servants - a severe reprimand (subparagraph 1.3 of paragraph 1 of Article 73 of the 2022 Law). In practice, it had already been applied to certain categories of public servants, for example to employees of the Investigative Committee (subparagraph 4 of paragraph 19 of the Disciplinary Statute of the Investigative Committee) and employees of the State Committee for Judicial Expertise (subparagraph 4 of paragraph 19 of the Disciplinary Statute), while it had been applied personally in relation to certain other public servants (subparagraph 3 of paragraph 1 and subparagraph 3 of paragraph 2 of Decree No. 502).

The 2003 Law provided for six disciplinary measures applicable to public servants for non-performance or improper performance of job duties: a warning; a reprimand; a notice of incomplete job performance; deprivation of full or partial incentive payments for up to 12 months; reduction in grade of a public servant for up to six months; and dismissal from office in accordance with the 2003 Law, the Labor Code, and other legislative acts. The 2022 Law also contains six measures but excludes the reduction in grade of a public servant for up to six months as a sanction (paragraph 1 of Article 73 of the 2022 Law, paragraph 1 of Article 57 of the 2003 Law). At the same time, it should be noted that the list of these measures is not exhaustive as the employer reserves the right to apply other disciplinary measures established by law (paragraph 2 of Article 73 of the 2022 Law).

To maintain the level of professionalism of public civil servants, the 2022 Law establishes the frequency of professional training or upskilling. As a rule, they should take place once every three years, but at least once every five years (paragraph 3, Article 40 of the 2022 Law). Note that the 2003 Law did not include such a norm.

ETHICAL REQUIREMENTS

An absolute novelty of the 2022 Law is the introduction of general requirements for ethical behavior of civil servants (subparagraph 1.12, paragraph 1, Article 25; subparagraph 2.2, paragraph 2, Article 72, Annex to the 2022 Law). The document enshrines more than 18 rules of official conduct, which must be followed by public servants regardless of the position they

hold. It is also stipulated that even outside office hours civil servants should follow high moral principles and norms of behavior (paragraph 15 of the Annex to the 2022 Law). In addition, when maintaining personal accounts on social networks, they must not post information the dissemination of which in the media is prohibited, as well as information that could damage their personal reputation and the image of the authorities in general (paragraph 14 of the Annex to the Law 2022).

CONCLUSION

Despite the fairly large number of changes introduced by the new law, all of them are insignificant and are not aimed at a conceptual change in the system of public administration. The new law of 2022 did not mark the beginning of the evolution of the public service system in Belarus towards modern trends. For example, while one of the main such trends is building public administration based on human rights, the efficiency of public administration, and the promotion of initiative and professionalism, the legislator goes in the opposite direction limiting the right of public servants to privacy, personal data protection, freedom of opinion, beliefs, and their free expression.

The convergence of the principles of civilian and military service, the actual merging of the two into one system, the introduction of the concept of work discipline, the exclusion of the principle of humanism and social justice - all these changes reduce the functions of public servants to an even greater degree to the need for rigorous implementation of regulations and orders as well as the blocking of initiative. It is also telling that the level of necessity and length of probation period has been reduced, which actually means that the requirements for assessing professional and personal qualities of public servants have been lowered. First, such a change is an indicator of an even greater decline in the level of prestige and trust in the system of public administration, and second, combined with other factors, this will lead to a decline in the quality of public administration.