

EXAMINING THE FORMATION OF LEGAL GUARANTEES FOR EQUAL ACCES TO CIVIL SERVICE: HISTORICAL ORIGINS AND MODERN APPLICATION

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Annotation. The aim of the work is to demonstrate the historical progression of access to civil service across different historical epochs – Ancient World, Middle Ages, New Era, and Modern Times. The developmental phases of equal access to civil service mirror the primary trends in shaping the relationship between individuals and the state. The article demonstrates the peculiarities of legal guarantees, which are closely intertwined with the complex global political, economic, social, and cultural transformations of humanity, giving scholars the space to go far beyond modern history. Employing a theoretical research model focused on a human-centered perspective, it scrutinizes the essence of legal assurances. The historical method is employed to comprehend the retrospective formation and progression of the civil service. Additionally, the axiological method forms the basis for considering equal access to the civil service as a value category.

Results of the research highlight that the legal guarantees of the right to equal access to the civil service have evolved over time, dating back to the Ancient World. This evolution is attributed to the formation of the civil service institution. The legal guarantees for equal access to the civil service are not only recognized at the national level but are also enshrined in international legal standards aimed at protecting human and civil rights. The study acknowledges that restrictions on the right to equal access during periods of special legal regimes can limit citizens' political opportunities for contributing to good governance. Author concluded that from the time of the Ancient World to the present, as a product of the evolutionary formation of the civil service institution, legal guarantees of the right to equal access to the civil service have been formed, including legality and fairness of selection procedures, equality, and non-discrimination of applicants for civil service positions, requirements for professionalism and competence, remuneration, etc.

Key words: historical evolution, human rights, civil service, legal guarantees, civil servant, law, and order.

1. Introduction.

The human right to access the civil service stands as a cornerstone among the fundamental political rights afforded to citizens, fortified both internationally and within national frameworks. Within modern democracies, the legal framework surrounding the right to equal access to civil service delineates the scope and direction of civic involvement in governance processes. Simultaneously, this access empowers citizens with justified expectations to take part in public affairs under specific conditions and to avail themselves of protections established by law. The historical genesis of this right can be traced back to a pivotal juncture – as the result of the French Revolution – wherein the Declaration of the Rights of Man and of the Citizen (1789) marked a watershed moment by enshrining the principle that all citizens are equal under the law. This declaration asserted that all citizens are equal before the law and therefore have equal access to all offices, public positions, and



occupations according to their merit and without any distinction other than that made on the basis of their virtues and abilities (article 6) [1].

Over epochs, this right has undergone a metamorphosis, finding contemporary resonance within modern legal systems. This article endeavors to assert that the legal assurances surrounding equal access to civil service have traversed every epoch in the evolution of statehood and jurisprudence. The focal point of this inquiry lies in the historical trajectory delineating the evolution of legal guarantees concerning access to the civil service. This theme has a pivotal role in the theory of legal studies. It has long been a question of great interest in a wide range of fields (especially, theory of law, constitutional and administrative law).

The stages of formation of the right to equal access to civil service reflect the main trends in building relations between a person and the state and allow assessing the state of citizen engagement in governance processes. They are closely related to the evolution of the civil service as a complex state and legal institution. For the most part, a thorough historiography of the civil service relates to the later periods of state-building in foreign countries.

The theoretical model of the research involves a human-centered approach to understanding the essence of legal guarantees. This approach is based on the pillar that human rights, freedoms, and interests are of the highest social value. There are two key research questions: 1) How were the legal assurances ensuring access to the civil service established across different historical epochs, and what were the pivotal factors contributing to their formation? 2) What constitutes the substantive content of these legal guarantees pertaining to access to the civil service, and how have they evolved across varying historical contexts and legal frameworks? Overall, research is poised to enrich the existing literature by offering a human-centered perspective on the historical development and substantive essence of legal guarantees associated with civil service access, thereby fostering a deeper understanding of their societal implications.

2. Analysis of scientific publications.

Extensive research has highlighted an insufficient exploration within the international scientific domain regarding the historical development of legal assurances for equal access to civil service. Nonetheless, fundamental philosophical underpinnings on this subject can be traced back to the works of Aristotle, Plato, and Cicero. Their perspectives on the state, law, their interactions, and contradictions remain pivotal, alongside subsequent scholars' contributions. Prominent reformers in advancing the concept of human rights during their respective eras included F. Bacon, known for «The Great Instauration» (complemented in 1620 with the treatise «New Organon»), G. Grotius with «On the Law of War and Peace» (1623), T. Hobbes and his seminal work «Leviathan» (1651), and T. Paine's influential «The Rights of Man» (1791).

Enlightenment thinkers like Diderot, Voltaire, Montesquieu, Rousseau, among others, actively promoted the epistemology of transforming the foundations of public affairs management and reshaping the relationship between individuals and the state. Their legacy encompasses seminal concepts such as the separation of powers and the principle of checks and balances. Recent scholarship on equal access to civil service has predominantly focused on the ancient world rather than offering a comprehensive investigation across all historical epochs. This paper references works by G. Tridimas, S. Ajdini, W. Beyer, among others, yet the existing knowledge concerning the historical evolution of legal guarantees for equal access to civil service relies heavily on individual, narrow-focused studies. The mentioned aspect underlines the significance and uniqueness of this work, which will bring readers closer to understanding the history of legal guarantees of access to the civil service.

3. The aim of the work.

In elucidating this historical evolution, this article identifies four distinct epochs: the Ancient World, the Middle Ages, the New Era, and Modern Times. This segmentation facilitates a comprehensive

exploration of how legal assurances governing access to civil service have evolved and adapted across diverse historical contexts. This study not only sheds light on the historical underpinnings of legal guarantees but also offers a robust foundation for comparative analysis with existing contemporary assurances. By delving into the depths of historical retrospect, this research aims to unearth the essence of legal guarantees, serving as a cornerstone for further examination and comparison within the existing framework.

4. Review and discussion.

The Ancient World. Access to public service in the early historical stages of human development was characterized by a blurred distinction between the right and obligation of individuals to hold relevant positions and serve in the public sector. This approach is inherent in the state system of the ancient Eastern despotic countries (Egypt, Babylon, India). A characteristic feature of access to the highest civil service positions was that it was seen as a «privilege of the nobility» and a «matter of sacred duty to serve the ruler» rather than an equal opportunity for all citizens, since mostly the ruler's closest blood relatives were able to hold leading positions in the public sector. The civil service examination system was an important vehicle of social mobility in imperial China. Even a youth from the poorest family could theoretically join the ranks of the educated elite by succeeding in the examination system. This assurance of success in the examinations dependent only on one's ability rather than one's social position helped circulate the key ideas of Confucianism -- concerning proper behavior, rituals, relationships, etc... [2]. Therefore, the peculiarity of access to the civil service can be considered the competitiveness of candidates, which ensured relative equality of applicants for public office. The content of the three-level competitive selection procedures was to determine the level of knowledge of candidates, understanding and application of Confucian classics and recognized commentaries.

Comparing the competitive principles of access to the civil service in ancient China and China in the early twentieth century, Professor Han-Yu Shan of the University of California, USA, in his article «The Civil Service of China: Yesterday and Today» (1946) came to unexpected conclusions that access to the civil service in ancient China was characterized by flexibility and lack of political bias, unlike today. Politically, the system insured a type of representative government since the road to successful scholarship and to civil service was open to all. It was neither a monopoly of the rich nor a privilege of the aristocrats [3, p. 156].

Thus, for the first time in the history of mankind, Ancient China established the outlines of legal guarantees of access to the civil service. It was about formal equality of candidates and competence, which was supported by competition and a set of competitive procedures for selecting candidates for public office. The distinctive traditions of the civil service institution development are inherent in Western European countries, among which we should focus on Ancient Athens, which is called the cradle of democracy. Undoubtedly, this has affected the principles of access to the civil service. Athens had no permanent civil service institution in the classical sense. The only permanent officials were those who performed minor duties, such as heralds, servants, messengers, lower-ranking scribes, etc.

The existence of a special form of government, namely «slave democracy», distinguishes the civil service institution in Ancient Athens from the Eastern despotism. The structure of the organization of governance involves the functioning of the general assembly, the Council of 500 and the court, i.e. the primary division of power into legislative, executive, and judicial. George Tridimas, Professor of Political Economy at the University of Ulster in Northern Ireland, states that the Athenians appointed by lot a large number of public office holders including the Council of the Five Hundred (Boule), and the panel of 6,000 jurors, who could serve in the popular courts (Heliaia). Appointment to public office by lot (sortition) from the eligible citizens was the hallmark of the ancient direct democracy, the true meaning of the rule of demos. Random selection offered equal opportunities to all citizens to hold public office, while election advantaged the rich who could afford training in public speaking and pay for liturgies (private finance of public services) that would make them popular [4, p. 205].



This thesis emphasizes the primary outlines of legal guarantees of candidates' compliance with the qualification requirements of the civil service. This method of appointing civil servants to positions is, in fact, unique, since in most primitive states of Antiquity and later the Middle Ages, appointment to managerial positions was recognized as the prerogative of the ruler and did not involve the exercise of direct popular power. At the same time, appointments by lot do not correspond to modern ideas of fairness and objectivity of selection, as well as access to power for the «strongest candidates».

Describing the organization of access to the public service in ancient Rome (VIII century BC – V century BC), Marcus Tullius Cicero points out that when thinking of the public administration; have to understand that a great civilization as the Roman Empire could not have survived without a significant public administration to run it. The history of the world can be viewed as a rise and fall of public administrative organizations. Those ancient empires that rose and prevailed were those with better administrative institutions than their competitors. Brave soldiers have been plentiful in every society, but ultimately wasted if not backed up by administrators who can feed and pay them [5, p. 385].

Compared to ancient China in the West, the selection of civil administrators and personnel based on examinations for suitability for the position is a later development. Under the republic only the lower ranking government workers other than freedmen or slaves were paid for their services, the magistrates being required to serve without pay other than expenses. Under the empire, however, salaries were extended to all citizen office holders regardless of rank [6, p. 248].

The Middle Ages and the New Era. After the fall of the Roman Empire in the fifth century AD, institutional and political reforms in various Western European countries formed a hierarchically organized apparatus of officials to support monarchical power. The famous thinker Thomas Aquinas in his work «On kingship, to the King of Cyprus» determined that it is proper that a king look to God for his reward, for a servant looks to his master for the reward of his service. The king is indeed the minister of God in governing the people, as the Apostle says: «All power is from the Lord God» (Rom 13:1) and God's minister is «an avenger to execute wrath upon him who does evil» (Rom 13:4). And in the Book of Wisdom (6:5), kings are described as being ministers of God [7].

In the Middle Ages, monarchical countries in Europe relied on an apparatus of officials to execute the divine will of the rulers, collect taxes, administer justice, resolve administrative issues, and ensure the country's defense. Most notably, the issue of building an effective bureaucracy and ensuring its smooth functioning depended directly on the decision of the monarch. One of the consequences of the liberation movement of the French Revolution (05.05.1789 – 09.11.1799) was the legal consolidation of human rights and freedoms.

The Declaration of the Rights of Man and of the Citizen (1789) states that that all citizens are equal before the law and therefore have equal access to all offices, public positions, and occupations according to their merit and without any distinction other than that made based on their virtues and abilities (article 6). This provision allows us to assert that after the adoption of this act, which was fundamental for most Western European countries, access to the public service began to be viewed not as a «privilege» granted by the monarch to his subjects, but as a full-fledged right, i.e., a requirement to ensure equal opportunities for governance for citizens in their country. This idea has been a «red thread» that has been running through the development of the right to equal access to the civil service in all democratic countries to this day.

It is interesting to note that the term «civil service» appeared only in 1854, when Sir Charles Trevelyan (a famous British colonial administrator) first applied it to the officials who administered the British colonial territories in India on a permanent basis on behalf of the crown, although the real civil service existed in the Middle Ages. This term included only a professional group of officials hired by the state on a permanent basis and paid from the state budget, but military personnel and judges were not covered by this category. Later, the scope of the concept was expanded, starting with the United Kingdom to other Western European countries and their colonies.

Thus, the peculiarity of access to the civil service in the modern period is that for the first time the right to access the civil service as a state-guaranteed opportunity is enshrined; secondly, the modern

understanding of the concept of «civil service» is finally established; thirdly, remuneration of civil servants as a legal guarantee of stability becomes a well-established practice.

Modern Time. The end of the Second World War (1939–1945) was marked by a change in worldview regarding the nature and significance of human and civil rights and freedoms, as well as the normative consolidation and international legal protection of all generations of human rights in European countries. Eleanor Roosevelt stated that democracy, freedom, human rights have come to have a definite meaning to the people of the world which we must not allow any nation to so change that they are made synonymous with suppression and dictatorship [8]. It was with these words that the chairman of a United Nations committee appealed to representatives of UN states to support the adoption of the Universal Declaration of Human Rights (1948). About 50 countries voted in favor of the adoption of this important international legal act, thereby agreeing to recognize human rights as a guideline for their domestic and foreign policy activities. Following the traditions laid down in the Universal Declaration of Human Rights, which recognizes the human right of access to public service (Article 21), in the XX century several European international legal standards provided more detailed protection of this human right.

The well-known international standards of the right to equal access to the civil service are the International Convention on the Elimination of All Forms of Racial Discrimination of 1965 (Article 5), the International Covenant on Civil and Political Rights of 1966 (Article 25), the Convention on the Elimination of All Forms of Discrimination against Women of 1979 (Article 7).

Nowadays, the American, African, and Asian regional human rights protection systems also define the right to access the civil service to a greater or lesser extent, for example, we suggest paying attention to the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará Convention) of 1994 (Article 4), the African Charter on Human Rights of 1981 (Article 13), the ASEAN Declaration of Human Rights (Bangkok Declaration) of 2012. These international legal standards emphasize various legal guarantees of ensuring the right to equal access to the civil service, for example: freedom of management of public affairs, universality of the right to access the civil service, equality, and non-discrimination of citizens in the pursuit of civil service positions, legality, and fairness of selection procedures, etc. In the light of modern epoch, the right to civil service is a claim of a person recognized by the international community and enshrined in national legislation to exercise governance in his or her country by directly performing the tasks and functions of the state.

5. Conclusions.

Thus, from the time of the Ancient World to the present, as a product of the evolutionary formation of the civil service institution, legal guarantees of the right to equal access to the civil service have been formed, including legality and fairness of selection procedures, equality, and non-discrimination of applicants for civil service positions, requirements for professionalism and competence, remuneration, etc. At present, legal guarantees of the right to equal access to the civil service are enshrined in international legal standards for the protection of human and civil rights and national legislation in most countries, and their consistent observance is considered one of the important responsibilities of the state to follow the ideals of democracy. Restrictions on the right to equal access to the civil service during periods of special legal regimes inevitably lead to a narrowing of the political opportunities for citizens to exercise good governance in their country, but at the same time, any temporary measures must pursue a legitimate aim, be proportionate to the goal and necessary in a democratic society so as not to level the content of the right to access the civil service.

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