

ADMINISTRATIVE AND LEGAL FRAMEWORK FOR SELECTION AND ENTRY INTO PUBLIC SERVICE IN THE CUSTOMS AUTHORITIES OF UKRAINE

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Annotation. The article provides a comprehensive analysis of the administrative and legal regulation of the selection and admission process for public service in the customs authorities of Ukraine. It is established that the formation of a professional personnel structure is one of the key conditions for the effectiveness of customs authorities and for ensuring the principles of integrity, competence, and transparency. The study characterizes the main normative and legal acts regulating this process, including the Law of Ukraine «On Civil Service» and the Customs Code of Ukraine.

The article examines the specifics of the competitive selection of candidates and identifies the main issues in its implementation, among which are the presence of corruption risks, a subjective approach to candidate evaluation, and potential favoritism. It analyzes scholarly approaches to defining the subjects of selection, their functions, and their responsibilities in ensuring the transparency of personnel procedures. Special attention is given to the issue of staffing customs authorities under martial law conditions, during which significant legislative changes have occurred, allowing for appointments without a competitive selection process.

The study considers both the positive and negative consequences of this approach. On the one hand, a simplified appointment procedure facilitates the prompt filling of vacant positions in crisis conditions, enabling a rapid response to challenges related to the functioning of customs authorities. On the other hand, it creates risks of forming an incompetent workforce, increasing corruption manifestations, and undermining the principles of equal access to public service.

Based on the conducted analysis, recommendations are proposed for improving the administrative and legal mechanism of personnel selection in Ukraine's customs authorities. In particular, emphasis is placed on the necessity of maintaining the competitive selection process as the primary method of recruiting civil servants, even under martial law conditions. It is proposed to enhance mechanisms for monitoring competitive procedures, ensure independent oversight of personnel appointments, and strengthen the role of civil society in ensuring the transparency of the selection process.

The study concludes that further reform of the personnel selection system in customs authorities should align with European standards of public administration. The adoption of international best practices in competitive selection, the development of clear candidate evaluation criteria, and the implementation of advanced digitalization practices in the selection process will contribute to improving the professionalism and integrity of Ukraine's customs service.

Key words: administrative and legal regulation, selection, public service, customs authorities, competitive selection, civil service, martial law, legal framework.

1. Introduction.

The administrative and legal regulation of the selection and admission process for public service in the customs authorities of Ukraine is a crucial element in ensuring the effective functioning of public administration. The formation of a professional personnel structure within customs authorities is

one of the key conditions for enhancing their operational efficiency and upholding the principles of integrity, competence, and transparency.

The legislative regulation of candidate selection for civil service, particularly within customs authorities, combines general provisions established by the Law of Ukraine «On Civil Service» with specific regulations outlined in the Customs Code of Ukraine. However, due to the dynamic changes in the legal environment, an ongoing debate continues regarding the effectiveness of existing procedures and potential ways to improve personnel selection mechanisms.

This issue becomes particularly significant under martial law conditions, where the introduction of simplified appointment procedures without competitive selection presents both opportunities for rapid staffing and risks related to corruption, inefficiency, and deviation from the principle of equal access to public service. The absence of a transparent competitive selection process may lead to violations of professional competence and integrity requirements for individuals appointed to positions within customs authorities.

2. Analysis of scientific publications.

The issue of administrative and legal regulation of selection and entry into public service in the customs authorities of Ukraine is a relevant subject of scientific research. The works of scholars such as M.O. Bahmet, L.M. Dorofeeva, O.P. Yefremova, T.Yu. Vytko, T.Ye. Kahanovska, T.O. Karabin, S.V. Kivalov, N.S. Panova, O.S. Prodaievych, V.H. Yatsuba, and others highlight various aspects of the legal regulation of this process. Despite significant scholarly attention to this issue, discussions continue within the academic community regarding the improvement of the relevant legal mechanisms, driven by the dynamic changes in Ukraine's customs system and its ongoing reforms.

3. The purpose of the work.

The purpose of this article is to conduct a comprehensive study of the administrative and legal aspects of the selection process and entry into public service in the customs authorities of Ukraine. Special attention is given to analyzing the current legislation regulating this process, assessing its effectiveness and compliance with contemporary requirements, as well as identifying challenges and prospects for improving the regulatory mechanisms of personnel management in the customs service.

Within the scope of this research, the author sets the following objectives: to examine the key legislative and regulatory acts that define the selection and entry procedures for public service in the customs authorities; to analyze changes in the competitive selection process, qualification requirements, and candidate evaluation mechanisms; to determine the impact of legal reforms on the personnel management system in customs authorities and propose ways to improve the administrative and legal regulation in this field.

4. Review and discussion.

According to Article 570 of the Customs Code of Ukraine, individuals eligible for service in the customs authorities are citizens who have reached the age of 18, possess the appropriate level of education, meet the established requirements regarding professional competence, business and moral qualities, and have the necessary health conditions for the performance of official duties. Upon admission to service, a probationary period may be established in accordance with the provisions of the Law of Ukraine «On Civil Service». The appointment of individuals applying for civil service positions in categories «B» and «C» within the customs authorities is conducted based on the results of an open competition held in accordance with civil service legislation, unless otherwise provided by law [1].

Thus, the administrative and legal regulation of the selection and admission process for service in the customs authorities of Ukraine is based on the provisions of the Customs Code of Ukraine, taking into account the norms of the Law of Ukraine «On Civil Service». At the same time, it is important to note that the concept of «admission to service» is not explicitly defined in the Law of Ukraine «On Civil Service» and is regulated exclusively by the Customs Code of Ukraine.

S.I. Nechyporenko, in his research, employs the terms «admission to service» and «appointment to a position», the content of which indicates their interrelation and shared coverage, including «the issuance of an order on admission to service for the respective vacant position and the assignment of an appropriate rank, familiarization with a detailed description of official duties, rights, and restrictions, taking the oath of office, arrangement of the workplace, and issuance of an official certificate» [2, pp. 53, 64].

Overall, according to the statement of P.R. Lytovchenko, «Administrative and legal regulation is the purposeful influence of administrative law norms on social relations to ensure, through administrative and legal means, the rights, freedoms, and public legitimate interests of individuals and legal entities, as well as the normal functioning of civil society and the state» [3, p. 99].

According to Article 21 of the Law of Ukraine «On Civil Service», entry into civil service is carried out through the appointment of a citizen of Ukraine to the respective position based on the results of an open competition [4].

Legislation establishes that the appointment of Ukrainian citizens to civil service positions without a competitive selection process is prohibited, except in cases explicitly provided by law, such as transfers to an equivalent civil service position within the same subcategory of positions.

Thus, the competition is a mandatory procedure to ensure transparency and equal access to civil service, aligning with the principles of integrity, objectivity, and professionalism in the formation of the personnel structure of public authorities, including the customs authorities of Ukraine.

As P.M. Rabinovych rightly points out, the effectiveness of legal regulation is characterized as the correlation between its actual results and the social objectives it aims to achieve [5, p. 150].

A.V. Andrushko identifies the characteristic features of the competitive selection process for civil service positions: a) it is one of the most effective legal mechanisms for staffing the civil service, significantly contributing to the enhancement of employees' professional levels, stimulating their self-education and self-improvement, and ensuring the recruitment of highly professional and qualified personnel into the civil service apparatus; b) it creates a competitive environment, where applicants compete for a vacant position under equal conditions; c) it encourages employees to acquire the necessary knowledge, thereby stimulating increased efficiency in their work; d) it serves as an indicator of demand for civil service, influencing supply and ensuring the continuous education of civil servants [6, pp. 70, 71].

O. L. Stalcheva rightly notes that the competition is a special method of personnel selection, which has a distinct organizational and legal form for assessing the professional qualities of each candidate for a position in accordance with the procedures established by law [7, p. 467].

Furthermore, the competitive procedure for filling civil service positions helps reduce the level of corruption among civil servants and minimizes favoritism in personnel decisions [8, p. 154].

O.S. Prodaievych stated, with which it is essential to agree, that the competition should be considered the primary legal method for filling a vacant position in a public authority, manifested through the assessment of the candidate's business, professional, and personal qualities in compliance with the legally established qualification requirements. The scholar viewed the external expression of the competition as a competitive procedure, which he, in turn, classified as a type of official procedure and proposed his own structural vision of it [9, p. 12].

However, the competitive selection of candidates for civil service positions is not entirely unambiguous. As T.Yu. Vytko points out, in many cases, the winner of the competition is not necessarily the most suitable candidate for fulfilling the responsibilities of the vacant position but rather the 'preferred' candidate [10, p. 10].

A.S. Cherkasova states that the competitive selection process for candidates for service in the customs authorities includes the following stages: 1) publication of an announcement in the press or other mass media by the customs authority regarding the competition; 2) receipt of documents from individuals wishing to participate in the competition and verification of their compliance with the qualification requirements for the respective position in the customs authorities; 3) conducting an examination; 4) selection of candidates [11, p. 208].

In accordance with modern personnel selection practices, the State Customs Service of Ukraine allows applicants to submit their resumes via its official website <https://customs.gov.ua/jobs>. This measure optimizes the document submission process and enhances the openness and accessibility of the competitive selection process for positions in the customs authorities.

In our opinion, the competitive selection process for positions in the customs authorities is an administrative and legal procedure aimed at assessing the professional, business, and personal qualities of candidates for vacant positions by comparing their compliance with established qualification requirements.

The main stages of the competitive selection process for vacant positions include:

a) decision-making and announcement of the competition – publication of information by the customs authority regarding available vacancies (positions requiring replacement) through official sources b) receipt and verification of documents – submission of the required document package by candidates and verification of their compliance with the established qualification requirements for the specific position; c) completion of the competitive examination – assessment of candidates' professional knowledge, skills, and competencies; d) candidate selection – comparison of competitive selection results, decision-making on candidates' suitability, and ranking formation; e) appointment to the position – final decision on the appointment of the competition winner to the vacant position in the customs authority.

According to part 5 of Article 10 of the Law of Ukraine «On the Legal Regime of Martial Law», during the period of martial law, the appointment of individuals to civil service positions is carried out without a competitive selection process. Such an appointment is made by the head of the civil service based on a submitted application, a completed personnel record card of the prescribed format, and documents confirming Ukrainian citizenship, the required education, and work experience in accordance with the legislative requirements for the respective positions.

Additionally, a mandatory condition for appointment is the presence of a relevant declaration in the Unified State Register of Declarations of Persons Authorized to Perform State or Local Government Functions for the previous year. At the same time, civil servants and local self-government officials appointed during the period of martial law cannot be transferred to other civil service positions [12].

Thus, as observed, the introduction of martial law in Ukraine has resulted in changes in the legal regulation of the appointment to civil service positions, except for transfers to such positions, provided that the individual is transferred from a position initially obtained through a competitive selection process.

S.M. Chystov believes that legal regulation is the activity of the state aimed at establishing legally binding norms and rules of conduct for legal subjects [13, p. 36].

O.M. Melnyk states that the overall effectiveness of legal regulation is ensured by the effectiveness of the law itself, the regulatory and executive activities that provide for the concretization of legal norms at the subordinate level, and the activities of the subjects involved in its implementation [14, p. 122].

According to N.H. Plakhotniuk, the subjects of the civil service candidate selection procedure include: 1) individuals seeking to acquire the status of a civil servant or civil servants applying for another position within the same institution where the competition is held or in another public administration body; 2) competition commissions and heads of public authorities; 3) personnel departments [15, p. 327].

N.H. Plakhotniuk's concept outlines three main groups of subjects involved in the civil service selection procedure, which generally align with the administrative and legal principles of public administration. However, from a practical perspective, it would be reasonable to expand this classification by including additional subjects that may influence competitive procedures, such as oversight bodies and civil society institutions. Such an expansion would enhance the efficiency and fairness of the civil servant selection process while also fostering the principles of professionalism, integrity, and transparency in the civil service.

In our opinion, the selection of candidates for positions under martial law remains a high-risk process, as the absence of a fair and transparent competitive selection procedure poses threats to the effective staffing of customs authorities and the civil service as a whole.

This leads to the conclusion that the abolition of the competition, even under martial law conditions, remains a contentious issue, as it creates risks for the formation of an incompetent workforce and undermines the principles of integrity and equal access to civil service.

The lack of a competitive selection process may encourage corruption and favoritism, resulting in appointments based on personal or political considerations rather than professional qualifications. This, in turn, may reduce the efficiency of official duties and negatively impact the overall functioning of customs authorities.

Furthermore, such a practice contradicts European public administration standards, which require openness and transparency in the selection of civil servants. This may have long-term negative consequences for the reform process of Ukraine's customs service and its integration into the European administrative framework.

Between January and May 2024, 539 individuals were appointed to civil service positions in the territorial bodies of the State Customs Service under a simplified procedure established for the period of martial law, bypassing the competitive selection process. This figure represents a small fraction of the total staffing capacity of territorial bodies, which amounts to 10,507 employees, in accordance with the resolution of the Cabinet of Ministers of Ukraine [16].

Selection is considered as: a process of assessing the professional qualities of a pool of candidates, determining their suitability for performing official duties; a set of measures aimed at ensuring the compliance of a candidate's individual psychological characteristics with the professional and job-specific requirements of civil service in public authorities [17, p. 55].

The absence of transparent competitive procedures undermines these principles, which may negatively affect the formation of a highly qualified civil service workforce in Ukraine.

As of today, there is no established judicial practice regarding decisions in favor of dismissed officials who were appointed through a simplified procedure during the period of martial law. At the same time, this circumstance may pose a potential legal risk in the future, particularly in the context of possible judicial appeals against such dismissals.



5. Conclusions.

The administrative and legal regulation of the selection and admission process for public service in the customs authorities of Ukraine is a crucial component of the state's personnel policy, directly influencing the effectiveness of the customs system's functioning. The study has demonstrated that the legal regulation of this process is based on a combination of the general provisions of the Law of Ukraine «On Civil Service» and the special provisions of the Customs Code of Ukraine.

One of the key mechanisms for ensuring transparency and objectivity in the selection of candidates for service is the competitive procedure, which involves assessing professional competence, moral qualities, and compliance with qualification requirements. However, the research findings indicate the presence of problematic aspects in the practical implementation of the competitive selection process, particularly concerning potential corruption risks, subjective approaches to candidate evaluation, and favoritism.

Particular attention was given to analyzing changes in the personnel selection procedure under martial law, which allow for appointments without a competitive selection process. This has contradictory consequences: on the one hand, the simplified procedure ensures rapid staffing, which is critically important in emergency situations; on the other hand, it creates risks of forming an incompetent workforce, which may negatively affect the ability of customs authorities to fulfill their functions effectively.

Based on the conducted analysis, it can be concluded that the current system of candidate selection for service in Ukraine's customs authorities requires further improvement. It is necessary to: a) ensure effective oversight mechanisms for competitive procedures by independent bodies; b) strengthen the role of civil society institutions in monitoring personnel appointments; c) refine the criteria for assessing candidates' professional competence; d) review the legal framework governing selection under martial law, with the aim of minimizing corruption risks and ensuring fair access to civil service.

In view of European public administration standards, further implementation of the best international practices for civil servant selection is advisable. This will contribute to strengthening the professionalism, efficiency, and integrity of Ukraine's customs authorities.

References:

1. Customs Code of Ukraine: Law of Ukraine No. 4495-VI of March 13, 2012. Retrieved from <https://zakon.rada.gov.ua/laws/show/4495-17/ed20120313#n4128>. [in Ukrainian].
2. Nechyporenko, S.I. (2011). *Administrativno-pravovi zasady prokhodzhennia sluzhby v orhanakh prokuratury: dys. kand. yuryd. nauk* [Administrative and Legal Principles of Service in the Prosecutor's Office: PhD Dissertation]. Odesa, 205 p. [in Ukrainian].
3. Lytovchenko, P.V. (2012). *Poniattia administrativno-pravovoho rehuliuвання u sferi komunalnoho hospodarstva* [The Concept of Administrative and Legal Regulation in the Field of Municipal Economy]. *Customs Affairs*, 2(80), part 2, book 2, 130 p. [in Ukrainian].
4. Law of Ukraine No. 889-VIII of December 10, 2015, on Civil Service. Retrieved from <https://zakon.rada.gov.ua/laws/show/889-19/ed20151210#Text>. [in Ukrainian].
5. Rabinovych, P.M. (1994). *Osnovy zahalnoi teorii prava ta derzhavy* [Fundamentals of General Theory of Law and State]. Kyiv: Naukova Dumka, 236 p. [in Ukrainian].
6. Andrushko, A.V. (2003). *Vynyknennia trudovykh pravovidnosyn z derzhavnymy sluzhbovtsiamy: dys. kand. yuryd. nauk* [The Emergence of Labor Relations with Civil Servants: PhD Dissertation]. Khmelnytskyi Institute of Regional Management and Law, Khmelnytskyi, 195 p. [in Ukrainian].
7. Stancheva, O.L. (2013). *Obrannia za konkursom yak vyd otsinky dilovykh yakosti pratsivnykiv* [Selection by Competition as a Method of Assessing Employees' Business Qualities]. *Aktualni Problemy Derzhavy i Prava* [Current Issues of State and Law], 70, 428–433. [in Ukrainian].
8. Zadoia, I.I. (2013). *Administrativno-pravovi zasady realizatsii prava na dostup do derzhavnoi sluzhby: dys. kand. yuryd. nauk* [Administrative and Legal Principles of Exercising the Right to Access Civil Service: PhD Dissertation]. Odesa, 239 p. [in Ukrainian].
9. Prodaievych, O.S. (2008). *Prokhodzhennia derzhavnoi sluzhby v Ukraini: orhanizatsiino-pravovy aspekt: avtoref. dys. kand. yuryd. nauk* [Civil Service in Ukraine: Organizational and Legal Aspect: Abstract of PhD Dissertation]. Odesa, 21 p. [in Ukrainian].
10. Vytko, T.Yu. (2016). *Derzhavna kadrova polityka Ukrainy: sutnist, suchasnyi stan i perspektyvy rozvytku* [State Personnel Policy of Ukraine: Essence, Current State, and Prospects for Development]. *Theory and Practice of Public Administration and Local Self-Government*, 1. Retrieved from http://el-zbirn-du.at.ua/2016_1/3.pdf. [in Ukrainian].
11. Cherkasova, A.S. (2010). *Analiz tekhnolohii vidboru pratsivnykiv na sluzhbu v orhany mytnoi sluzhby Ukrainy ta shliakhy yikh udoskonalennia* [Analysis of Technologies for the Selection

- of Employees for Service in the Customs Authorities of Ukraine and Ways to Improve Them]. Derzhavne upravlinnia ta mistseve samovriaduvannia [Public Administration and Local Self-Government], 4(7), 201–210. [in Ukrainian].
12. Law of Ukraine No. 389-VIII of May 12, 2015, On the Legal Regime of Martial Law. Retrieved from <https://zakon.rada.gov.ua/laws/show/389-19/ed20150512#Text>. [in Ukrainian].
 13. Chystov, S.M. (2002). Derzhavne rehuliuвання ekonomiky [State Regulation of the Economy]. Kyiv: KNEU. [in Ukrainian].
 14. Melnyk, O.M. (2004). Pravove rehuliuвання ta shliakhy pidvyshchennia yoho efektyvnosti: dys. ... kand. yuryd. nauk: 12.00.01 [Legal Regulation and Ways to Improve Its Effectiveness: Dissertation for the Degree of Candidate of Law]. Kyiv: IDP NAS of Ukraine. [in Ukrainian].
 15. Plakhotniuk, N.H. (2005). Protsedury pryiniattia na posady derzhavnoi sluzhby v Ukraini: teoretyko-pravovyi aspekt [Procedures for Appointment to Civil Service Positions in Ukraine: Theoretical and Legal Aspect]. Universytetski naukovy zapysky [University Scientific Notes], Khmelnytskyi, 4(16), 326–333. [in Ukrainian].
 16. Some Issues of Approving the Maximum Number of Employees of the Apparatus and Territorial Bodies of Central Executive Authorities and Other State Bodies: Resolution of the Cabinet of Ministers of Ukraine No. 85 of April 5, 2014. Retrieved from <https://zakon.rada.gov.ua/laws/show/85-2014-%D0%BF#Text>. [in Ukrainian].
 17. Malynovskyi, V.Ya. (2005). Slovyk terminiv i poniat z derzhavnoho upravlinnia (druhe vydannia, dopov. i pererob.) [Dictionary of Terms and Concepts in Public Administration (Second Edition, Revised and Expanded)]. Kyiv: Center for Institutional Development of Civil Service. [in Ukrainian].

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