

SOCIAL GUARANTEES OF CIVIL SERVANTS AS A STRUCTURAL ELEMENT OF THEIR SPECIAL PUBLIC-LAW STATUS

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Abstract. The paper examines the legal nature of social guarantees granted to state civil servants in Uzbekistan. It is argued that these guarantees are not ordinary labour-law benefits but an inherent element of the special public-law status, compensating for civil-service restrictions, enhanced duties and public responsibility. Analysis of the Law “On State Civil Service” reveals that guarantees are placed outside the chapter on legal status, regulated largely by reference, and weakly linked to restrictions. Survey data show that only 13% of civil servants are fully satisfied with existing guarantees. Drawing on German, Baltic and Estonian models, a classification of guarantees and legislative proposals are advanced.

Keywords: state civil service; special legal status; social guarantees; civil-service restrictions; public-law status; compensatory guarantees; Uzbekistan.

1. Relevance of the issue

A professional civil service cannot be constructed exclusively around duties, restrictions, prohibitions and liability. The Law of the Republic of Uzbekistan “On State Civil Service” imposes on the civil servant an extensive set of duties (Article 12) and restrictions (Article 13), including the prohibition of entrepreneurial activity and of most other paid activity, of acquiring foreign citizenship and of holding accounts and property abroad, together with a special anti-corruption regime (Chapter 4) [1]. A status so heavily weighted towards obligations is sustainable only if it is matched by a corresponding system of special legal guarantees.

The logical chain underlying this paper may be expressed as follows: civil-service restrictions → enhanced public duties and responsibility → special guarantees. The restrictions deprive the civil servant of lawful sources of income and forms of activity available to other citizens; the enhanced duties and liability increase the personal risk connected with the office; guarantees restore the balance between the public interest in an impartial civil service and the legitimate interests of the person who serves. Uzbek legislation itself acknowledges this link: among the measures for preventing corruption in the civil service, the Law expressly lists ensuring the social protection, material support and incentivisation of civil servants (Article 15) [1]. Adequate guarantees are thus treated by the legislator not as a privilege, but as an instrument of integrity, stability of the civil-service corps and professionalisation.

The practical relevance of the problem is confirmed by the survey of civil servants that I conducted within my research. Only 13% of respondents stated that existing social guarantees fully meet their needs, 52% considered that they meet them partly, 17% that they do not meet them, and 17% found it difficult

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to answer. When asked which direction deserves priority in improving the civil-service system, 31.3% named improvement of legislation, 29.6% social guarantees for civil servants and 23.9% improvement of the remuneration system.

2. Legal nature of social guarantees

I understand the legal status of a state civil servant as a legal institution that determines the rights, duties and functions of persons in the civil service and their liability, and whose content is shaped by legal guarantees, restrictions and ethical standards. On this understanding, guarantees are not external to status but form one of its constitutive elements alongside rights, duties, restrictions and liability. This position is consistent with doctrinal views that the status of a civil servant must include not only organisational norms but also guarantees of personal and social stability [8], that sufficient legal guarantees are required to balance the personal interests of the servant and the public interest [6; 7], and that the burdens attached to higher public positions call for corresponding guarantees, including social protection [9].

Within the body of guarantees applicable to civil servants, several categories must be distinguished. General employment guarantees derive from the Labour Code, which governs labour relations of civil servants not regulated by the Law (Article 2) [1; 2]. Of the eighteen rights listed in the first part of Article 11, eight essentially reproduce rights of any employee under the Labour Code, including the right to timely and full pay, to training, to a workplace meeting labour-protection requirements, to rest, and to compensation for material and moral damage. Special civil-service guarantees arise from the service itself, such as retention of position and salary during retraining (Article 11), preservation of the more favourable conditions during temporary secondment to another state body (Article 41) and reimbursement of expenses on official business trips (Article 40) [1]. Social-security guarantees comprise mandatory insurance of life and health (Article 55) and state pension provision (Article 57). Compensation mechanisms include compensation for damage caused to the life, health and property of the servant (Article 56). Professional and institutional guarantees cover legal protection (Article 52), the right to appeal to the specially authorised state body, and the consequences of unlawful termination (Article 51). Finally, incentive mechanisms are embodied in the structure of remuneration (Article 43) and in incentive measures (Article 44) [1].

Special guarantees of civil servants cannot be equated with ordinary labour-law benefits for three reasons. First, the activity of civil servants in Uzbekistan is regulated by a mixed system of public-law and labour-law norms; the civil servant is at the same time a participant in public-law relations with the state and in labour relations with the state body [5]. Second, the restrictions of Article 13 are public-law in nature and apply only by virtue of holding a civil-service position; the guarantees that compensate for them must therefore have the same public-law basis and the same personal scope. Third, the Law elevates legal and social protection to a principle of the civil service (Article 5) [1]. I interpret this principle as requiring that the duties, liability and restrictions forming the civil servant's status be counterbalanced by state protection through legal guarantees, social stability, professional security and material incentives. Social guarantees are therefore an element of the special public-law status arising from the particular nature of civil service, not a set of benefits granted at the discretion of the employer.

3. Regulation in Uzbekistan

The Law "On State Civil Service" contains a separate Chapter 9 on the legal and social protection of civil servants, consisting of articles on legal protection (Article 52), social protection (Article 53), labour

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and social leave (Article 54), mandatory insurance of life and health (Article 55), compensation for damage to life, health and property (Article 56) and state pension provision (Article 57) [1]. Remuneration is structured as a base salary, a supplement for long service, a supplement for the qualification level, an allowance for achieving key performance indicators and incentive payments based on the results of the reporting period (Article 43). Rest is guaranteed through a forty-hour five-day working week, a reduced week of thirty-five hours for one parent of a child under three years of age, and double compensation or equivalent additional rest for work beyond working hours (Article 34) [1].

The structural position of these rules is itself significant. Chapter 3 of the Law, entitled “Legal status of a state civil servant”, includes rights, duties, restrictions and liability (Articles 10–14), whereas guarantees are placed in Chapter 9, after the rules on termination of service. The systematic arrangement of the Law thus does not recognise guarantees as an element of status, although the Law itself lists legal and social protection among the principles of the civil service. Moreover, the key provisions are formulated largely by reference to other legislation, so that the content of particular guarantees is determined by labour law, social-insurance and pension legislation and by acts of the President and the Cabinet of Ministers. The career model introduced by Decree PF-5843 of 3 October 2019 and developed by Decree PF-6168 of 11 February 2021 envisages fair pay, social protection and improvement of working conditions as part of career development [3; 4], but the corresponding implementation mechanisms have not been fully developed.

The concept of the civil-service code that I have developed also presupposes guarantees that are not currently reflected in the Law as a coherent system: guarantees for family members of civil servants, improvement of household and housing conditions, periodic retraining, including abroad, and social guarantees after the completion of service. Their absence from the Law is a consequence of regulation that treats guarantees as a sum of general labour and social-security entitlements rather than as a special statutory system.

4. Empirical dimension

The survey results allow the formal statutory guarantees to be compared with their perception by those to whom they are addressed. In addition to the figures cited above (13% fully satisfied, 52% partly, 17% not satisfied, 17% unable to answer), respondents were asked to what extent working conditions at their workplace correspond to the legislation in force: 25.2% answered that they fully correspond, 26.1% that they partly correspond, 24.3% that they do not correspond at all, and 24.3% found it difficult to answer. When asked which measures are needed to improve working conditions, 24% named raising pay, 40% reducing working time, 25% strengthening labour protection and 11% other measures.

Two conclusions follow. First, the dominant “partly” response indicates that guarantees exist formally but are not perceived as complete or reliably implemented; the problem lies less in the absence of norms than in their content and implementation mechanisms. Second, almost a quarter of respondents consider that their actual working conditions do not correspond to the law at all. This points to a gap between the statutory model of guarantees and administrative practice, which cannot be closed by general labour-law remedies alone and requires special guarantees embedded in the civil-service status itself.

5. Comparative legal analysis

The jurisdictions examined in my research demonstrate three materially different approaches to the relationship between special status and guarantees.

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The German model rests on public-law service relations: the civil servant (Beamte) acts on behalf of the state, and his or her rights and duties are regulated by special legislation. Strict requirements of loyalty, impartiality and political neutrality, restrictions on secondary activity and the absence of the right to strike are matched by special guarantees: stability of employment, a separate pension system financed from the state budget outside general employment insurance, and the Beihilfe system, under which a substantial part of medical costs of the servant and family members is covered by the state [10; 11; 12]. Guarantees here are the direct counterpart of the restrictions.

The Latvian and Lithuanian models also treat civil servants as persons exercising public interests on the basis of public-law relations. Their social guarantees are regulated by special civil-service legislation separately from labour law and include supplements linked to length of service, housing assistance for families with children, and coverage by the state of a significant share of medical expenses [13; 14]. Guarantees are institutionalised as part of a coherent status alongside restrictions on political activity and conflict-of-interest rules.

The Estonian model illustrates the opposite approach. Following the 2012 reform, civil-servant status is reserved for persons exercising public authority, while most other public employees work under employment contracts and enjoy the general guarantees of labour law, without special state benefits [15; 16]. Where the relationship is contractual, the guarantees revert to the general regime; where the state imposes public-law restrictions, it provides special guarantees.

The principle relevant to Uzbekistan is therefore one of correspondence: the scope of special guarantees should follow the scope of public-law restrictions. Uzbek law currently combines public-law restrictions characteristic of the German and Baltic models with a system of guarantees that is largely derived from general labour and social-security legislation, which produces a structural imbalance.

6. Deficiencies of the current legal framework

On the basis of the foregoing, the following deficiencies can be identified. First, regulation is fragmented between the Law, the Labour Code, social-insurance and pension legislation and presidential and governmental acts, and many guarantees are established by reference rather than by substantive provisions. Second, there is no coherent statutory system of special guarantees: guarantees are not included in the chapter on legal status, and a significant part of the rights listed in Article 11 duplicates general labour-law rights rather than establishing service-specific protection. Third, the connection between restrictions and compensatory guarantees is not articulated in the Law; the prohibition of other paid activity and entrepreneurship, for example, is not accompanied by any statutory principle that remuneration and guarantees must compensate for the loss of these opportunities. Fourth, guarantees are unequal across categories: labour contracts are not concluded with civil servants of the political group (Article 30), and their additional rights, duties and restrictions are established by separate legislation (Article 10) [1]; the extent to which labour-law guarantees, which presuppose a labour contract, apply to them therefore remains uncertain. Fifth, implementation mechanisms of particular guarantees remain insufficiently precise, which the survey results reflect.

7. Doctrinal position: guarantees as an autonomous element of status

I argue that social guarantees should be recognised as an autonomous structural element of the special legal status of civil servants, on a par with rights, duties, restrictions and liability. This recognition has legal consequences: guarantees become subject to the same requirement of statutory

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definition as restrictions, cannot be reduced by subordinate acts without a legal basis, and must correspond in scope to the restrictions imposed.

On the basis of the structure of the Law and the concept of the civil-service code developed in my research, the guarantees of civil servants may be classified as follows: (1) material guarantees — remuneration, supplements, allowances and incentives (Articles 43–44); (2) social-insurance and pension guarantees — mandatory insurance of life and health and state pension provision (Articles 55, 57); (3) rest and recovery guarantees — limits on working time, reduced working time for certain categories, leave (Articles 34, 54); (4) compensation guarantees — reimbursement of service-related expenses, preservation of conditions during secondment, compensation for damage (Articles 40, 41, 56); (5) guarantees of professional stability — retention of position and salary during retraining, legal protection and protection against unlawful termination (Articles 11, 51, 52); and (6) guarantees upon and after termination of service, which the Law currently addresses mainly through pension provision and which require development.

8. Legislative proposals

First, the content of Article 53 “Social protection of a state civil servant”, together with the other guarantees of Chapter 9, should be incorporated into Chapter 3 “Legal status of a state civil servant”, thereby establishing in the structure of the Law that guarantees are a component of status.

Second, the Law should define a minimum state standard of guarantees applicable to every civil servant directly on the basis of the Law, replacing general references to “legislation” with a substantive list of guarantees according to the classification proposed above.

Third, the Law should establish the principle that civil-service restrictions are accompanied by corresponding compensatory guarantees, so that the introduction or expansion of a restriction requires an assessment of its compensatory counterpart, including guarantees applicable after the completion of service.

Fourth, basic guarantees should be unified for all categories of civil servants, including the political group, while justified special guarantees for particular types of public service are retained in special legislation. In this connection, ratification of ILO Convention No. 151 concerning Labour Relations in the Public Service would provide an international framework for determining the conditions of employment of civil servants [17].

9. Conclusion

Social guarantees of civil servants are neither optional benefits nor privileges. They are a legal mechanism that counterbalances the restrictions, enhanced duties and public responsibility inherent in the civil-service status and thereby ensures the stability, professionalism and institutional independence of the civil service. The Uzbek legislation already recognises legal and social protection as a principle of the civil service and links social protection to the prevention of corruption, but it has not yet drawn the structural consequence of this recognition. Incorporating guarantees into the legal status of civil servants and linking them to the restrictions imposed would bring the system of guarantees into correspondence with the public-law nature of the civil service and would strengthen the balance between the public duties imposed on civil servants and the protection of their legitimate rights and interests.

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