

On the Implementation Predicament and Improvement of the Newly Revised Civil Servant Law

Yi Qin *, Xinyue Zhang

Southwestern University of Finance and Economics, Chengdu, Sichuan, 610000, China

* Corresponding author: Yi Qin (Email: 926155233@qq.com)

Abstract: With the new revision of "civil servant law" the formal implementation, our civil servant employment, assessment, promotion and other systems more perfect. The new contents of the Civil Service Law meet the needs of the legal construction of socialism with Chinese characteristics in the new era. However, the implementation of the law still faces various difficulties: there are still shortcomings in the legislation, the relevant employment system is unreasonable, and the promotion and assessment system are not perfect. The construction of the legal system of civil servants in the future still needs to further improve the relevant legislation and build a complete supervision mechanism.

Keywords: Civil Servant Law; Legal System; Supervision; Lawmaking.

1. Introduction

With the gradual improvement of the legal construction in our country and the continuous expansion of the civil servants, the implementation process of the civil service system has been inadequate in many aspects. In order to improve the construction of the civil service system and meet the needs of society, the seventh meeting of the Standing Committee of the 13th National People's Congress passed the amendment of the Civil Service Law of the People's Republic of China (hereinafter referred to as the Civil Service Law), and the official implementation of the Civil Service Law, China's civil service system is more detailed and comprehensive. The newly revised "Public Service Law" mainly responds to the needs of the Party and the state to reform the civil service personnel system, and implements and improves the parallel system of civil service positions and ranks, admission, appointment, treatment and incentive mechanism. However, the Civil Servant Law still faces multiple difficulties in the process of implementation. This paper analyzes the above related problems in detail, and puts forward suggestions on the improvement of the current civil servant legal system in combination with the problems of the implementation of the current law.

2. The Dual Limitations of Legislation and Practice: An Analysis Based on Legal Provisions

2.1. The Civil Servant Legal System is not Perfect

There are legal gaps in the examination of civil servant law in our country. First of all, although the new revision of the "Civil Service Law", but in today's legalized society, the civil service selection system still lacks special legislation in terms of examination records. The current civil service examination in our country is temporarily borrowed from the school as the examination room, and there is no special examination room for the civil service examination. Due to different infrastructure conditions, these borrowed school examination facilities are not perfect, which indirectly affect the fairness

of the examination. Secondly, the examination system itself has drawbacks. [1] China's civil servant examination has always followed the principle of fairness and openness, but there are still many loopholes in the process of implementation, which need to be restrained by targeted laws. In the local examination, some units will restrict the registration of candidates by age, major, test subject scores and other conditions. The examination content and restrictions should help to ensure that differences in performance are related primarily to the skills under assessment rather than to irrelevant factors.[9] Otherwise, this kind of behavior is possibly considered as a "tailor-made" phenomenon to open the door to convenience, contrary to the principle of fairness and justice. Thirdly, the content of the examination is also unreasonable: it emphasizes theory rather than practice, resulting in a large number of candidates memorizing theoretical knowledge, but lacking flexible application. Although local governments have issued relevant regulations requiring newly admitted civil servants to train at the grassroots level, there is no relevant legal provision in the new Civil Servants Law requiring admitted civil servants to train at the grassroots level. Finally, there are still problems with the interview system of civil servants. Article 30 [Article 30 of the Civil Service Law "The civil service recruitment examination shall be conducted by written examination and interview, and the examination contents shall be set according to the basic abilities that civil servants should possess, different job categories and different levels of organs"] makes relevant explanations for the interview, but there is no clear requirement, and the interview process is subject to subjectivity. Part of the interviewers are officials of administrative organs, and the other part are scholars from universities. In the actual interview process, the quality of the interviewers will be uneven, which is easy to cause the wrong judgment of candidates' interview questions. Although the selection of interviewers may follow the principle of avoidance, it is still necessary to introduce relevant laws or regulations to make up for the shortcomings of the examination system of the Civil Service Law itself.

The Civil Servant Law is not well connected with other laws. By combing the relevant legislation in different fields and refining the improvement of the new law in legislation,

taking the form of provisions as an example, article 26 [Article 26, paragraph 4 of the Civil Service Law] "The following persons shall not be employed as civil servants: In the "credit information industry Management Regulations", the credit information system will add the dishonest person to the warning list, but the credit information as an admission evaluation condition is too strict, although it meets the requirements of strict management of civil servants, and if this clause is more convincing, it needs to cooperate with the corresponding credit management law. In recent years, academic circles have gradually suggested that punishment for dishonesty should be included in a number of laws, such as the punishment for dishonesty in the Personal Information Protection Law [2]. At present, it is urgent to introduce a credit management law to cooperate with the implementation of the Civil Service Law and other laws. In addition, if a civil servant is subject to disciplinary action within an institution, he or she will be transferred to a supervisory organ. However, the Civil Service Law does not accurately specify the procedures for internal accountability and transfer, nor does it specify in detail how to deal with minor violations of law and discipline. Therefore, relevant administrative organs may substitute disciplinary action for legal punishment to avoid legislative loopholes. So as to escape the phenomenon of legal accountability, it is still necessary to improve the shortcomings of legislation.

2.2. The Inadequacy of the Civil Servant Recruitment System

The legislative starting point of civil servant employment system is biased. Article 26 of the Civil Service Act [Article 26 (1) of the Civil Service Act "The following persons shall not be employed as civil servants: those who have been criminally punished for a crime"] clearly states that persons who have been criminally punished shall not be employed as civil servants, yet this paragraph deprives the punished persons of their basic political right to serve in public office. [3] First of all, Article 54 of the Criminal Law stipulates the content and period of deprivation of political rights. Then, citizens who are subject to criminal punishment and deprived of political rights, but who have completed their prison term and have their political rights restored, and citizens who have committed crimes such as misdemeanors and negligence and have not deprived of political rights, should enjoy the most basic political rights when participating in the recruitment of civil servants. However, the Civil Servant Law deprives citizens of their basic political rights, and the legal level of the civil servant's basic rights protected by the Constitution is higher than that of the civil servant law. Obviously, the employment system in the civil servant Law restricts or deprives citizens of their basic rights. Secondly, from the perspective of the rights and interests of the penalized persons, the legislative purpose and measure of the Civil Servant Law violates the concept of citizens' basic political rights guaranteed by the Constitution, and the general provisions of the Civil Servant Law clearly state that "This Law is formulated according to the Constitution". In terms of the right to be elected, if it is narrowly understood as the right to be elected as a deputy to the People's Congress, then according to the Constitution and existing laws, a person who has received criminal punishment but has not been deprived of political rights can participate in the election of deputies to the People's Congress, then citizens with the right to be elected should have the right to be elected as public officials,

but according to the Civil Service Law, they are not employed, and the seemingly reasonable legal system has conflicts. Moreover, at present, China only has the electoral law of the People's Congress and the organic law of local governments in electing public officials, and there is no legislation on the election of public officials, which also causes the contradictions in the above civil servant recruitment system. Some scholars in the academic circle believe that "the realization of a legitimate goal will lead to excessive damage to basic rights, so this legitimate behavior should also be abandoned" [4]. Finally, the legislation of the Civil servant Law is intended to protect the management order of the civil servant team and exclude those who have been punished by the criminal law from the civil servant team. However, with the development of the current criminal law, the threshold for criminalization is constantly changing, and the judicial practice of the criminal law still faces the dilemma of criminalization. The most typical behavior is the act of doing justice. In practice, the judgment of doing justice is quite controversial, and it is easy to form the crime of "hitting each other" or "crime of negligent wounding". The act of upholding social justice and seeing justice among citizens should be taken as an advantage condition in the selection process of civil servants. This kind of employment system obviously has unreasonable place. At present, China's civil servant recruitment procedures are based on conditions, and whether or not they are subject to criminal punishment is one of the evaluation conditions, and the criminal situation of the penalized person is not taken into account. Although article 37 of the Criminal Law [Article 37 of the Criminal Law] "For minor criminal circumstances that do not require punishment, criminal punishment can be exempted, but according to the different circumstances of the case, Admonishment or order to make a statement of repentance, apology, compensation for losses, or administrative punishment or administrative punishment by the competent department "] for the relatively minor circumstances of the crime, can be exempted from criminal punishment, does not affect the failure to be employed by civil servants due to minor crimes, but does not exempt citizens from the above justice and other acts. With reference to Article 7 of China's Lawyers Law [Article 7 of the Lawyers Law "Those who have been criminally punished will not be issued a lawyer's practice certificate, but with the exception of negligent crimes"], the rule of "excluding negligent crimes" guarantees the fair right of the penalized person to obtain a practice certificate, making the law more reasonable. If such rules are added to the evaluation conditions, the above problems can be solved.

To sum up, there are unreasonable places in the admission system of the Civil Service Law. Although the law will not be abandoned, as a national system for selecting public officials with the purpose of "serving the people", there are still some legislative imperfections in the law, which leads to the dilemma of unfair selection in the implementation process. Therefore, it is necessary to make up for the defects in the admission conditions. It should also reflect the principle of equity.

2.3. The Inadequacy of the Civil Servant Promotion and Evaluation System

The newly revised Civil Servant Law has added a parallel system of position and rank, which has made the promotion of civil servants from the former "monorail system" to the present "dual-track system", and initially solved the difficult

situation of civil servants' promotion, but there are still many problems in the actual implementation process.

The lack of supervision mechanism leads to the phenomenon of "running officials" and "running ranks". [5] Article 37 of the Civil Service Law and the current relevant system stipulates that "annual assessment exists during the current rank or post". Based on the current promotion pressure, if there is any problem in the assessment, the promotion path of the examinee will fall into a passive position, and if the assessment is rated as excellent, the service life of half a year will be shortened. Through opening up the relationship between superiors, we try our best to achieve excellent assessment results. Although the procedure requires that "the personnel who meet the promotion requirements shall carry out democratic assessment and comprehensive assessment within the organization or prescribed scope", in the practice process, the interviewees in the democratic assessment may give praise based on the principle of being worldly, and the comprehensive assessment may be "cared" by the superiors. It makes the whole procedure like a formality, and the whole evaluation process lacks the supervision of a neutral supervisory body, which can not truly reflect the assessment results. Moreover, due to the "dual-track" promotion path of parallel position and rank, the importance of rank promotion is less than that of position promotion, so there are operable "gray areas" in the assessment process of rank promotion.

In the promotion system of civil servant law, there exists a phenomenon where economic benefits are emphasized, but personal quality is neglected to meet the requirements. [6] Article 35 of the Civil Service Law [Article 35 of the Civil Service Law] "The assessment of civil servants shall, in accordance with the authority of management, comprehensively assess the morality, ability, diligence, performance and integrity of civil servants, focusing on the assessment of political quality and work performance." Assessment indicators are set according to different job categories and different levels of organs.] Although the comprehensive assessment is mentioned, it focuses on the assessment of "political quality and work performance" and the assessment indicators are formulated by organs at all levels. In the actual operation process, there may be a situation of promotion "outstanding work performance, but personal quality is not up to standard". Shi Wenqing, former deputy director of the Standing Committee of Jiangxi Provincial People's Congress, was called "the worst quality senior official". Some scholars believe that the promotion championship mechanism which takes economic growth as the main assessment index still exists in our country [7], and the promotion championship is prone to bring many negative impacts, such as: performance projects, false performance, duplicate construction, etc. Moreover, the parallel system of position and rank promoted by the Civil Service Law does not apply to civil servants at or above the bureau level. In actual situation, the promotion of rank does not change their political treatment, and leading cadres prefer the promotion of position. Therefore, the unbalanced promotion mechanism of civil servants above and below the bureau level is easy to cause bad phenomena.

3. The Improvement of Civil Servant Law

3.1. Improvement of Legislation

We will further improve legislation. As mentioned above, in order to better implement the new Civil Servant Law, first, it is necessary to further introduce special laws related to credit management. The promulgation of the credit management law can not only cooperate with the provisions of the civil servant law, but also advance to the credit management of the future civil servant system reform and strengthen the management of the civil servant team. Second, strengthen the relevant legislation in the selection of admission. Civil servant examination selection system as a necessary way of national selection, through legal means to regulate the examination system, from the selection of examination content, interview requirements of the interviewer, the selection of enrollment units and so on to make more detailed provisions, to a great extent to ensure the fairness of the examinees. Thirdly, the unreasonable places in the current Civil Service Law should be repaired, or relevant judicial interpretations should be introduced to supplement them. From the above analysis, it can be seen that the current legal system of civil servants has unreasonable legal rights in the admission requirements, which not only deprives candidates of their basic political rights, but also violates the constitutional principle of fairness and justice in concept. Therefore, we can refer to the Law of Lawyers and add crimes such as "negligence or excessive defense" on the basis of the original. Besides, ethics and morality should be considered in addition to law. The existence of civil servant legal system should protect citizens' rights and interests to a certain extent, rather than damage them.

3.2. Improvement of the Supervision Mechanism

The effective implementation of "Civil Servant Law" needs to establish a perfect supervision mechanism. It is not difficult to find that from the admission system to the promotion system, there are many problems in actual practice, and the implementation of various systems needs to take the supervision mechanism as the starting point. From the recruitment and interview, to the assessment of civil servants and the promotion of posts and ranks, it is necessary to supervise the whole process to examine whether there are irregularities in the work process: Is the selection process of civil servant interviewers compliant? Was the interviewer using proper process? Is the assessment officer accurate in the annual assessment of civil servants? Let's wait. Adding supervision procedures in each process to form a "tripartite mutual supervision", on the one hand, can ensure the fairness of all aspects of the civil service. On the other hand, through the situation of mutual supervision, we can curb the occurrence of undesirable phenomena such as "running officials to manage" and "taking the relationship", and also trace the phenomenon of violations of law and discipline to the source, to effectively pursue accountability, promote the implementation of the legal system of civil servants, and improve the rule of law system of civil servants in our country.

4. Conclusion

Under the background of the construction of the rule of law, the new revision of China's Civil Servant Law has improved

the shortcomings of the previous civil servant legal system, and added the parallel system of position and rank, making China's civil servant system more comprehensive. Based on the legislative and practical dilemmas faced by the relevant legal provisions of the revised Civil Servant Law in the concrete implementation, this paper puts forward corresponding suggestions from the aspects of legislation and supervision mechanism. Although China has newly revised the Civil Servant Law, the rule of law construction of the civil servant system will not stop there. As stated in the Principles of Philosophy of Law, "Law is not immutable". Therefore, it is necessary to continue to base on the national conditions, issue corresponding judicial interpretations and regulations according to the problems found in the implementation process, and supplement and improve the legal system of civil servants.

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