

THE MINISTRY OF JUSTICE OF THE REPUBLIC OF UZBEKISTAN

TASHKENT STATE UNIVERSITY OF LAW

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UDC: 342(575.1)

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***THE LEGAL STATUS OF CIVIL SERVANTS IN UZBEKISTAN: THEORY,
PRACTICE AND PROBLEMS OF DEVELOPING THE LEGISLATION***

Speciality: Law of public administration–5A240108

DISSERTATION

for

Obtaining an academic degree Master of law

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Tashkent – 2016

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INTRODUCTION

The actuality and justification of the research theme. Authority and relations related to it are basic elements of political system in every country. Government influences on society via determining directions of activities of persons as a main part of the political system of society. Civil service is also considered one of the institutions of the society. Perfecting the public management is deemed as one of today's important directions. As the President stated in joint session of the Senate and the Supreme Assembly of the Republic of Uzbekistan held on November 12, 2010: "As we all know, during past years reforms done in the sphere of democratizing government and government in our country had crucial aim, such as providing measures of realizing constitutional principle of division of governments, forming effective structure of mutual abstaining and counterpoise of benefits among governments, strengthening the role of control tasks and power of presidency and legislative governments in the center and places, liberalizing the court system and providing its independence"¹.

Interrelation between the administrative law and civil service can be defined through the fact that both have common regulating subject. However, their regulating subject have certain particular features. For example, administrative law includes social relations appearing in the process of organizing and accomplishing public management and the subject of public service includes social relations appearing in the process of organizing and accomplishing public service. So, linking social relations included in public service with organizing and accomplishing public management is not sufficient. Relations of public service and the role of public servants in it may appear, change and be banned in nearly all the sphere of the society. However, we should show dependencies between public service and administrative law. Norms of administrative law participate in the

¹ Каримов И.А. Мамлакатимизда демократик ислохотларни янада чуқурлаштириш ва фуқаролик жамиятини ривожлантириш концепцияси: Ўзбекистон Республикаси Олий Мажлиси Қонунчилик палатаси ва Сенатининг қўшма мажлисидаги маъруза. 2010 йил 12 ноябрь. – Тошкент: Ўзбекистон, 2010.

process of organizing and accomplishing public service and abolishing relations of state service.

Actuality of problems of perfecting the legislation and analyzing theoretical and practical features of legal status of civil servants represents itself in followings:

Firstly, analyzing theoretical and practical features of legal status of public servants in the Republic of Uzbekistan and development of requirement to perfect the legislation in this sphere;

Secondly, although it is actual to learn this sphere scientifically and many reforms are being carried out in this sphere, any complex monographic researches devoted to the administrative-legal features of this theme haven't been accomplished;

Thirdly, the relevance of researching problems of legal status of public servants scientifically and theoretically in the Republic of Uzbekistan;

Fourthly, determining legal status of public servants in the Republic of Uzbekistan and giving suggestions and recommendations about perfecting the legislation;

Fifthly, avoiding faults in the practice of legal status of public servants in the Republic of Uzbekistan.

Abovementioned options prove the actuality of problems discussed within the framework of the research work and their accordance with legal reforms are being carried out currently.

The object and the subject of the research. The object of the research is researching the legal status of public servants in the Republic of Uzbekistan practically and theoretically and social relations on problems of perfecting the legislation.

The object of the research:

a) normative-legal documents about the object of the research in the Republic of Uzbekistan;

b) researching the legal status of public servants in the Republic of Uzbekistan theoretically and practically and scientific works about perfecting the legislation.

The goal of and tasks of the research. The main aims of the research work are learning the legal status of public servants in the Republic of Uzbekistan theoretically and practically and solve the problems on the questions learned and perfecting the legislation on this sphere.

Following objectives are set in order to achieve this aim:

- To determine the concept of public servants and its particular features;
- To analyze the concept of public servants and learning their functions;
- To analyze the definition of the concept of public servants and their legal status;
- To determine rights and obligations of public servants;
- To promote public servants and discussing the problems of their responsibility;
- To prevent corruption in accomplishing public service and analyzing measures of fighting against it;
- To learn the problems regulating public service and the politics of cadres in current condition and problems of estimating working efficiency of public servants;
- To learn and analyze comparatively the foreign experience in stimulating institution of rotation in the activity of public servants (civil servants).

The main issues and assumptions of the research. The analysis of the legal status of the public servants in the Republic of Uzbekistan theoretically and practically and effective usage of legislation by perfecting it will be achieved by the result of the research.

The review of literature dealt with the research theme: Researching the legal status of public servants in the Republic of Uzbekistan theoretically and practically and some features of perfecting the legislation were accomplished by a number of Uzbek scientists such as Alimov X.P, A.Begmatov, Jurayev

B.I, Hojiyev E, Khudoyberdiyeva V, Husanov O., Husainov U., Hamedov I.A, Said-Gaziyeva N., Mirboboyev B., Muminova E., Rahmonov A.E.¹ and foreign scientists such as Atamanchuk G.V., Alekhin A.P., Kozlov Yu.M., Karmolitskiy A.A., Bakhrakh D.N., Manokhin V.M., Kozlov M, Starilov Yu. N., Ovsyanko D.N., Lazarev B.M., Kurashvili B.P., Radko T.N, Tolstik V.A., Weber M., Ostrom V., Simon H., Blay P., Crozier M., Peters G.

Although some problems of theoretical-legal features of the theme were scientifically proved and effective conclusions were made in our country, all features of the theme weren't learned completely.

The methods used in the research. In carrying out the research the following methods were used: statistical, formal-legal, logical (analysis, synthesis), structural methods of scientific knowledge and analytical research of materials.

The theoretical and practical significance of the results of the research. Scientific importance of the research is that suggestions and recommendations made by the result of the research make certain contribution to enrich the theory of the subject of administrative law. Conclusions made based on scientific researches can be used in holding scientific researches, in teaching law and public service in institutions and universities and preparing methodological recommendations. Besides, it gives an opportunity to research theoretically and practically the legal status of public servants in foreign countries and to learn particular

¹Алимов Х.Р. Административное право Республики Узбекистан. Учебник, Т., Академия МВД, 1999 г.; Жўраев Б.И. Ўзбекистонда давлат ва жамият қурилишини эркинлаштиришнинг ташкилий-ҳуқуқий жиҳатлари. \ \ Дис..юрид. фан д. –Т.ТДЮИ. 2008. –47 б.; Мирбобоев Б., Хусанов О., Бегматов А. Ўзбекистонда давлат хизматини ташкил этишнинг ташкилий –ҳуқуқий масалалари. Т. “Академия” нашриёти. 2005. –Б. 48.; Ҳожиев Э.Т. Давлат хизмати. – Т.: ТДЮИ, 2004. Б.14.;Худойбердиева В., Ҳожиев Э.Т. Маъмурий ҳуқуқ. Ўқув қўлланма. Тошкент, 2001 й.; Хусаинов У. Давлат ҳокимияти фаолиятида ротация институтининг Конституциявий-ҳуқуқий асослари.Т. 2011. б. –163.; Ҳамидов И.А. Организационно-правовые проблемы совершенствования системы государственного управления в Республика Узбекистан. \ \ Дис.. д раюринд. Наук. –Т.: 2004.;Саид-Ғазиева Н. Ўзбекистонда давлат хизматини ислоҳ қилишнинг назарий ва амалий муаммолари. Ю.ф.д. илмий даражасини олиш учун ёзилган диссертация. Т. 2010.; Муминова Р. Ходимлар карьерасини режалаштириш \ \ Ж. Кадрлар масалалари бўйича маълумотнома. 2007. № 11. Б.28 –33.; Рахмонов А.Э. Ўзбекистон Республикаси Вазирлар Маҳкамасининг Конституциявий ҳуқуқий мақоми. . \ \ Дис..юрид. фан номзоди. –Т.ТДЮИ. 2008. –26 б.; Weber M. The theory of Social and Economical Organization. – N.Y.:1947; Ostrom V. The Intellectual crises in American Public Adminstration. – Tuscaloosa: 1989; Simon H. Administrative Behavior. – N.Y.:1959; Crozier M. The Bureaucratic Phenomenon. – Chicago: 1964; Blay P. Bureaucracy in modern Society. – N.Y.:1959; Peters G. Searching for a Role; The Civil Service in American Democracy// American Political Science Review. – 1993. – Vol.14. - № 4;

features of perfecting the legislation. A number of materials on this sphere are analyzed. Also, practical suggestions and recommendations will be formed on solving problems of realizing norms of administrative legislation about public servants and perfecting it.

Scientific innovation of the research includes analyzing the legal status of public servants in the Republic of Uzbekistan theoretically and practically and researching monographically theoretical, legal and practical problems of perfecting the legislation from the point of view of subjects of administrative law. As a result, new conceptions, scientific theoretical conclusions, practical suggestions and recommendations were formed and proved as a particular solution to administrative-legal problems of public servants.

The structure of the research work. The dissertation consists of introduction, three chapters consisting of nine paragraphs, conclusion, references, and 91 pages in total. More than 100 sources were used while writing the dissertation.

CHAPTER I. THE CONCEPTION OF CIVIL SERVICE AND CIVIL SERVANTS AND LEGAL BASIS OF CIVIL SERVICE IN UZBEKISTAN.

1.1. The conception of public service and its features.

Achieving its independence the Republic of Uzbekistan obtained a chance to determine independently its own way of development. In the condition of formation of new Uzbek governmenthood the demand appears to form governmental and local organs and civil service and disciplining them legally. Thus, firstly, development of our country depends on forming public service correctly.

Indeed, during the years of independence problems such as limiting the centralization of state, carrying out part of task in this sphere in regional, district and city framework, forming structure of “mahalla” which is unique form of state in Uzbekistan were supported and, as a result, modern structure of state was established and independent public service was formed.

Public service is accomplishment the function of cadres by state organs, activity of all persons provided by state budget and working in the mechanisms of state organs permanently or temporarily¹.

According to B.Mirboboyev, O.Husanov, O.Begmatov, we can find different opinions about the concept of “public servants” in scientific books. Variety of opinions of this kind depends on accomplishing various social objectives by the public servants. It is natural state and it excludes using one criterion in determining the concept of “public service”².

In fact, before determining main features and the content of public service, we must establish an opinion about socially beneficial activities made by people. We can divide them into following forms:

-producing goods and other material values, presenting certain domestic service;

¹Хожиев Э.Т. Давлат хизмати. – Т.: ТДЮИ, 2004. Б.14.

²Мирбобоев Б., Хусанов О., Бегматов А. Ўзбекистонда давлат хизматини ташкил этишнинг ташкилий – ҳуқуқий масалалари. Т. “Академия” нашриёти. 2005. –Б. 48.

-creating non material values: writingbooks, articles, making movies and video films, writing scenarios;

-socio-cultural activity(education, health care and etc.);

-public service or serving all spheres of society and state;

a) ruling socio-cultural spheres(education, health care, science, culture, labor and protecting citizens socially);

б) ruling economic spheres (industry, agro cultural economics, construction, transport, communication, service);

в) ruling administrative-political spheres(defense, government security, justice, internal affairs, external affairs) ¹;

-serving in non-governmental, social, religious, foreign companies;

-serving in certain social spheres in order to provide certain demand and others.

According to well-known Russians scientist lawyer D.N. Bakhrakh, “One of activities satisfying people, state and society is service. This conception can be used in different meanings: type of people’s activity, socio-judicial institute, and special structure of state organs”

According to D.N. Bakhrakh, “Service consists of ruling, accomplishing state activity, serving citizens socio-culturally by providing management”².

Main type of service (including socially beneficial activity) is public service. In most text books public service is described as the action of public servants of state organs in accomplishing governmental objectives and functions³.

Public servants are main type of servants and constitute main group of administrative judicial subject among other officers⁴.

Before in literal books the term “public servants” was used in wide and narrow meanings. In wide meaning it meant a person working in public

¹ Алехин А.П., Козлов Ю.М., Кармолицкий А.А. Административное право Российской Федерации. Москва, Зерцало, 1996, с.76-236.

²Бахрах Д.Н. Административное право. Москва, 1993, с.97.

³Каранг:Административное право. Москва, 1985, с.123.

⁴Алехин А.П., Кармолицкий А.А., Козлов Ю.М. Административное право Российской Федерации. Учебник. –М.. ЗЕРЦАЛО, 1998. С. 184.

enterprises, agencies, companies as a civil servant, and in narrow meaning it meant a citizen working on state organs in certain order¹. It should be noted that public unit of state organization that suits person's labor position is understood under the conception "position".

The important feature of these descriptions is that servant working in both state organs and other public organs are stated as public servants. And public servants of state organs were included in special group of servants participating in accomplishing public assignments in certain degree.

According to well-known Russian lawyer V.M Manokhin "the gist of public service can be determined through its features, functions and objectives of public service and dependency of forms of state actions"².

According to M.Weber "Civil service is a type of power like a pyramid". As we know that M.Weber is one of the great German scientists of XX century. In his conception M.Weber mentioned that the structure of a system uses universal laws in order to keep itself.³

The servants of different organizations lead proper relationships while accomplishing their duties. The importance of the relationships is determined by the type of service and specific features of the company presenting the service. Official relations include:

Firstly, state-service relationships;

Secondly, official relations in social communities and other non-governmental organizations.

In our opinion, based on abovementioned, we can divide servants according to their working position and the organization where they accomplish their duties and obligations into following divisions: firstly, servants of state organs; secondly, servants of local organs; thirdly, servants of state enterprises, agencies, organizations and communities; fourthly, servants of non-governmental organizations; fifthly, servants of social communities and etc.

¹ Административное право. Учебник.-М., Юристь.1999.С.211.

²Манохин В.М. Государственная служба. Москва, 1966, с.5.

³ Weber M. Theory of Social and Economical Organization. – N.Y.:1947

According to scientific lawyer M.Kozlov, “under the term public service any kind of activity accomplished on state organs and differing from worker’s labor in form and importance is understood”¹.

This kind of approach to the public service is based on two forms of labor activities:

Firstly, making immediate material values, goods;

Secondly, controlling the management. Here material values can be made or functions of state organs can be fulfilled.

In this field service accomplished in public and local organs plays crucial role among services presented by people.

Demand of the service in state and local organs comes out from the existence of a state, from its functions and objectives, also from the requirement of forming public organs. Exactly servants act as personnel in the ruling structure and the structure that is ruled, in agencies and companies, in the structure of state organs; serve in their accomplishing the duties honestly and in establishing judicial discipline. We can consider the concept of public service in several meanings:

D.N Bakhrakh described public service in social meaning in the following way: “public service is a social category and is accomplishing socially beneficial action according to the direction of the state by a person working in certain position”².

However, in political meaning it is an action directed to accomplish politics of state, reaching its objectives and goals by all established power. Public service is a main type of balance in society.

In legal meaning – it means establishing judicial state-service relations and provides accomplishment of competency of state organs, obligations of positions and working duties of servants. Public service is a complex socio-judicial institution, and learning it requires analyzing judicial and social basics of relations.

¹ Административное право. Под ред. Ю.М.Козлова. Москва, 1973, с.136-137.

²Бахрах Д.Н. Административное право. Москва, 1993, с.102.

This institution consists of complex of standards regulating state-service relations and servants' rights, obligations, limits, responsibilities and their accomplishment of public service, establishment and reversal of working relations are regulated through it. So, public service is a judicial institute and consists of different standards of different spheres of law and small institutions.

In organizational meaning – public service will be in connection with organizational-functional elements of public mechanism, it presents itself as a structure consisting of following elements: organizing organizational and processual basis of the activity of state mechanism, formation of positions and their legal basis, defining workers and their evaluation. Public service is a legal basis of consolidation of the state power. It strengthens state and provides normal functions of civil society.

If we consider Yu.N.Starilov's opinion about the subject - "Service accomplished in state and local organs is general power and is work of general state organs". According to common theory, under the term public service usually service accomplished in state enterprises, agencies, companies and communities is understood. Servants of private organizations, enterprises, banks and other organizations can be included in the structure of service relations only from social approach.

Lately, service accomplished by deputies in developed countries presents itself as a professional work. However, work of deputies is not considered as a public work. Even people working in high positions (President, leaders of executing and representative bodies, minister and others) are not public workers. They have mass judicial status of work and can accomplish their duties in a certain period. For example, if we consider Western Europe and United States of America, their servants are not included in mass service.

However, when we learn about the mass service structure of these countries we can see some discords (for example, about the principle of servants' accomplishing their duties "temporarily" and principle of their designation

ad vital). Important public-administrative functions are accomplished by the people who don't have any relation to public service (for example, private notaries)"¹.

In judicial literatures, the term public servants are used in wide and narrow meanings.

If we consider public service in wide meaning, it is an action of all people accomplishing function of cadres of management, working in certain position in the mechanism of state organs permanently or temporarily and financially provided by the state budget, in narrow meanings, citizens who work in state organs specified in law.

The conception given by Russian scientist B.M Manokhin is widely used in judicial literature. According to him, public service is a part of the state activity in regulating legally and organizing state organs and other enterprises, and the activity of state organs and enterprises is directed to accomplish public objectives and functions.

However, majority of scientist protested against abovementioned description. For example, Russian scientist B.M. Lazarev. shown up its following drawbacks: firstly, public service is determined by the term of civil servant; secondly, civil servants accomplish not only state functions, but also other types of activities (for example, doctors, scientific leaders, teachers and other); thirdly, in the conception given by B.M.Manokhin two situations: public service and activity directed to its organization and regulation are generalized. B.M.Lazarev gives following definition to the state service: "civil service – is serving for the state or an activity of accomplishing functions and objectives of the state for certain amount of money in government organ with its requirement"².

Public service is one of basic types of state activities of legally regulating and organizing public mechanism and it provides effectively accomplishing state objectives.

¹Старилов Ю.Н. Служебное право. Москва, изд. БЕК, 1996, с.131.

²Лазарев Б.М. Государственная служба. Москва, 1993, с.5-6.

The main objective of the state service in the Republic of Uzbekistan is accomplishing public functions according to situations and tendencies established in laws and the Constitution of the Republic of Uzbekistan, fulfilling its objectives, providing satisfaction of needs of society and citizens.

Currently, one of the basic problems is confirming unique law regulating general sides of state service in the Republic of Uzbekistan.

So, if we conclude abovementioned definitions of public service, public service is a professional activity of civil servants in representative, executive and judicial organs.

We may consider the conception of the public service also in functional meaning. In functional meaning is a special kind of activity of administrative-government structures, mechanism of state organs and state activity.

The activity of civil servants can present itself in different forms. For example, civil servants:

- present decrees, accomplish commissions of regulating character;
- fulfill directions of judicial power towards different judicial subjects in the state system, for example presenting decrees, orders and directions and etc.
- accomplish judicial activities or provide forcing, for example disciplinal, administrative and other measurements towards judicial and physical people and other subjects of law;
- accomplish organizational activities and material-technical operations, for example holding meetings, sessions, conferences;
- accomplish activities directed to protection of rights and freedom of citizens.

The activity of civil servants leads to essential consequences, because during their activity legal relations can be formed, changed and reversed. All forms of activities of civil servants are important elements of management accomplished by the state and are inseparably linked to accomplishment of state.

Mostly servants fulfill administrative functions, for example management, organization, control, planning, accounting, leadership and others. Servants of

management deal with social labor according to their goals, objectives, meaning and results. According to the rule in the process of management of this kind material values aren't made immediately. This activity is basically directed to working out goals, objectives and directions of public formation, social development, organizing certain social-government organism, regulating social activity. Servants' work is a type of intellectual, moral, responsible activity which effects people's mind.

If we consider general features of public service, we can include the followings to it:

Firstly, leading public service of civil servants based on the state abovementioned in public organ;

Secondly, it is accomplishing commissions of public organ and obligations of the position for the amount of money by the public servants.

Speaking about the service fulfilled by people, we should learn not only about the content of the public service, but also of the service presented in local organs.

With the achievement of the State Independence of the Republic of Uzbekistan and change of legal, economic and political circumstances in the country big attention is drawn to the development of local government organs.

1.2. The conception of civil servants and their duties.

Civil servants consist of a social group of individual subjects and they accomplish functions and objectives of state organs and other organizations for the amount of money¹. Every organization should have personnel consisting of specially prepared servants in order to function properly. Regarding to the type of organization we can present the following servants: servants of state organs, local organs, social communities, nongovernmental, trade, nontrade, religious, private, foreign organizations.

Majority of people are busy with socially beneficial activity: accomplish different kind of functions so that the society functioned properly; make material values, produce goods, serve people, accomplish disciplinal and educational functions, fulfill functions of state actions and protection of the law, accept different kind of decrees.

In order to make out thorough understanding about servants, we should differentiate them from other people engaged in different social organizations (enterprises, agencies).

- servants working different positions in certain organizations (government, local, non - governmental, trade, non - trade, social, religious);

- their activity has intellectual feature, which means they don't create immediate material values. But servants may working material industry, for example provide the process if production technologically, preparing projects, marketing, research activity and others;

- servants accomplish state activity(organization, presenting decrees, leadership, control) and have administrative-economic commissions and commission to present certain organizational decrees; they can provide state and social forcing measures. Servants in any kind of organization accomplish basically

¹Ҳожиев Э.Т. Давлат хизмати. – Т.: ТДҶОИ, 2004.Б.18.

management functions (here the state management function means that regulate the activity of subject);

- as a rule servants accomplish their commissions, functions for the certain amount of money.

Servants working in state and local organs should be distinguished among other servants. Servants of state and local organs provide the benefit of government and local organs and on the behalf of them and are considered as the representatives of state and local organs.

Servants of state and local organs accomplish functions and objectives of government and local organs. Below we learn all of them.

Civil servants, in broad meaning, is an individual subject of law accomplishing functions and objectives of the state not only in state organs, but also in other organizations, agencies and enterprises.

In narrow meaning, civil servant is a person working in public service, which means he works in certain position in the structure of governmental administrations, accomplishes functions of state organ for the certain amount of money¹.

Majority of civil servants deal with giving executive decrees, organization, accomplishing commissions and socio-cultural activity. Only in some countries civil servants working special public positions and accomplish justice and the control of procurator (which is protecting law).

In most judicial books the following definition is given to the civil servants: civil servant is a person who accomplishes work duties in the mechanism of public administration directly or indirectly for the certain amount of money². Here accomplishment of work obligations by an servant presents itself as a main concept.

¹Хожиев Э.Т. Давлат хизмати. – Т.: ТДЮИ, 2004.Б.18.

²Старилов Ю.Н. Службное право. Москва, БЕК, 1996, с.313.; Власов В.А., Студенкин С.С. Административное право. Москва, 1959, с.107.

The concept of the civil servants can be considered in three meanings:

Firstly, from the state-judicial point, public service is a “servant” of the state (state organs) having commissions of different features and importance. Servants signify the state in different social relations of the public administration and in foreign relations. Civil servant is a product of state and social development and he accomplishes state functions;

Secondly, from the administrative- judicial point, civil servant has commissions to present decree and fulfill organizational commissions. Civil servant in a state representative who has the right to provide judicial measures and accomplish commissions and administer administrative-judicial sanctions;

Thirdly, from the criminal-judicial point, civil servant is a special subject of criminal-administrative responsibility (civil servants - officials- are involved to responsibility for official crimes).

Each civil servant must accomplish duties linked to his position. Public position is considered to be “working place” of a civil servant. Each public position is included to the government unit which is one of elements of the public service. Public table consists of positions established in state organ (organization). Positions in public organizations are established in the order of presenting decree by state subjects.

Servant can work in certain position for a long time (for example for his whole working time). Civil servant can act according to his position while working in state organ, that is an experiential category established in public service. Experiential categories determine the order of changing position for the civil servant (for example being promoted or demoted). They link civil servant and the state during their whole professional period and provide the balance of relations in society and the country. In most Western European countries, if the position is reversed the person working in the position must not be fared, as his experiential category lets him to work in other public position. According to features mentioned above experiential category differs from public position.

Kh.P. Alimov gives to a civil servant the following definition. For example, “civil servant is a person accomplishing functions and objectives of the state for the certain amount of money within the framework of the state. Only citizens of the Republic of Uzbekistan can work in public position¹”.

And according to D.M.Ovsyanko, “civil servant is a citizen accomplishing obligations according to the public position in civil service for the certain amount of money in the order mentioned in the law. All state commissions regarding the whole social spheres are accomplished by civil servants²”.

In our opinion, concluding the abovementioned, we can give the following definition to the concept civil servants in the Republic of Uzbekistan:

Firstly, civil servant if a citizen of the Republic of Uzbekistan reached 18, knowing state language and having professional knowledge. Civil servant constitutes one side of state – service relations. Labor agreement is drawn between civil servant and state organ and according to it civil servant accomplishes the commissions of a state organ, functions of a state, solves special problems in order to achieve certain aim of public formation and the public in its order has obligations such as establishing his rights and benefits and providing them, providing with socio-judicial guarantee, responsibility and certain amount of money. Civil servant is a representative of administration and is a part of state bureaucracy. All actions of civil servants are fulfilled on the behalf of the state and according to its directions, and the state controls the activity of a civil servant and can provide forcing measurements in certain situations. Civil servants may work only in public positions. If we take Russian Federation as an example, according to law established in it, the activity of officers in public enterprises and agencies is not considered as a public service. According to Russian law the activity of the President of Russian Federation, ministers, gubernators, judges and other people working in political positions is not considered as a civil service.

¹ Административное право Республики Узбекистан. Учебник. Ташкент, Адолат, 1999.

² Административное право. Учебник под ред. Ю.М.Козлова, Л.Л.Попова. Москва, Юристъ, 2000, с.211.

If we conclude from the current law of the Republic of Uzbekistan, the President of the Republic of Uzbekistan is the highest official. He accomplishes functions of the state aiming public benefits, acts on behalf of the state within the framework of commissions given to him by the state. So, the activity of the President of the Republic of Uzbekistan can be considered as a civil service or if consider ministers, mayors and judges they also accomplish functions of the state in certain sphere aiming public benefits, act on behalf of the state within the framework of commissions given to them by the state.

If any law regulating public service in the Republic of Uzbekistan, surely it should be taken into account;

Secondly, civil servants must fit the requirements of legal documents regulating public service.

Thirdly, civil servant works in a public position in the order established by the legislation. The legislation regulating public service determines the content of the activity of civil servant, his judicial position, objective of his activity, aims and main directions, rights, obligations, responsibility, limits and guarantees. Only civil servants may work in public service;

Fourthly, civil servant is given an experiential category in the order established by law;

Fifthly, civil servants accomplish public functions, commissions of state organs, fulfill objectives of the state in economic, social, administrative-political spheres (developing financial activity, culture of the state, providing social discipline and safety, customs and bank service, involve in tax, fighting against law, internal affairs, external political affairs and etc.) ;

Sixthly, civil servants accomplish acts leading to judicial consequences (for example, confirm leading decrees, impose to penalty). Acts of this kind can present themselves as judicial facts and can serve as evidence. Acts of civil servants of this kind can lead to different social relations in life of a state and a society, change or reverse them;

Seventhly, as a rule activity of civil servants doesn't have productive character. However, we cannot conclude that their activity doesn't have any relation to production. Because civil servants effect on the process of production by directing the process of production, ruling it, preparing projects and others.

Public service effects on people mind, their financial life, technological process of production and organizing and ruling labor communities.

1.3. The description (classification) of the civil servants and their legal status.

As we know, civil servants can be classified into different groups according to variety of basics. Based on the Constitution of the Republic of Uzbekistan, or drawing attention into the principle of separation of the authority into three branches, civil servants can be classified into three groups:

First, servants of organs of legislative authority. Indeed, the legislative authority of the Republic of Uzbekistan is fulfilled by the Supreme Assembly of the Republic of Uzbekistan. The function of the Supreme Assembly of the Republic of Uzbekistan is regulated by the Constitution of the Republic of Uzbekistan, Constitutional law “About the Legislative Chamber of the Supreme Assembly of the Republic of Uzbekistan”¹, “About the Standing order of the Supreme Assembly of the Republic of Uzbekistan”², “About the Legal status of the member of the Senate and deputies of the Legislative chamber of the Republic of Uzbekistan”³. As per the 76th article of the Constitution of the Republic of Uzbekistan, the Supreme Assembly of the Republic of Uzbekistan is the highest state organ of membership, and accomplishes the legislative authority.

The Supreme Assembly of the Republic of Uzbekistan deals with not only accepting new laws, but also with controlling organs of executive authority within the framework of responsibilities it is assigned with.

Currently, new parliament of Uzbek statehood is formed. According to it, parliament of our country consists of two chambers: senate (higher chamber), legislative (lower);

Second, servants of organs of executive authority. Functions of government and its mechanisms are accomplished by organs of executive authority. Organs of executive authority accomplish organizational-operational function and gives decrees of execution.

¹Ўзбекистон Республикаси Олий Мажлиси Ахборотномаси. – 2002 – №12 – 215-модда.

²Ўзбекистон Республикаси Олий Мажлиси Ахборотномаси. – 2003 – №9 – 136-модда.

³Ўзбекистон Республикаси Олий Мажлиси Ахборотномаси. – 2005 – №1 – 8-модда.

According to current legislation, the structure of executive body of the Republic of Uzbekistan includes followings: the Cabinet of Ministers of the Republic of Uzbekistan. As per the law of the Republic of Uzbekistan “About the Cabinet of Ministers”¹ accepted on August 29, 2001 and the Constitution of the Republic of Uzbekistan, the Cabinet of Ministers is an executive organ of the Republic of Uzbekistan providing leadership to effective function of economic, social and cultural spheres, execution of laws, fulfillment of draft laws, decisions, President’s decrees and other decisions of the Supreme Assembly;

Ministries, governmental committees and their departments and institutions;

Enterprises, agencies and organizations, corporations, concerns, companies, associations and other communities functioning in the republic;

Hokims and authorities, their departments and institutions. As per the law “About local governmental authorities”² accepted on September 2, 1993 and the Constitution of the Republic of Uzbekistan, regions, districts and organs of membership of towns (Councils of national deputies) headed by hokims of regions, districts and towns and executive mechanism of the authority are included in the organs of local governmental authority;

Third, servants of organs of the legislative authority. According to the 107th article of the Constitution of the Republic of Uzbekistan, the legislative system of the Republic of Uzbekistan consists of Constitutional court of the Republic of Uzbekistan, Supreme Court and Supreme Economic Court of the Republic of Uzbekistan, Supreme and Economic Court of the Republic of Karakalpakstan, regional courts, the town court of Tashkent, district, town and economic courts which are elected for a period of five years.

According to the Law³ of the Republic of Uzbekistan “About courts” accepted on December 14, 2000, court in the Republic of Uzbekistan is directed to protect rights and freedoms of people, rights and interests protected by law of enterprises, agencies, companies and organizations by the court. The activity of the

¹Ўзбекистон Республикаси Олий Мажлисининг Ахборотномаси.. 1994. №6

²Ўзбекистон Республикаси Олий Мажлисининг Ахборотномаси.. 1995. №10

³Ўзбекистон Республикаси Олий Мажлисининг Ахборотномаси.. 2001. №1

court is directed to providing the supremacy of the law, social justice, peace and friendship of citizens.

The definition of the civil servants is stated differently in judicial literatures. For example, from the point of view of a well-known Russian lawyer D.M. Ovsyanko, public servants can be classified into following groups: depending on the circle of functions of state organs – servants working within the framework of the republic; servants working in local framework; according to features of state service they are classified into: civil servants of citizenship; militarized public servants (for example, military servants, servants of organs of internal affairs); according to the principle of separation of authority: public servants of legislative organs;

Servants of executive authority; Servants of legislative authority; according to the range of responsibilities they are classified into: officials; other servants not included in officials; according to the period of work public servants are classified into servants appointed (elected) for a period of time; servants with non-appointed period of work; servants with testing period of work and others¹.

However, Kh.R.Alimov classified public servants into four groups: Chiefs. Chiefs accomplish functions of organizations, agencies, enterprises and state organ of this country and directs the activity of mechanism of public servants dependent on him; have the right to accept them to work and dismiss from work, involve in behavioral responsibility, possess material values, award workers, sign on the behalf of this organization and accomplish other acts with judicial importance.

Briefly, chiefs accomplish responsibilities of state and authority and are responsible for the activity of the organ they are ruling.

Chiefs have rights to interpose in the economic, operative (daily) activity of dependent organs, enterprises, agencies and organizations to them, control, direct, give forcing directions. Ministers, chairmen, chiefs, directors, heads, rectors of governmental committees and others can be included in chiefs.

¹ Административное право. Москва, Юристъ, 2000, с.211-216

Public servants of this type are called officials in judicial literatures. However, majority of public servants can be called as officials because they work in certain position in state organization. Thus, not any kind of public servants can be called as chiefs (officials).

According to the second part of the 15th article about the Codex of Administrative responsibility of the Republic of Uzbekistan confirmed with the law of the Republic of Uzbekistan on September 22,1994, a person who is assigned with responsibilities for carrying out acts with judicial importance and accomplishing organizational - management, administrative - economic tasks in enterprises, agencies and organizations despite the form of property, in self-governing organs of citizens and state organizations, or accomplishing tasks of the member of the authority, elected or appointed for a certain period of time, permanently or according to special responsibility, and also in international organization or in legislative, executive, administrative or court organs of foreign country¹.

It is clear that chiefs and servants having right to accomplish the function of control (for example workers of internal affairs, organs of sanitary control and etc.) are considered as officials.

Main consist – is the second and important group of public servants and accomplishes almost all functions of this organ, personally fulfills the functions of this organ. Public servants included in the main consist don't fulfill actions of judicial importance accomplished by chiefs (for example, accepting to work, dismissing from work, direct the activity and etc.). Engineers, economists, agriculturists, architects, doctors, teachers, scientific servants and others can be included in this group of workers. It should be stressed in particular that in some cases accomplishment of actions with judicial importance depend on specialists. For example, director cannot make an order about dismissing a worker for a period of time without the reference of doctor. Actions of the main consist of public servants determine the quality of the function of organization, agency, enterprise

¹Ўзбекистон Республикасининг Маъмурий жавобгарлик тўғрисидаги кодекси. Тошкент, Адолат, 2012.

and state organ. According the work of the main consist the function of state organ is estimated. Thus, big attention is drawn into the problem of choosing and appointing to positions cadres in forming the main consist of servants in state organs. Assistant servants. This group of public servants include servants accomplishing assisting functions necessary for the normal functioning of state organs. Assistant servants make conditions for the normal functioning of the state organ. The consist of assistant servants includes secretaries, administrators, carriers, typists, laboratory assistants, expeditors and others. The framework of responsibilities of assistant servants includes preparing documents of office, statistical information, sending documents and other assistant –technical services. The activity of assistant servants doesn't have judicial importance. For example, the document typed by typist doesn't have any judicial importance until it is signed by director.

Members of administrative authority – are considered special group of public servants. Members of administrative authority are the group of public servants, who can within the framework of given responsibilities give directions which are crucial to other people regardless to the dependence on the work. Judges, procurators, deputies, people who can be included in the consist of chiefs in organs of internal affairs, military services, organs of national defense can be considered as members of the authority. Members of the authority are assigned with responsibilities of general features: confirm decrees to persons who didn't obey them in work, arrange administrative measures and etc. Members of the administrative authority are assigned with responsibilities of state and authority and act due to its directions¹.

So, public servants are citizens of the Republic of Uzbekistan, who accomplish tasks and functions of the state within the framework of responsibilities they are assigned with for the certain amount of money.

¹ Административное право Республики Узбекистан. Учебник. Ташкент, Адолат, 1999, с.113-116.

However, Yu.N.Starilov presents grouping of public servants according to the following features: according to the duration of state-service relations public servants are officers assigned to lifetime position in public job.

Herewith, it should be noted that we may observe abovementioned situation in the legislation of the Republic of Uzbekistan. For example, as per the 97th article of the Constitution of the Republic of Uzbekistan, the President, upon completion of his term of office, shall be lifetime member of the Senate.

Servants appointed to the public position for a certain period of time. They are appointed with special legal documents.

Public servants appointed to a state work without certain period:

Servants appointed to the state work with testing period;

Public servants due to the framework of activity;

Servants of the republic;

Local servants;

Public servants are classified into: servants included in high; head; big; small groups and other public servants due to the range of knowledge and requirements put to their professional preparation¹.

So, we can classify or define public servants into several groups according to situations confirmed in documents of legislation based on different foundations.

Public servant has certain legal position. There are specially confirmed conditions for public servants for starting state service, accomplishing it and being dismissed from state work. Public servants may accomplish the responsibilities they are assigned with and functions within the public administration and toward the external subjects (citizens and other organizations) of the law.

¹Стариков Ю.Н. Служебное право. Москва, БЕК, 1996, с.345-355.

As soon as the citizen starts the public work links to the “organism” consisting of four elements: firstly, the possessed state position; secondly, existence of certain category of experience; thirdly, inclusion of servants into the certain unit of state; fourthly, special place of public servant or head, official, member of the authority and others with determined duties of position¹.

All of the cases related to the public servant and state service must be regulated from the legal point of view.

Legal position of public servant is a core of state-service relations. The legal position of servants is determined by confirming their rights, obligations, responsibilities. When state-service relations change the legal position of servants also changes, for example, dismissal from work, losing citizenship, retirement and etc.

The position of public servants is a differentialized complex system and has vertical and horizontal form.

Every public servant has legal position determined with normative legal acts and considered as a central element of legal institution of state service and other elements of public service are accepted in order to serve state service and public servants, which means that they clarify the legal position of public servants and assist in their complete accomplishment.

Legal position of public servants is a set of responsibilities, obligations, freedoms and rights ensured by the state and accepted by the legislation.

Legal position of public servants in the Republic of Uzbekistan is determined by the Constitution of the Republic of Uzbekistan, regulatory texts of the Cabinet of Ministers, statutes and regulations of state organs, and other normative organs. For example, rights, obligations and responsibilities of the servants working in the Cabinet of Ministers are regulated by the Constitution of the Republic of

¹Старилов Ю.Н. Служебное право. Москва, БЕК, 1996, с.318.

Uzbekistan, the law “About the Cabinet of Ministers of the Republic of Uzbekistan”, the work order of the Cabinet of Ministers and other normative.

The meaning of the legal position of public servants may depend on the category of public servants, the conditions the state service is accomplished.

The problem of having the status of public servant is very important. If we consider current documents of legislation, citizen obtains the status of public servant with drawing the labor agreement with the state organ and after the confirmation about appointment of this person for the certain position. When the person obtains the status of public servant, the state-service relations are formed.

With abolishment of state-service relations public servants lose their status. State-service relations are abolished in cases of dismissal from work, retirement and others. In some cases the exact time of abolishment of the state service is determined in normative acts.

Conclusions of the first chapter

Concluding the first chapter, we consider that reformation of the state service in the Republic of Uzbekistan must be directed to followings:

Firstly, developing normative-legal basics regulating state service;

Secondly, defining state organs, functions of their departments and responsibilities;

Thirdly, establishing unique structure of state service in relation with new economic reforms developed in the society;

Fourthly, organizing different type of state organs accomplishing functions such as method of planning, financing and estimating the activity;

Fifthly, establishing the effective politics of cadres in the sphere of state service.

In our opinion, the conception of state service in the Republic of Uzbekistan can be determined in following way:

Firstly, public servant is the citizen of the Republic of Uzbekistan not younger than 18, being in full command of the state language and having professional knowledge.

Secondly, public servant consists one side of state-service relations. Labor agreement is drawn between state organ and public servant and according to it, public servant accomplishes responsibilities of the state organ, functions of the state, fulfills special tasks in order to achieve certain aims of constructing the state, and in its order the state organ shall confirm and accept his rights and interests, have obligations such as providing with socio-legal ensures, responsibility and certain amount of money.

Thirdly, public servant is considered as a member of administration and part of state bureaucracy. All actions of public servants are done on the behalf of the state and according to its directions. And the state controls the activity of the public servant and in certain situations may use forcing measures toward him. Public servant may work in state position only in state organ.

CHAPTER II. THE LEGAL STATUS OF CIVIL SERVANTS AND THE PROBLEMS OF ITS DEVELOPMENT.

2.1. Rights and obligations of civil servants.

One of the main elements of legal position of state servants is rights of state servants and it establishes the transparency and effective functioning of state service. State servant has constitutional rights like as any subject of law or the citizen of the Republic of Uzbekistan. But from the point of view of state-service activity, labour rights consist the main part of the legal position of state servants. The functioning of the state service is provided with accomplishment of labor rights. Labor rights are directly related with accomplishment of obligations of position, and in some cases labor rights are accomplished in order to exercise obligations of position confirmed with acts of legislation.

Considering the current legislation, rights of state servants are classified into three groups.

Rights signifying legal position and legal ensure of servants. Followings may be included in it:

Getting familiarized with documents determining rights and obligations on the public position of the state servant, for example organizational-technical conditions necessary for accomplishing obligations of position and acting according to the state service, criterion determining the quality of work;

Getting familiarized with all information in personal documents;

Carrying out labor revisions in order to refuse information influencing the honor and reputation of the state servant;

The right to address the court or certain state organ in order to solve problems related to state service of state servants¹.

Rights related with directly accomplishing labor obligations. This may include followings: obtaining information and materials necessary for

¹Ҳожиёв Э.Т. Давлат хизмати. – Т.: ТДЮИ, 2004.Б.41.

accomplishing labor obligations in stipulated order; being in enterprises, agencies and organizations to accomplish labor obligations in stipulated order; participating in preparing and making decisions connected with obligations of position; to improve experience free of charge by the state; giving suggestions of developing public service; rights directed to improving the position activity of the state servant, accomplishing constitutional rights and obligations and providing social assurance:

To take part in selection for a vacant (temporarily free) position with their own wish; getting promoted according to the results of working activity, increasing the salary; receiving pension according to the working experience; uniting in trade unions in order to protect his own rights, socio-economic and professional interests; being financially provided according to the official salary and receiving extra money according to the category of experience and receiving awards according to the results of working activity; to go on annually paid vacation. The period of the vacation is stipulated according to the features of the state organization. Usually, labor vacations are not less than 30 days;

Demanding to add working activity in other period to the length of working (for example, it may influence to the pension of the employee); provision with medical service of the state official and his family members; obligatory state insurance on the possible damage to the health or the property of the worker related to accomplishment of public post;

Obligatory social state insurance on falling ill or losing workability while accomplishing state service and other rights.

As per the features of accomplishment of state service, in the order stipulated by the law officials may be provided with labor houses and labor transportations.

Obligations of state servants characterize the point of their working activity. Because the state organ accepts the citizen to certain position in order to assign him with responsibilities of the position.

In the Republic of Uzbekistan the obligations of state servants are stipulated in different documents of law. The point and varieties of obligations are stipulated according to objectives, tasks and functions of public organization.

The analysis of the current legislation shows that general obligations for state servants include followings: supporting current legislation and providing execution of the Constitution, laws of the Republic of Uzbekistan and other regulatory texts regulating their powers.

One of aspects of state servants is that they must prevent emergence of opinions about state servant's exercising not only acts inappropriate to the interests of the state and the society, but also acts damaging state organs or the honor of the state servant.

State servant cannot use his job descriptions in damaging the honor of state service, state organs or authorized persons.

One of main obligations of state servants is honestly accomplishing his job descriptions. Functions and proxies of state servants are clearly determined in legislative documents and other regulating texts and they must be correctly and clearly accomplished by servants. Non-accomplishment or improper accomplishment of job descriptions is considered as improper action, misdemeanor or sometimes crime.

State servants must accomplish rights and obligations they are assigned with according to their position. These requirements force state servant to make clear opinion about the size and framework of responsibilities according to the position.

The necessity of state servants to accomplish the responsibilities they are assigned with is directly related to following stipulated order in state organ.

In order to provide rights and freedoms, global interests of citizens, state servants shall have responsibility to accomplish job descriptions. If state servants use their proxy in other aims or act out of the framework of their responsibilities, this may be defined as an improper action of the service, administrative

misdeemeanor or crime. For example, damage a person by the consequence of acting out of the framework of responsibilities of the position and etc.

One more main obligation of state servants is providing the execution and protection of rights and legal interests of citizens. State servants are obliged to admit rights and freedoms of citizens, to protect and provide their legal interests. Rights and legal interests of citizens are essential categories for state servants. The accomplishment of these obligations by state servants provides the balance of social relations, execution of the order of the legislation, ensures the general judicial order. While rights and legal interests of citizens are protected by the state, one of main objectives of the state is considered to be fulfilled.

The execution of commands, orders and other type of directions, except for directions contradictory to the law, of state organ with high range of proxies. State service is based on the principle of hierarchy of obedience, and state servants are obliged to execute orders, commands, directions and other legal decisions of the law of heads within the framework of proxies based on submission.

State servants accomplish all commands on the basics of the personal responsibility. Thus, the command taken for execution must be estimated by the state servant from the point of view legislation and conformity to the law.

State servants are obliged to save and improve their experience in order to accomplish their job descriptions. With the beginning of the public service, state servant must be ready to accomplish his functions and job descriptions in high quality. He must fit the requirements of the position he is working in according his features. Having practical and theoretical knowledge is obligatory for state servants. As a rule, professional preparation is required when giving category of experience and receiving special degree.

Public servants accomplish different kind of functions in the framework of one state organ while dealing with their working activity. When the state servant is promoted he shall have more complicated duties. On the other hand, there may happen the evolution of jobs, for example some of them may end, start or change.

Considering abovementioned, public servants must improve their professional experience, and preparing public servants and improving their skills shall be their obligation.

A public servant must follow norms of etiquette of public servant. Public servant is obliged to accomplish his professional duties. He must accomplish his professional duties honestly, faithfully, considering interests of the society.

Public service is closely connected with the etiquette, moral, behavioral features of state servants. Following etical requirements are put before public servants when starting and accomplishing public service: firstly, following high moral principles, loyalty to the state; public servants must put their individual (own) interests behind the interests of the state; secondly, following the principles of public service; thirdly, being always ready to protect the Constitution and laws of the Republic of Uzbekistan; he mustn't break his oath about loyalty to the state, he must accomplish legal requirements given on public post; fourthly, he must search and use effective and unexpensive methods while accomplishing state objectives and functions; fifthly, in public one servant may not be awarded more than another; sixthly, it is prohibited to use public position for own sake or for the sake of family members; seventhly, it is not allowed to make promises related to the job descriptions; eighthly, it is prohibited to use secret information taken while accomplishing job descriptions for his own profit; ninthly, public servants cannot be engaged with commercial activity; tenthly, he must carry out a fight against corruption in state organs; eleventh, following the regime of labor activity and being respectful with citizens and colleges; twelfth, it is prohibited to use job descriptions deliberately or on other purposes.

Although, actions or inactions damaging the honor of the public servant are not considered as a crime according to their features, public servant of this kind are not allowed to work or accomplish professional duties in state organs. For example, breaking acknowledged norms and rules in rude way, deliberately breaking requirements of the law, causing unacceptable consequences as a result of

dishonesty, breaking the oath about loyalty to the public service and others. By the result of actions or inactions of this kind the damage is caused not only to the honor of the state servant, but also to the interests of state organs. Thus, state servants must save the authority (honor) of the government (state organ) in any case.

State servants are obliged to keep state secrets and other secrets protected with legal documents. According to the current legislation, public servant must keep secrets revealed while accomplishing their job descriptions. However, with this connection there may be noted also the permission to open secret protected by state, labor and other laws. For example, public servant may elicit information considered state or labor secret in connection with pursuit of criminal case or cases directly considered in the law.

Public servants are obliged to timely examine different kind of applications included in their job descriptions (applications, complaints and suggestions of citizens, enterprises, agencies and organizations). For example, according to the main law – the Constitution of the Republic of Uzbekistan, 35th article, each person directly individually or with others has right to apply authorized state organs, agencies or members of the nation with application, suggestions and complaints. Applications, suggestions and complaints must be examined in order and time stipulated by the law. According to the 19th article of the law “On physical and judicial persons applications analysis” accepted on 29th October, 2014 by the Legislative Chamber of the Republic of Uzbekistan and approved on 13th November, 2014 by the Senate, “Complaint or application after being received by relevant government organ, is examined in 15 days, and when it is required to analyze, or examine additionally, and ask additional documents in one month’s period”

In cases when it is necessary to carry out revision to examine applications and complaints, take other measures to demand extra materials, the period of their examination may be exceptionally prolonged by the chief of relevant state organ for not more than one month, the applier shall be informed about that.

The suggestion is examined in one month after being received by the state organ except for suggestions requiring additional examination, the judicial or physical person who presented the suggestion shall be informed about that in ten-days-period in written form. So, public servants are obliged to examine application in the framework of their responsibilities objectively and timely.

According Alimov Kh.R, public servants must: strictly follow objectives and duties of public service, act basing on the interests and position directions of the state, accomplish state organs and authorized persons' decisions included in the framework of responsibilities well and timely;

constantly develop his activity and improve professional experience; keep state and labor secret; respect interest and personality of citizens, follow and protect their rights, freedoms and legal interests; provide legislation in the sphere of administrative authority; follow labor etiquette; improve the degree of the managing culture, adapt new modern methods and forms to management; be at work on working days stipulated by the legislation; examine (applications, complaints and suggestions) timely and objectively; accomplish other obligations stipulated with the relevant public position and the status of public servants¹.

¹ Административное право Республики Узбекистан. Ташкент, Адолат, 1999, с.123

2.2. Stimulating civil servants and the problems of their responsibility.

It should be stressed in particular, that stimulating public servants and pursuing to responsibility has an important role in the sphere of public service. Stimulating is influencing on the needs, interests, purpose, practical position, and to the state-service activity of state organ, authorized person and other subject. Stimulation helps to improve the discipline and the quality of the service, educates employees in the idea of initiation and punctuation.

Stimulation always bases on particular legal fundamental. It must be timely, objectively and must have particular importance. Stimulation must be adopted in such way, that it must become the stimulation of achieving high results in the management. In this meaning the stimulation is a way of balancing.

While examining the legal institute of the public service, the problem of stimulation mustn't be considered, because in most normative documents including norms about public service this term is used.

Stimulation may be collective, or individual, and according to the meaning – economic, moral or mixed.

According to the Russian scientist D.M. Ovsyanko, “stimulation is used for the public servants’ accomplishing their job description honestly and effectively, fulfilling long-term, important and very essential tasks. Stimulation is one of basic means of educating public officers and strengthening labor discipline”¹.

Taking stimulating measures toward the public servants is accomplished by the state organ or director having this kind of right. There they may take stimulating measures in the order stipulated by the legislation and in the framework of their responsibilities.

In the current legislation different kind of measures of stimulating public officers morally and economically are stated.

¹ Административное право. Учебник под ред. Ю.М.Козлова, Л.Л.Попова. Москва, Юристъ, 2000, с.227.

In order to stimulate public servants followings may be fundamental: effectively accomplishing given tasks; accomplishing tasks and commands before the appointed time; initiative working; accomplishing labor tasks honestly and following the discipline¹.

According to the 180th article of the Labor Code confirmed with the law of the Republic of Uzbekistan on the 21st December, 1995, an employee may be stimulated for achievements at work. Types of stimulation, the order of their appliance, necessity and giving awards are stipulated in social agreements, rules of internal labor order and other local documents, team agreements, regulations and laws about discipline. Employees may be presented governmental premiums for particular labors before the state and the society.

According to the Labor Code of the Republic of Uzbekistan, salaries, awards, additional payments, raises and other payments considered in the structure of labor payment are not included in the types of stimulation².

We may take one particular state organ as an example. According to the regulation of the President of the Republic of Uzbekistan “On rewarding group of employees working in social spheres, and spheres of mass media, moral and enlightenment, art, culture, literature, health care, educations science in connection with the 24th anniversary of the independence of the Republic of Uzbekistan” on August 25th, 2015, the rewarding a number of workers for their bright talent and art, scientific activity and honest job in contributing to strengthening the independence of our country, reconstructing national idea, understanding our essence was confirmed³.

Or, one more example, according to the Law “On fulfilling labor in the department of fight against crimes on currency and tax at the Main Procuracy of the Republic of Uzbekistan” confirmed with the 291st decision of the Cabinet of Ministers of the Republic of Uzbekistan on July 6th, 2001, servants of the

¹Ҳожиев Э.Т. Давлат хизмати. – Т.: ТДЮИ, 2004.Б.72.

²Ўзбекистон Республикасининг Мехнат кодекси. Тошкент, Адолат, 1996.

³Ўзбекистон Республикаси Президентининг 2015 йил 25 августдаги “Ўзбекистон Республикаси мустақиллигининг йигирма тўрт йиллиги муносабати билан фан, таълим, соғлиқни сақлаш, адабиёт, маданият, санъат, маънавият ва маърифат, оммавий ахборот воситалари ҳамда ижтимоий соҳалар ходимларидан бир гуруҳини мукофатлаш тўғрисида”ги Фармони.

Departments are stimulated for accomplishing their labor tasks honestly and exemplarily, initiation and fast working. There are different types of stimulation: money reward; ceasing the penalty given before; charter; present; expensive present; giving next assignment of special degree before the appointed time.

Also, they may be awarded with the Charter of the Head Prosecutor of the Republic of Uzbekistan and Central Committee of Union of employees of state organs and social organizations.

Servants of the department may be awarded with the governmental awards of the Republic of Uzbekistan.

Head of the department is given a right to appoint awarding raises in the form of stimulation to all workers starting from officers to deputy Head of Department in the amount of one year salary to their salaries with his own regulation.

Stimulating servants of the department and its territorial divisions is accomplished in accordance with the result of the activity of the department and amount of money received to the state budget by its result.

Stimulation is not enacted toward the servants with active disciplinal punishment.

Stimulation is accomplished in the following way:

Firstly, announcing gratitude, monetary award, giving present is accomplished by the Head Procurator of the Republic of Uzbekistan and Head of the Department;

Secondly, awarding with expensive present, giving the Charter of the Head Prosecutor of the Republic of Uzbekistan, giving next assignment of special degree before the appointed time, presenting the Charter of the Head Prosecutors of the Republic of Uzbekistan and Central Committee of Trade Union are accomplished by the Head Prosecutor of the Republic of Uzbekistan.

The order is accepted about stimulation and announced to the servant of the department who is being awarded. If necessary, it is announced to all servants of

the department. A copy of the order about stimulation is sewed in the collapsible file of personal documents of the servants¹.

Not only stimulating or awarding servants is considered in the current legislation, but also involving in legal responsibility: disciplinal, administrative, material and criminal responsibility.

Under the concept of legal responsibility of public servants taking different measures of punishment stipulated in the documents of the law toward the actions contradicting the law are understood².

In accordance with judicial writings, we can divide actions contradicting the law – offences into two types: incorrect action or inaction and crime.

Legal responsibility of public servants may occur by the result of public officers' non-accomplishment of legal requirements, in different respond to job obligations, materially damaging governmental, social communities, violating legal and judicial rights of citizens.

One of basics of responsibility of public servants is action or inaction causing violation of legal and judicial interests of citizens. For example, according to the law of the Republic of Uzbekistan “On applying to the court about actions violating rights and freedoms of citizens” accepted on August 30th, 1995, any citizen considering that illegal actions of state organs, enterprises, agencies, organizations, social communities, self-governing organs of citizens or authorized persons violate their rights and freedoms, may apply to the court with complaint³.

Collegial and individual actions of state organs, enterprises, agencies, organizations, social communities, self-governing organs of citizens or authorized persons liable for applying to the court include: actions (decisions) violating rights and freedoms of citizens; interfering the rights and freedoms of citizens; causing obligations to citizens illegally.

¹Ўзбекистон Республикаси Ҳукуматининг қарорлар тўплами. 2001, №7

²Ҳожиёв Э.Т. Давлат хизмати. – Т.: ТДЮИ, 2004.Б.74.

³Ўзбекистон Республикаси Олий Мажлисининг Ахборотномаси. 1996. №9

Responsibility of public servants occurs when they break legislation or labor discipline, don't accomplish job descriptions or accomplish them not in appropriate form.

One of main types of responsibilities of public servants is disciplinary responsibility.

Democratic society, its economic fundamentals, tendencies of organizing the labor and economics, socio-cultural construction and managing administrative-political activity require unity and discipline of all members, strict discipline of the state and the society, also, high organization of labor discipline.

Disciplinary responsibility can be accomplished by chief or organ having proxy to appoint a public servant to the position. Disciplinary responsibility of the public servant is administered for illegal actions (or inactions) of public servants. Because following the labor discipline and strengthening the state discipline are main obligations of public servants.

Disciplinary responsibility of public servants is a type of legal responsibility occurring as a result of non-accomplishment or accomplishment in inappropriate form of labor obligations by public servants.

Disciplinary responsibility means taking punishing measures toward the public servants exercised illegal action of the position by the member of the administration.

Disciplinary responsibility of public servants is appointed by:

- 1) The laws of the Republic of Uzbekistan;
- 2) The Labor Code of the Republic of Uzbekistan;
- 3) Disciplinary regulations and special laws;
- 4) Internal rules of labor order.

One of main documents determining the disciplinary responsibility of public servants is the Labor Code of the Republic of Uzbekistan accepted on December 21, 1995. As per this Code, the labor order in enterprise is determined with the internal labor order confirmed by the committee of the trade union of employer or other organ of membership of servants.

In some branches of public economics regulations and laws for some groups of workers are practiced.

Public servant must accomplish his labor tasks honestly, follow the labor discipline, timely and correctly accomplish legal regulations of the employer, follow discipline of technology, labor protection, safety arrangements and industrial sanitary, and save property of the employer.

Labor duties of employees are clearly stipulated in internal disciplinary rules, disciplinary regulations and laws, local documents accepted in enterprises (social agreements, brochures and etc.), labor agreements.

State organ (organization) must organize the work of servants, provide labor conditions stated in laws and other normative documents, labor agreement, provide labor and industrial discipline, follow the rules of labor protection, be careful to needs and requirements of employees, gradually improve their working and living conditions.

State organ cannot require the public servant to do works not included in the framework of his labor tasks, illegal or causing danger to the health of the employee or other people, interfering their honor and interest.

Each employee must be introduced with his labor tasks before starting the work.

Labor discipline is provided by stimulating awarding for honest work, providing with necessary economic and organizational conditions for normal working, taking punishing measures for dishonest workers.

Authorized organ or chief can take following disciplinary punishing measures for breaking labor discipline:

- 1) Admonition;

- 2) Fine not exceeding thirty percent of medium salary. In internal rules of labor order cases of fining employee for fifty percent of the medium monthly salary may also be considered.

- 3) Ceasing the labor agreement.

It is prohibited to take disciplinary punishing measures not mentioned above.

Disciplinary punishing measures are taken by persons (organs) having right to accept to work.

Before taking disciplinary punishing measures the employee must be required to write an explanatory letter. The refusal of employee to write an explanatory letter may not prevent punishing him for incorrect actions done before.

While providing disciplinary punishment, the size of incorrect action, the situation when the action was done, previous work and behavior of the employee are taken into consideration.

For each incorrect action only one punishment can be provided.

Disciplinary punishment is taken after the incorrect action is revealed, but not taking into account the time when the employee was ill or on vacation, in one month-time.

If an incorrect action is revealed after six month by the result of financial-economic checking, the penalty cannot be provided two years after the event occurred. The period when criminal case was in process is not included in this period.

The message about the disciplinary punishment is sent to the employee and the note is taken from him.

The period of activity of the disciplinary punishment mustn't exceed one year since it was provided. If the employee isn't involved to disciplinary punishment, it shall be considered that he didn't take any punishment.

The organ or chief that provided the punishment may cease it due to his own initiation, because of the request of the employee, application of the labor team or direct chief of the employee before the appointed time.

One may complain about disciplinary punishment in the order stipulated for examining individual labor conflicts.

The organ examining labor conflict has right to conclude that the punishment given to the employee is illegal and cease it considering the manner the incorrect action occurred, the previous behavior of the employee, his regard to the work, the

concordance of the disciplinary punishment with the degree of incorrect action, the fact that the employer followed the order of giving disciplinary punishment.

The disciplinary punishment of public servants must be distinguished from administrative responsibility of public servants. As we considered above, disciplinary responsibility of public servants occur by the result of their incorrect action. However, administrative responsibility is provided for administrative incorrect actions, which means for breaking commonly obligatory rules set by authorized organs of state management (for example, traffic rules, rules of safety arrangements, rules of fire safety). Disciplinary responsibility is usually taken by head of state organ, and administrative responsibility is taken by authorized organs of state management and authorized officials. Disciplinary responsibility has subordinating character, but in administrative responsibility guilty person doesn't have to obey the organ or authorized person providing responsibility¹.

In some cases illegal action may have signs of both disciplinary incorrect actions and administrative incorrect action, and this illegal action raises responsibility of two types. For example, violation of legal documents on labor protection and labor by authorized person shall be fundamental for providing both administrative and disciplinary responsibility.

According to laws of the Republic of Uzbekistan, not only citizens, but also authorized officials (public servants) are attracted to administrative responsibility for administratively incorrect actions(illegal action).

Violating commonly obligatory rules stipulated by the legislation of the Republic of Uzbekistan, which means commitment of administrative illegal action can be fundamental for administrative responsibility of public servants. For example, according to the 10th article of the code about Administrative responsibility stipulated with the law of the Republic of Uzbekistan on September 22nd, 1994, under the concept of administrative illegal action or inaction committed illegally (deliberately or by carelessness) and violating rights and freedoms of citizens, causing danger to persons, property, governmental and social discipline

¹Ҳожиёв Э.Т. Давлат хизмати. – Т.: ТДЮИ, 2004.Б.76.

and environment is understood. The administrative responsibility for illegal action mentioned in this Code is accomplished providing that this illegal action in accordance with its features doesn't lead to criminal responsibility¹.

According to the 15th article of the code on administrative responsibility, authorized persons must be attracted to administrative responsibility due to committing administrative illegal action connected with non-accomplishment of accepted regulations and other rules included in their labor obligations in the spheres of keeping the order of management, governmental and social discipline, protecting the environment and health of citizens.

For example, there is considered administrative responsibility of authorized persons in the code for refusing examination of documents groundlessly (44th article); revealing information possibly damaging citizens morally and economically (46th article), breaking the legislation of sanitary and others.

Administrative responsibility of military servants and other servants is solved in different order. According to the 16th article of the code on administrative responsibility, military servants and persons obliged to military service called to meeting, also persons included in the consist of soldiers and commanders of organs of internal affairs shall be responsible for administrative illegal actions in accordance with disciplinal regulations. These persons shall be administratively responsible for breaking rules of hunting, fishing and rules of saving fish resources, rules of customs in common basics. Administratively arresting cannot be provided toward abovementioned persons. Military officers in periodic military service may not be fined.

Persons not included in the group of persons stated in the first part of this article, other people mentioned in disciplinal regulations and other special rules about discipline shall have disciplinal responsibility in cases directly considered in this regulation or laws, for committing administrative illegal action, in other cases they shall be responsible in common bases.

¹Ўзбекистон Республикасининг Маъмурий жавобгарлик тўғрисидаги кодекси. Т., Адолат, 2000.

However, according to the 23rd article of the Code on Administrative responsibility of the Republic of Uzbekistan, following measures of administrative punishment can be taken for the commitment of administrative illegal action:

- 1) fine;
- 2) taking an object which is considered to be or directly the an instrument of an illegal action on condition to pay for it;
- 3) confiscate an object which is considered to be or directly the instrument of an illegal action;
- 4) deprive particular person of special right given to him (right to drive means of transport, right to hunt);
- 5) arrest administratively.

As a rule, public servants (authorized persons) are considered special object of administrative responsibility.

According to well-known Russian scientist Yu.N.Starilov, when public servants are involved in administrative responsibility, two types of measures of administrative punishment can be used toward them: warning and fining¹.

In the current legislation criminal responsibility for authorized persons' (public servants) committing crime is considered. So, the fundamental for criminal responsibility of public servants is crime.

According to the 14th article of the Criminal code confirmed with the law of the Republic of the Republic of Uzbekistan on September 22nd, 1994, committing socially dangerous action prohibited with the Criminal Code shall be found a crime with the prevention of providing with punishment. An action (or inaction) damaging or causing real danger of damage to objects protected with this law shall be found as socially dangerous action².

According to the Criminal code of the Republic of Uzbekistan, following actions can be reason for the criminal responsibility of public servants: misuse of authoritative responsibilities and job descriptions (205tharticle); act out of the

¹Стариллов Ю.Н. Служебное право. Москва, БЕК, 1996, с.428

²Ўзбекистон Республикасининг Жиноят кодекси. Тошкент, Адолат, 2014.

framework of responsibilities of the authority and position(206tharticle); interfere the activity of subjects leading economic action illegally (206^{th1} article); disrespect the position (207th article); inaction of the authority (208th article); inaction of the authority (209th article); take bribes (210th article); offer bribes(211th article); interpose in offering bribes(212th article) and others. Act out of the framework of responsibilities of the authority and position. Following punishing measures states in the Criminal code of the Republic of Uzbekistan can be taken toward public servants:

- a) fine;
- b) depriving of particular rights;
- c) correctional measures;
- d) limitation at work;
- e) prison;
- д¹) limitation of freedom;
- e) sending to correctional center;
- ж) depriving of liberty;

Beside main punishments, additional punishments such as depriving of military or special degree can be provided toward the convicted persons.

- a) depriving of military or special degree;
- b) depriving of particular right can be provided not only as main punishment, but also additional punishment.

Material responsibility of public servants in the Republic of Uzbekistan is regulated by the labor legislation of the Republic of Uzbekistan. For example, according to the 185th article of the Labor code of the Republic of Uzbekistan, one side of the Labor agreement compensates the damage caused to the other side in accordance with rules stipulated by this Code or other normative documents about labor.

Material responsibility of the sides of the labor agreement is determined in labor agreement or agreement drawn in written form additionally, and also in social agreement. Here responsibility of the employer before the employee cannot

be less, and responsibility of the employee before the employer cannot be more than stated in the Code.

Abolishment of the labor agreement after the damage is caused cannot deprive sides of the agreement of material responsibility.

One side of the labor agreement shall be responsible for the damage caused to the other side by the result his illegal actions even if that condition is not mentioned in the Code.

Each if the sides must prove the size of the damage caused to them.

Any kind of damage caused by the result of accomplishing labor tasks or illegally being deprived of working capacity is fully compensated to the employee, and if a bread-winner dies while accomplishing labor tasks – the family is provided with full compensation by the employer providing that other case is not mentioned in the law.

Moral damage (physical or moral sufferings) are compensated in the form of money or other material form in accordance with agreement between employee and employer, in case of death of the employee while accomplishing job descriptions in accordance with agreement between employer and the family of the employee. In case of a conflict regarding to compensating moral damage, this problem is examined in the court.

Employee must pay real damage directly caused to the employer.

Directly caused real damage means that existing property of the employer (including property rented by employer from third persons) lessened or seriously damaged, and the employer must pay additional payments.

Employer shall be responsible for both directly caused damage, and the damage caused by the result of employer's compensating the damage caused to other persons.

If the damage is caused by the result of forces which were impossible to prevent, by the consequence of normal economic risk or by the result of necessary defense, the responsibility of the employee is excepted.

If other case is not mentioned in Labor code, the employee shall be responsible for the caused damage within the framework of his medium monthly salary.

In following cases employee shall be fully responsible for the caused damage:

1) for not providing keeping valuable things given to his in accordance with special written agreement;

2) for not providing keeping valuable things taken according to one-time agreement;

3) for causing damage deliberately;

4) for causing damage by the result of the effect of alcohol drink, drugs or toxic substance;

5) for causing the damage by the result of criminal actions of the employee proved with the verdict of the court;

6) for revealing trade secrets;

7) in cases mentioned in laws, also in the decisions of the Authority of the Republic of Uzbekistan.

Employer must carry out inspection in order to determine the reason and the size of caused damage before taking the damage from particular employee. Employer has right to organize commission in participation of relevant specialists in order to carry out this kind of inspection.

Employee must be required an explanatory letter in order to determine the reason of emergence of the damage. The refusal of the employee to write an explanatory letter cannot prevent his responsibility for the caused damage to the employer. Employee has right to get acquainted with all examination materials.

The employee responsible for the damage caused to the employer has right to compensate the damage fully or partially with his own will.

In accordance with agreement between the employer and employee, the deadline of compensating the damage may be prolonged. In this cases employee gives written obligatory on compensating the damage clearly determining the time of payment.

If the employee given written obligatory on compensating the damage ceases labor relations and refuses to compensate the damage, the resting part of money is taken in accordance with executive documents of notary offices.

With the agreement of the employer employee may give property with equal price with the loss, or repair broken property.

The sum of damage not exceeding medium monthly salary is taken according to the regulation of the employer. The regulation can be made in one month after the damage is determined.

If the sum of the caused damage which must be taken from employ exceeds medium monthly salary or if one month passed since the damage determined, the compensation is taken in the order of the court.

One may apply to the court on the decision of the employer about compensation of the damage.

2.3. Preventing corruption in accomplishing state service and measures of fighting against it.

From the first days of achievement of the independence of the Republic of Uzbekistan till today in direct leadership of head of state the fight against corruption which was tradition of the previous totalitarian regime is going unsparingly and violently.

Indeed, the roots of corruption are social occurrence, taking their start from faults in organizing state service and particular psychology of public officers. This shows importance of taking administrative-legal and organizational- management measures.

As the President Islom Karimov states, “Historical and current practice, including events in some new independent countries let us clearly imagine the threat of corruption and criminality to the defense”².

Corruption is a crime related with using position in personal purposes. The activity of corruption is considered one of main types of secret economics. In most cases corruption is understood as authorized persons’ taking bribes from citizens envisaging own interests, obtaining money in illegal ways in order to make profit. From etymological point, the word corruption is taken from Latin word “corruptio” meaning “breaking, agreeing for bribe”. As the author of judicial encyclopedia stated, “corruption is criminal activity done by authorized officials in the sphere of politics and state management in order to make personal profit within the framework of rights and possibilities given to them”¹.

In the “Encyclopedic dictionary of judicial terms” the following definition is given to corruption: “illegal usage of position and possibilities related to it by persons having authority to accomplish functions of the government (or equaled

² Каримов И.А. Ўзбекистон XXI аср бўсағасида: хавфсизликка таҳдид, барқарорлик шартлари ва тараққиёт кафолатлари. – Тошкент: Ўзбекситон 1997. – 85б.

¹Юридик энциклопедия . – Тошкент: Шарқ, 2001. – 258 б.

them) in obtaining material and other values, immunities, and also permitting other judicial and physical persons to obtain these values and immunities illegally”¹.

As it is stated in other writings, the term corruption is defined as “criminal activity is the sphere of politics and state management, includes authorized persons’ using rights and opportunities in order to make profit”².

In the code of authorized officials’ discipline on defending Legal order it is stated: “The concept of corruption must be confirmed in national legislation”, however exemplary definition of this case is given: “authorized person’s exercising particular actions or inaction within the framework of his duties for particular money breaking rules of position instructions, for the interests of the person giving the money”³.

The following is stated in the information of the UNO on fight against corruption in international scale: “Corruption is disrespecting state authority in making profit for own sake”⁴.

We may see similar definition given to corruption in the report of the World bank dedicated to the role of the government in current period: “Corruption is disrespecting state authority in making profit for own sake”⁵.

As R.Zufarov states, the word corruption is taken from Latin word “corruptum”, and means “broken, spoilt” and means spoiling social interests on personal and corporative purpose⁶.

N.F.Kuznetsova understands corruption as socially dangerous action involving suborning officials of state management and non-governmental organizations offering them bribes⁷. But the concept of corruption as socially dangerous emergence has wider meaning except for suborning for bribe and offering bribes, and we think then it is more correct.

¹Юридик атамалар қомусий луғати. – Тошкент: Шарқ, 2003. – 2016.

²Юридическая энциклопедия. 2-ое изд. перераб. – М.: Зерцало, 2003.– 45 с.

³Уголовный кодекс Республики Казахстан: Учебно-практическое пособие. – Алматы: НОРМА-К, 2007.

⁴Уголовно-процессуальный кодекс Республики Казахстан. – Алматы: НОРМА-К, 2007.

⁵Отчет Всемирного банка о мировом развитии / Под общ. ред. Д.Тушунова. Пер. с англ. Н. Сухова. – М.: Прайм-Тасс, 1997.– 26 с.

⁶Зуфаров Р. Порахўрлик- коррупция негизи // Давлат ва ҳуқук. – 2000. № 4. – 41 б.

⁷Криминология / Под ред. Н.Ф. Кузнецовой, Г.М. Миньковского. – М.: МГУ, 1994.– 58 с.

B.J.Akhrorov gives opinion as: “The word corruption is differently defined in legal writings. It doesn’t have unique definition and can include different crimes. Even from suggestions of international organizations it is not possible to create unique definition”. As he confirms, “Currently in publications it is stated as “illegal action of corruption” and crimes of authorized persons against management order are called “corruption””¹. According to the author, the meaning of crimes of authorized persons against management order and concept of corruption are different and there are also differences between them. Corruption is set of crimes committed pursuing personal interests using proxies of state authority and management by authorized persons. Corruption is understood as obtaining material or non-material interests illegally using proxies of authority and position by authorized persons”².

L.V.Michailov wrote: “The conception of corruption was analyzed by scientists of the USA especially deeply and widely. American scientists of the problems of corruption define this occurrence as politicians’, officials’ of state management, businessmen’s and other persons’ refusing to accomplish their official duties and state functions pursuing personal, family or group interests, making profit or getting promoted.”³.

In judicial dictionary of G.Black corruption is defined as: 1) an action of authorized persons committed on purpose of giving particular benefits not corresponding his official duties and rights of other persons; 2) it is defined as an action of authorized person committed illegally using his position or status in order to obtain particular privileges for himself or other persons in purposes not corresponding his position or status or other persons’ rights and duties⁴.

¹ Кадыков В.М. Некоторые проблемы коренной трансформации экономического механизма и криминализации российской экономики // Проблемы борьбы с преступностью, охраны прав и законных интересов граждан в условиях перехода к рыночной экономике. – М.,1996. – С.85-94.;Алауханов Е.О., Турсынбаев Д.Е. Борьба с коррупцией в государственных органах Республики Казахстан: учебное пособие / Под ред. Е.О.Алауханова. – Алматы: КазАТК, 2008. – 287 с.

² Ахроров Б.Д. Бошқарув тартибига қарши мансабдорлик жиноятлари учун жавобгарлик муаммолари: Юрид. фан. докт. ...диссертация. – Т., 2008. – Б.143-146.

³ Михайлов Л.В. Борьба с коррупцией в США (80-е годы) // Вопросы истории. – 1994. - №5.

⁴ Джонстон М. Поиск определений: качество политической жизни и проблема коррупции // Международное жюри социальных наук. – Париж, 1997. - №16.

Corruptional criminality – is class and historically changing occurrence. According to Ye.I.Kairjanov, “no one can deny the fact that the concept of criminality appeared by the result of emergence of property and division of society into antagonistic classes”. Both the concept of criminal and criminality didn’t exist before the emergence of class society ”¹.

P.A.Kabanov understands corruption as a social emergence including authorized officials’ of state authority and management organ using his status and labor duties on purpose of making profit ².

G.A.Satarov defines corruption as “disrespecting labor duties on purpose of avarice”³.

However, K.Tojiboyev said: “by the result of corruption occur actions as using possibilities of state management, organizing it according to personal interests”⁴.

“Corruption is illegally using state position in order to make personal profit. The term “illegal” means existence of laws regulating discipline of public officers working in state positions”⁵.

As we learned, we may find different definitions for the concept of corruption in legal writings. The analysis of abovementioned definitions lets us make following conclusions: firstly, it is a social emergence that doesn’t have clear judicial definition; as a result, it leads to regression of society and government of citizenship by the result of its becoming daily norm of social life; secondly, there is particular framework of subjects of this illegal action (they are firstly servants of state service, persons having proxy to accomplish governmental functions, and also persons having proxy to accomplish management functions in private sector); thirdly, subjects mentioned use their labor status, labor position, legal status and the status of their position (the work in state service and organizations of private

¹Кайржанов Е.И. Преступность – явление социальное // Предупреждение преступности. – 2003. - №1. – 8 с.

²Кабанов П.А. Коррупция и взяточничество в России: исторические, криминологические и уголовно-правовые аспекты. – Нижнекамск: Гузель, 1995.– 32 с.

³Сатаров Г.А. Россия и коррупция: кто кого? // Российская газета. 19.02 1998.

⁴Тожибоев Қ. Мансаб мавқеини суиистеъмол қилиш йўли билан ўзгалар мулкани талон-тарож қилганлик учун жавобгарлик. – Т.: ТДЮИ, 2004. – Б. 13.

⁵Основы борьбы с организованной преступностью: Монография / Под ред. В.С. Овчинского. – М.: ИНФРА-М, 1997.– 92 с.

sector) not in correspondence with their labor interests and stipulated rules of discipline; fourthly, this activity of mentioned subjects is accomplished in order to make profit or in interest of other persons or corporative interests and etc.

As forms of disrespecting labor status are different, according to various criteria different type of corruptions are distinguished.

We think that corruption can be divided into several basic types¹:

1) according to the status of subjects: a) corruption is organs of authority; b) corruption in private sectors; c) corruption in politics or political corruption;

2) according to degree: a) corruption in low degree; b) corruption in high degree; c) vertical corruption;

3) according to social danger: a) corruption-action; b) corruption-crime².

The fact that this kind of crimes are widely spread in most countries, officials of public management commits corruption regularly, leads to taking strict measures against crimes of public officials such as taking bribes, disrespecting labor status and other dangerous crimes of labor, and contrarily not paying big attention to more widely spread and less dangerous crimes of public servants (for example, taking present which is not very expensive is not considered as crime)³.

Currently corruption in non-governmental organizations and private sector is more widely spread. Chief of an organization (trade or social organization) must strictly follow rules given in regulation, but as an authorized official of the state he may handle resources not belonging to him on his own interests or on the interests of the second person, commit actions not corresponding interests of the organization. Daily examples for that: giving credits for the bribe to projects with the aim of taking money and disappearing; buying for cheap prices material values (vine-vodka or oil-chemical products and others) in enterprises of different forms of property financially damaging the enterprise and the government for the bribe and etc..

¹ Blay P. Bureaucracy in modern Society. – N.Y.:1959;

² Алауханов Е.О., Турсынбаев Д.Е. Борьба с коррупцией в государственных органах Республики Казахстан: Учебное пособие / Под ред. Е.О.Алауханова. – Алматы: КазАТК, 2008. – 27 с.

³ Нукенов М.О. Проблемы борьбы с коррупционной преступностью (уголовно-правовые, криминологические и криминалистические аспекты): Автореф. дис. ... д.ю.н. - Алматы, 2005. – 7 с.

Some experts distinguish political corruption as a separate type of corruption. For example, Russian scientist professor V.A.Shabalin analyzing sources on problems of politics and criminality, defines this occurrence as “deviant political behavior reflecting in illegally using governmental resources for strengthening own authority”¹. Kazak scientist professor Ye.O.Alauxhanov also has the same opinion².

For his part, A.I.Gurov defines political corruption as authorized persons’ of state management breaking norm of discipline and law not for taking bribes, but for making political benefit, supporting relatives and other illegal actions of this kind³. In turn, the author suggested distinguishing 3 main forms of corruption: 1) political. Authorized person’s acting illegally due to emergence of supporting relatives; 2) it is connected with criminal activity, and based on subornation of authorized persons. And they serve illegally for bribes; 3) this considers one of sides’ involving relevant authorized persons to criminal action in order to create convenient condition for himself. This form of corruption is closely related to collective criminality, and means subornation, provocation and threatening authorized officials⁴. Herewith, R.Zufarov said: “It is not possible to separate corruption from simple criminality. Corrupting authorized person doesn’t take awards given to him once, and serves his criminal structure, and takes his part from its benefit”⁵.

According to G.N.Gorshenkov, political corruption emerges in commitments not provided with punishment in criminal way (politicians’ patronizing electoral arrangements for personal loyalty and political support) and commitments worth criminal punishment distinguishing with political character⁶. This definition includes not only set of commitments deserving punishment, but also other types

¹ Шабалин В.А. Политика и преступность // Государство и право. – 1994. - №4.

² Алауханов Е.О. Проявление коррупции в обществе // Правовая реформа в Казахстане. – 2006. - № 4.

³ Криминология: Учебник / Под ред. В.Н. Кудрявцева, В.Е. Эминова. – М.: Зерцало, 1995.– 64 с.

⁴ Гуров А.И. организованная преступность – не миф, а реальность. - М., 1992. – 21 с.

⁵ Zufarov P. Порахўрлик- коррупция негизи // Давлат ва ҳуқуқ. – 2000. № 4. – 42 б.

⁶ Горшенков Г.Н. Криминологический словарь. – Сыктывкар: ДУМА, 1995.– 102 с.

of illegal actions in politics, which means it doesn't have clear criminological, but also wide socio-political character¹.

As Kh.Meliyev accounted, "Combination of corruption with other types of criminality, especially with collective and economical criminality is crucially dangerous for social relations"².

According to the degree of function low, high and vertical degree corruptions are distinguished.

Corruption in low degree is especially widely spread in medium and low degrees of management organs and authority, and connected with regular interrelation of citizens and authorized persons (cataloguing, fining, licensing, getting different kind of allowances and etc).

Corruption in high degree includes politicians working in governmental organs, authorized persons of high status and is connected with making decisions of crucial importance (forwarding and accepting laws, changing state orders, forms of property and etc.). In most cases two sides interesting agreement of corruption work in the same organ. For example, public officer of low degree offers bribes to the official of high degree for patronizing acts of corruption or assigning with additional responsibilities, giving additional resources, money.

Besides main forms of corruption such as taking bribes or disrespecting labor status, we can distinguish following forms of emergence of corruption:

Direct participation of authorized officials, servants of state labor, deputies in commercial activity for personal or corporative benefit; using own labor status to transfer money of the government to commercial formations in order to obtain it; giving awards to members of his corporative group (political, religious, national and etc.) from state resources; using labor status in order to agitate in mass media to make personal or corporative benefit; authorized persons' or servants' of state service using fake persons or relatives in order to make personal benefit; using

¹Кабанов П.А. Политическая коррупция в России: криминологическая характеристика и меры сдерживания. – Нижнекамск: МГЭИ, 1998.- 78 с.

²Мелиев Х. Коррупция: унинг олдини олишда анти коррупциявий экспертизанинг ўрни // Ҳуқуқ ва бурч. № 7, 2008. – 42 б.

labor responsibilities in order to manipulate (presenting changed information, not presenting, postponing deadlines of presenting and etc.) information to make personal or corporative benefit; forwarding decisions about accepting normative documents in narrow group interests; presenting state financial and material resources to the election funds of some candidates¹.

Form of corruption called “kickbacking” is widely spread in the USA. Its scheme is very simple: participants of criminal group agree on making agreement for certain amount of money, and sign official agreement for higher amount of money. One part of difference is presented to authorized official who let to accomplish, which means they secretly offer bribes. This form of bribing has also been used in Uzbekistan within latest years.

Corruptional crime is committed not only secretly, but also according to agreement of sides starting corruptional relations. In most cases it doesn't become a reason to claim relevant organs of authority, because both sides make benefit from illegal agreement. People even rarely claim against corruption, because they don't trust the process of fighting against corruption. There are objective and subjective foundations for that related to national and foreign experience.

The most dangerous side of corruption is that a person who is considered authorized by the government accomplish illegal requirement or condones illegal actions of the second side - a person offering bribe, and this action damages interests of government and society.

The relevancy of fight against corruption is that learning reasons of emergence of socially negative event, legal and criminological features gives opportunity to increase effectiveness of fighting against this action.

As the President of our country claims, “Doubtlessly, the degree of fight against corruption, its positive result is closely related to the process of fighting against this crime in the structure of judicial, legal-order and procuratory organs”

¹ Основы борьбы с организованной преступностью / Под ред. В.С. Овчинского и др. 2-ое изд. перераб. – СПб.: ИНФРА-М, 2003. – С. 190-191.

As the president I.A.Karimov claimed, “The most dangerous defect which is currently damaging not only the economics, but also political and international fame of the republic, moral-disciplinal fame of the society is corruption”¹.

Secondly, improvement of criminality and corruption damages constitutional fundamentals of the country, causes serious damage to rights and freedoms of citizens. The worst and incorrect idea that “The aim of accepting laws and regulation is avoiding them” leads to losing the ability of the society to provide legal order of the society and social discipline.

Thirdly, corruption damages moral-disciplinal fundamentals of the society, aborts status of citizenship of members of the society, makes condition for emergence of negative reaction to social reforms, damages the status of ideas of reforms, and also makes impression of missing “strong hand of powerful center”.

Fourthly, it is necessary to know that the people who illegally made money try to escape punishment and hide their actions by using every chance they have. People of this kind are afraid of justice, and even ready to commit the most offensive actions and ready to cause social disorders and conflicts among people in order to escape punishment.

Fifthly, there were some cases of the people’s making much of money from illegal activities tried to enter to the politics as defenders of the law and even people suffered fighting for democracy.

Sixthly, in the condition of realizing the activity directed to clear aim in the sphere of involving to the process of economic reforms foreign investments and enterprisers and active integration to world economic relations which is one of main objectives of Uzbekistan, actions of corrupters not only expels honest citizens from enterprise, but also causes misbelieve of foreign coworkers and fear them.

The President of the Republic of Uzbekistan I.Karimov in his work “Uzbekistan on the threshold of the 21st century: threats to thr security, conditions and and guarantees of progress” stated that increase of corruption and criminality

¹Каримов И.А. Озод ва обод Ватан, эркин ва фаровон ҳаёт – пировард мақсадимиз: Иккинчи чақирик Ўзбекистон Республикаси Олий Мажлисининг биринчи сессиясидаги маъруза. – Т.: Ўзбекистон, 2000. – Б.53.

not only prevents reforms, but also is big danger for achieving appointed aims in the period of changes¹. This negative emergence corruption exists in Uzbekistan in certain degree. Fight against it considered to be one of crucial problems both in international extend and within the Republic. Because corruption is closely related to criminality, especially cooperative criminality.

In this work national security was announced to be supreme and crucial aim. Providing national security is an obligation of not only organs of national security, but also number of state organs, social organizations, every citizen. In Uzbekistan developing patriotism of citizens and their love to the country, strengthening the status of state organizations in their mind is an important part of this aim. In order to realize these aims we should provide security of the government and society, fight against criminality which is causing big danger to reforms, and influencing every sphere of the society.

Considering corruption as a problem related to criminal right and criminality is not fully correct. Because it is considered to be a problem having difficult political, economic and disciplinal importance.

Countries with high degree of corruption lose their status in international extend and in mind of citizens.

The head of our country gave number of advice on preventing corruption in order to strengthen the status of our independent country. For example, on February 7th, 2005 the President of Uzbekistan in a practical conference hold with new staff of authority stressed in particular, that servants of state organs must fit two criteria: 1) deeply change his responsibility; 2) have high experience, skills and knowledge relevant to the belief and obligation presented to state servants, be master of their job and deeply know secrets of their sphere². The Republic of Uzbekistan joined convention of UNO against Corruption³.

¹Каримов И. Ўзбекистон XXI аср бўсағасида: ҳавфсизликка таҳдид, барқарорлик шартлари ва тараққиёт кафолатлари. Т.: “Ўзбекистон”, 1997. Б. 85.

²Каримов И. Янги ҳаётни эскича караш ва ёндошувлар билан қуриб бўлмайдиган. Ўзбекистон демократик тараққиётнинг янги босқичида. Т.: “Ўзбекистон”, 2005. Б. 64-88.

³“Халқ сўзи”. 2008 йил 8 июл.

To conclude, we may state that preventing corruption is currently the task of each of us.

Conclusions of the second chapter.

If we conclude the second chapter, state officer as a subject of law – the citizen of the Republic of Uzbekistan has accepted constitutional rights. From the state-service point of view, main elements of legal position of state officer include labor rights.

Concluding current legislation, we may divide rights of state officers into following groups:

Firstly, rights reflecting legal position of state servants and their guarantees;

Secondly, rights related to directly accomplishing labor obligations. .

One of main obligations of state servants is honestly accomplishing labor obligations. Functions and proxies of state servants are clearly confirmed with legislation and other normative regulations, and they must be accomplished by state servants correctly and clearly. Non-accomplishment or incorrect accomplishment of labor obligations is considered as illegal activity, law violation or sometimes crime.

State servants are obliged to accomplish obligations and rights linked to their position. Obligation of state servants to accomplish their proxies is directly related to following labor order accepted in state organ.

State servants have proxy to accomplish labor obligations in order to provide rights and freedoms, social interests of citizens.

One of main obligations of state servants is to provide protection and abidance of rights and legal interests of citizens.

State servants are obliged to admit rights and freedoms of citizens, provide and protect their legal interests. Rights and legal interests of citizens are important categories for state officers. Accomplishment of these obligations by state servants provides balance of social relations, abidance order of legislation, ensures general legal order.

CHAPTER III. CRUCIAL PROBLEMS OF REFORMING CIVIL SERVICE AND WORKING WITH CADRES AND IMPROVE THEIR EXPERIENCE, THEORETICAL-LEGAL FEATURES OF ATTESTING THEM.

3.1.Importance of attestation of civil servants

We can not imagine development and regulation of public service without constant attestation of civil servants. Order of working out rules and holding of attestation and acting according to labor are processes related to each other.

In accomplishment of public service legal institution of attestation of civil servants plays an important role. This legal institution is regulated with different legal documents of the Republic of Uzbekistan.

Before speaking about attestation of civil servants, we should stress in particular the fact that this problem is not widely analyzed in judicial writings.

Legal institution of attestation of civil servants includes the set of legal norms regulating social relations emerging in the process of accomplishment of tasks and obligations on organizing public service, accomplishment and provision of proxies of state organs.

In narrow meaning, attestation is held in order to estimate professional, labor and personal features of servants and check their relevance to labor-position requirements.

According to well-known Russian scientist Yu.N.Starilov, attestation of civil servants is hold in order to check degree of professional preparation of civil servants and their relevance to the requirements of their position and solve the problem of giving category of experience of civil servants. So, two main tasks of attestation are appointed by legislator:

Firstly, determining relevance of state servant to his position (in other words, determining the degree of preparation);

Secondly, giving following degree of experience¹.

In wide meaning, attestation accomplishes following main tasks:

¹Стариков Ю.Н. Службное право. Москва, БЕК, 1996, с.398-413

- following tendencies of public service in practice;
- provision of legislation in the structure of public service;
- organization of set of professional cadres of state organs;
- determination of potential possibilities of civil servants in order they could act according to labor;
- provision of punishment measures for civil servants; developing discipline and responsibility;
- provision of action of civil servants according to staircase of labor;
- provide balance of public service;
- regulationof improving development of experience of civil servants;
- fighting against violation of law and corruption, preventing and others¹.

However, according to other Russian scientists, attestation is a process of high state organs held in the order accepted by the legal documents in order to develop the activity on selecting cadres for public service, increase the experience of employees, appoint servants to relevant positions, determine the degree of professional preparation of employees and appropriatenessto their position, and also presenting following degree of experience².

Attestation is estimation of professional features of public servants. In some cases attestation is hold in order to achieve certain aims and solve certain problems.

Chiefs of organs are responsible for organization of attestation of civil servants. Commission of attestation is formed, the table of holding attestation is drawn, the circle of persons holding attestation is formed and necessary documents for holding attestation are prepared to hold attestation.

Attestation is accomplished in the presence of a person holding attestation. If he couldn't come for respectful reasons, attestation may be hold without his presence.

¹Хожиев Э.Т. Давлат хизмати. – Т.: ТДЮИ, 2004.Б.67.

² Административное право. Учебник под.ред. Ю.М.Козлова, Л.Л.Попова. Москва, Юрист, 2000, с.224.

The commission of attestation learns presented documents, the servants who is taking attestation and if necessary the chief of attestation are asked and their opinions are taken into consideration. Discussion of professional and personal peculiarities of people taking attestation must be accomplished objectively and based on accepted requirements.

Estimation of labor activity of employees is based on appropriateness of employees' to their position, determination of their role in accomplishment of tasks given from relevant state organ, complication of work done by him, results of labor activity and others. Besides, during attestation professional knowledge of employees, improvement of their experience and retrain them, and also organizational features (for relevant group of officers) must be taken into consideration.

According to the results of attestation, commission of attestation can give based advice to:

- Promote state servant to relevant position;

- Present following category of experience;

- Change additional money to improve labor conditions (difficulty, special labor order and etc.) of the employee;

- To include to the reserve of promotion.

According to the results of attestation civil servants may be given following marks of three types:

- Firstly, appropriateness to current position;

- Secondly, appropriateness of employees to current position providing that he accomplishes directions of commission of attestation;

- Thirdly, inappropriateness to current position.

If the state servant is found inappropriate to current position, he may be sent to retraining or to improve his experience or to other governmental position.

As it was mentioned above, we may consider attestation as a process. From this point of view the process of attestation includes several elements:

A subject organizing the process of attestation and solving problems of attestation. The subject of attestation is a group of persons estimating professional, labor, personal features and results of work of employee. The subject of attestation is a commission of attestation and in consists of professional and principal servants;

1) *An object* defining relations on accomplishment of functions and obligations by employees. The object of attestation is group of civil servants taking attestations according to the requirements of special normative act;

2) *A process* accomplished in order to achieve actual results of attestation. According to E.Khojiyev, “The process of attestation includes followings: determining aims and objectives of attestation; working out measurements of retraining; collect, learn, analyze and generalize information about employees taking attestation; form the structure of assigning employees; assigning employees according to attestation, and defining their concordance to the position in public service; preparation of recommendations by the commission of attestation; set the order of accepting decisions on giving category of experience, moral or financial stimulation of employees by high state organ or chief according to the results of attestation, include in the reserve in for promotion; form the order of accomplishment of the results of attestation – marks and recommendations of the commission of attestations”¹.

Interrelation of abovementioned elements constitutes their indivisibility. The attestation of state servant is a process when labor, personal and professional features of employees, the process and result of their work are estimated by the commission of attestation in scientifically proved order in order to determine degree of their concordance to their current positions.

According to the Russian scientist B.P.Kurashvili, attestation is a process as a result of which accomplishment effectively followings are fully determined: preparation to attestation, accomplishment of assignment and control of work of employees, acceptance of decisions by relevant high state organ or relevant chief

¹Ҳоҷиев Э.Т. Давлат хизмати. – Т.: ТДҶОИ, 2004.Б.68.

according to the results of attestation; working out recommendations of commission of attestation on improving the function of administration and employees; holding attestations and solve conflicts related to the result of attestation; results of attestation; practice forward experience of attestation and others.¹

Attestation of state servant is considered legal instrument of deepening democratic processes in the policy of cadres and in ruling public service, and it provides organization and accomplishment of purposely directed policy of cadres.

From theoretical-legal point of view, attestation of civil servants as a legal institution consists of set of norms regulating relations in the institution of accomplishing public service. Attestation sets the accepted order of the activity of organs directed to accomplishment and assignment of work of civil servants.

The attestation of civil servants accomplishes following functions: assignment, control, improvement of working with employees, keep political, financial, organizational, communicative, informative balance and others.

The meaning and importance of the activity of attestation are defined through its tendencies. We may include followings to the tendencies of attestation: generality of attestation; transparency, group assignment; periodicity of attestation (having the structure); accomplishment of assignment fully; objectiveness of assignment; reasonableness of assignment and suggestions.

So, the role of attestation is significant in accomplishment of public service, action of civil servants according to public service and in giving servants following category of experience.

¹ Курашвили Б.П. Очерк теории государственного управления, Москва, 1987, с.166-167.

3.2. Problems of legally regulating public service and policy of cadres in current conditions and estimation of working capacity of civil servants.

Understanding the meaning of reforms in our country and taking part in their accomplishment is very important for civil servants.

So, in order to build legal-democratic country and society of citizenship crucial problems of current time are training employees of public service in the condition of accomplishment of reform in its legal structure and problems of legally regulating the policy of cadres in current condition and assignment of working capacity of civil servants.

The process of building legal-democratic government and forming society of citizenship based on ideas forwarded by the President of our country and stated in the Constitution is being accomplished stage by stage². Open society of citizenship which provides following human rights and freedoms, moral modernization of the society, formation of socially directed market economy, joining to world community.

Here professionalism, responsibility of civil servants, acknowledgement with changes in the life of the state and the society in developing public service and improvement of its efficiency play important role.

K.K.Kuranbayev stated following opinions: “We must create system of informative monitoring of using and preparing cadres, analyzing and considering changes in professionalism of cadres, and improve organization of single bank of the reserve of existing cadres based on the modern technologies in our country”¹

Joining abovementioned opinions, we must state that it is required to assign personal and professional features of civil servants in using institution of rotation to them. Selecting cadres and appointing them to relevant positions, stimulating

²Қодиров Р.Ҳ. Ўзбекистон Республикаси прокуратура органлари фаолиятини ташкил қилишга оид норматив-ҳуқуқий ҳужжатлар ва Бош прокурорнинг буйруқлари тўплами. Сўз боши. Т., 2006, 3-бет.

¹Куранбаев К.К. Давлат бошқаруви кадрлар тизимини шакллантириш ва ривожлантириш муаммолари (сиёсий -ижтимоий жиҳатлари). -Т.: ДЖҚА, 2008. -Б.230.

them and improve their labor-professional experience, must be based on objective and scientifically proved foundations.

As U.Sh.Husainov stated, “Assignment is a process hold in order to determine personal values of civil servants, numeral and qualitative results of his work, degree of suitability to certain requirements”¹.

The task of assessing working capacity includes determining the degree of working capacity, degree of using working capacity, suitability of state servant to his position, his readiness to work in other certain position.

Estimating working capacity is related to improving efficiency of the activity of state organ. And according to its results, following measurements must be taken: developing assignment of cadres to appropriate positions by organizing the reserve of cadres, in other words, rotation; determining necessary directions of improving experience of state servant; stimulating the labor activity of employees fully considering the results of the work; forming positive opinion of employees and improving degree of satisfaction from work.

- estimating the working ability is directed to solving following problems of management: Selecting cadres, here assessing professional experience and personal values;

- defining degree of suitability to current position;
- improving usage of cadres;
- estimate distribution of the employee in the results of the work;
- transferring civil servants and defining the need of improving experience;
- improve the structure of management body, clarifying the number and the structure of cadres according to positions;
- improving management.

Assessing chiefs is accomplished considering their organizational abilities. Any specialist may have some important working ability on management.

¹ Хусаинов У.Ш. Давлат ҳокимияти фаолиятида ротация институтининг конституциявий –ҳуқуқий асослари. Т. 2011. – 89 Б.

For example, ability to solve any problem of management; having knowledge in solving a problem; having ability to select cadres properly and assign them to relevant positions; having ability to encourage the team to achieve forwarded tasks; ability to keep the discipline and protect labor interests; properly directing the work of the management body; present clarity and transparency in solving urgent and daily affairs; stimulating and feeling responsibility accomplishing his own decisions.

While selecting a leader, firstly his organizing ability, initiative, professionalism, experience and skills are drawn attention.

If a leader is honest and innocent, uses all his efforts for his work. If an incapable and passive person becomes a leader, this may suffer many people. Because, as our great ancestor Amir Temur said, “One smart and sensible man is better than thousands of apathetical, indifferent and imprudent people”, and these words prove our statement.

“In selecting and training leading employees we haven’t formed modern efficient system and order yet. We have old conception of “reserve of cadres”. As head of our country stated, in some cases in what extension the leader is promoted in that extension he becomes selfish, greedy and avid” in his report in the out-of-turn session of Samarkand regional Congress of national deputies on November 9th, 1998.

Especially, honesty of the leader, his taking responsibility for accomplishing hard work with big responsibilities as ruling the nation is of great importance. The idea of fair leader, honest ruler was great moral ideal of many enlighteners such as Alfraganus and Navai. In a work “Siyosatnoma” which was very famous in the East it is stated that the main task of padishahs, khokims, emirs and beks and judges, in modern language leader is protect sheep from wolves, cut their hands and clear the world from people causing badness, and prosper the country with justice and quietness”.

In fact, besides that assessing working efficiency is also of big importance, and its system must provide clear and reliable information. This system mainly consists of six stages: In the first stage setting efficiency, standards and criteria of estimation of

each work according to its place is accomplished; in the second stage designing the policy of estimation of working efficiency or deciding on when, how often and by whom is the estimation is accomplished; in the third stage assigning certain persons with task on estimating working efficiency; and in the fourth stage including information about working efficiency of employees to the tasks of people accomplishing estimation; fifthly, discussing estimation with the employee; sixthly, making decision and documenting the score.

In management besides setting qualitative criteria giving opportunity to estimate working activity of employees sufficiently and fully, estimating them numerally is also plays an important role. As its efficient and widely spread type we can show the method of group discussion of a candidate for position. Expertise of this kind fully meets modern requirements.

Currently, coefficients, methods of balls and others aren't spread sufficiently. Method of coefficients for assessing officer and leader is used as exemplary method when actual employee is compared with a candidate for position.

In single-minded, planned and actual estimation we can distinguish three conditioned groups of methods in foreign and national estimation: qualitative, numeral and combined methods.

Qualitative methods usually include biographical description, description of workability and special oral assessing.

Group of numeral methods include all methods of numeral assessment of degree of professional values of the employee. Marking and coefficients are the simplest and the most efficient methods. The often repetition of certain quality is wide-spread in the group of combined qualities and it is consisted of combination of qualitative and numeral methods.

In the system of estimation of a candidate to a certain position always some qualities play more important role. Special document of assessment of a candidate to management position is drawn in order to generally assessing entrepreneurial spirit and quality of organization. Here if the general score is high according to each group of estimation, candidate shall be found appropriate to the position.

In the stage of determining general score in rotation of the candidate to the position quantity of the coefficient of perspective is added with general mark on organizing qualities and entrepreneurial spirit. As a result, superiority is given to the candidate gaining highest score considering also scores got on the groups of personal values.

Important conditions of using method of estimation by expert include anonymity of marks put by the expert and substantiation of selecting the content of the expert commission. Group of experts use method of individual and group assessment.

Chief of cadres department acknowledge experts with method of assessment with the help of scientific assistant and basically rules all works. Commissions of experts are formed in numbers not exceeding 5 or 7 people. Necessary documents of any kind of method despite the method of accounting are: form for assessing chief or specialist, card of an employee taking attestation, blank of the results of experts' questionnaire on taking attestation, and blank of final assessment.

Assessment of entrepreneurial spirit of employees requires following certain rules and requirements. For example, objectivity, quickness, transparency, democratization, uniqueness of requirements for the same position to all people and simplicity of the process of estimation, clearness and understandability.

By the way, control of state authority and management organs, and activity of the organs protecting law, assigning to positions within them, legal regulation of determining workability, especially, considering peculiar difficulties and responsibility of accomplishing public service in them and diversity of rights and obligations of authorized persons in public service, must accept the law "On public service". This document of law consists of different norms of different judicial spheres and has complex character.

Accomplishing public service in state organs is well-organized in the legislation of the countries such as Russia, France, Federative Republic of Germany.

There are certain types of public service, for which it is needed to accept separate judicial documents in order to regulate them. For example, internal affairs, service in the organs of prosecutors' office, military service, peculiar features of service in executive body.

3.3 Foreign experience in using institution of rotation in the activity of civil servants

If we consider foreign experience in using institution of rotation in the activity of civil servants, here firstly we should form technology of modern cadres. It includes followings: assigning to the position of public service according to the results of competition; helping civil servants to promote according to the results of competition; forming and using reserve of cadres in order to work in positions of state citizenship; assigning the results of the activity of professional labor of employees of state citizenship through attestation and examination of experience; accomplish rotation of employees and others¹.

However, order of this kind is regulated with special law in Japan and France. For this reason using this experience in Uzbekistan also will give positive result. Analyzing foreign experience of training cadres for public service, we may distinguish several features general for all countries.

As a rule the status of state officer is regulated with relevant legal documents. For example, in order to work in public service it is required to have basic information in relevant form and special professional training. Besides, in order to get promoted the officer must have different preparations, go to courses of improving experience and accomplish probation.²

For example, in 2004 Japan started new system of training cadres and according to it, employees improve their experience through accomplishing probation.

Besides, the Hague is considered the legal capital of the world. As their jurists work directly with the Supreme Assembly of UNO, in the curriculum of education special attention is drawn to teaching norms of international law deeply.

¹Саламатин Е.Ю. Международный опыт правового регулирования государственной гражданской службы актуальны вопросы для российских реформ \ \ международное публичное и частное право.2006. №5.-С.62-63.

² Хусаинов У.Ш. Давлат ҳокимияти фаолиятида ротация институтининг конституциявий –ҳуқуқий асослари. Т. 2011. – Б– 102.

Learning experience and practice of foreign countries related to training professional judicial cadres and improving their experience helps to develop the activity of Uzbekistan in this sphere.

While special school in the sphere of court-law in Britain was formed in 900 years, this was achieved in Uzbekistan in twenty years. Surely, it is a case worth admiring.

In Great Britain the system of training judges and jurisprudential cadres is of great importance and this process is controlled by the commission for teaching judges. In accordance with the tendency of independence of judges, persons appointed to position of judge participate in seminar trainings with the participation of professional specialists. Trainings especially are hold on themes related to argumentative situations in the process of court, successfully solving complicated criminal cases and cases related to the law of family, improving oratorical skills of lawyers. Teaching is hold in the form of seminars, annual conference and distant teaching. One more point worth admiring is that in Great Britain there is exchange of experience with European courts, and it will show its result in improving the experience of judicial persons and retraining them.

In Great Britain projects of training cadres for public service is directed to accomplish the conception of state management and its main aim is to increase the quality of service. And it requires developing skills like managing changes, and leading abilities of civil servants. Accordingly, majority of places of education of future civil servants in high and middle stage in the government are colleges of public service.

Classes there are held according to the project of training future leaders. Graduating from this system gives opportunity to have experience necessary for being transferred to three classes. Also, there are special projects of improving experience for chiefs of the fourth and seventh classes. Specialists working in high leading positions of the first and second classes. They go into “master seminars” specially designed considering features of their sphere.

It should be noted that training cadres is considered as main directions in Great Britain. For this reason, there is a system on preparing reserve of cadres in order to improve the degree of professionalism and promote to higher positions high leaders and training civil servants in generalized way.

In France a person must study for four years in order to get the degree of lawyer. It is considered as the first stage. Courses of improving experience and annual attestations insist lawyers to regular study. All of these stages are accomplished stage by stage. After that the attention is drawn into specialization of cadres. After getting particular knowledge and experience on the sphere, lawyers specialize according to different directions of jurisprudence.

As we know, regular complication of the legislation, changes in practice and management requires continual improvement of experience from lawyers, prosecutors and advocates. In accordance with that, regularity of education is considered as a main process in training experienced lawyers.

In Hungary in the sphere of court-law generalized continual education is accepted. In order to educate cadres whose activity is directly related to sphere of court-law and improve their experience on September 1st, 2006 Supreme Academy of Law was found in Hungary.

The academy designs the plan of annual study, deals with organizing conferences and seminars among cadres, and this provides continual education of employees of traditional judicial courts. The process of education is directed to improve their professional ethics, degree of judicial knowledge, ability to make final decision. Besides voluntary courses there are obligatory courses in the academy.

Besides, in many cases as a state officer main functions of organs of prosecutors' office in foreign countries depend on legal system these countries related to.

For example, in the countries related to Roman-German legal system accomplishment of control on providing legislation is considered as main function

of organs or prosecutor's office, and all other functions are directed to completing and developing it¹.

Surely, there may be differences between functions of organs of prosecutor's office of countries with similar legal system. But similarity of historical formation of organs of prosecutor's office, generality of legal instruments used in accomplishment of these functions gives opportunity to make general conclusion on the functions of organs of prosecutor's office of the countries with the same legal system.

The functions of organs of prosecutor's office of the countries with continental (Roman-German) legal system are different.

Basic functions of organs of prosecutor's office in France, Germany, Belgium, Italy, Netherlands and Romania are related to the sphere of managing criminal-court affairs, and for this reason in these countries prosecutors mainly work at the court.

In these countries functions of prosecutors on managing criminal-court affairs include following:

1. Maintaining criminal action.
2. Investigating criminal actions, controlling investigation, managing the investigation.
3. Supporting accusation in courts.

Assignment of prosecutors on maintaining criminal action in many countries have absolute character. For example, in FRG assignment of maintaining criminal action is considered absolute right of prosecutors.

In France also only prosecutor have right to maintain criminal action against law-breaker on his behalf or on the behalf of the government, or based on complaint, written complaint, message or bill of complaint of suffered person.

In Italy this right of prosecutor is confirmed in the Constitution².

¹Шалумов М.Надзор за законностью и уголовное преследование-самостоятельные функции прокурора //Законность.-1999.-№8.-С.4

²Олимов Б. Хорижда санкция ва тергов // Қонун ҳимоясида.-2005.-№6.-Б.22

In Russian Federation, Albany, Hungary, Macedonia, Serbia, Slovakia, Croatia and almost all countries of CIC organs of prosecutor's office differ with their wide range of functions in criminal process on providing legal order and legislation and other spheres.

Functions of organs of prosecutor's office in providing legal order and legislation in these countries include followings:

- Controlling execution of laws;
- Providing relevance of office normative-legal acts to the Constitution and laws;
- Bring into accord the activity of organs of law protection on fight against criminality.

In majority of these countries while accomplishing abovementioned functions prosecutors are independent from the point of view.

And in countries included in the Anglo-Saxon legal system functions of organs of prosecutor's office are different. As main of these functions we may state followings:

1. Maintaining criminal action, investigating and supporting accusation in the court;
2. Accomplishing the role of the representative of the authority on judicial problems.

But in connection with particular features of historical-legal development functions of organs of prosecutor's office of every country completely differ from each other.

For example, while in the USA attorneys have wide range of assignments on investigation, learning, supporting accusation in the court, stating interests of the authority in the court, in Great Britain activity of attorneys is limited with supporting accusation in the court and stating interests of the authority in the court.

In the Latin America and Scandinavian countries functions of organs of prosecutor's office are similar with the countries with Roman-German legal system.

In these countries main functions of organs of prosecutor's office include providing legal order and legislation and leading criminal-court affairs.

In some Scandinavian countries, organs of prosecutor's office accomplish functions belonging to administrative courts¹.

It should be stressed in particular, that in the sphere of developing state management Germany was the main country. Currently, in German universities in the wide base of subjects the tradition of training specialists is reforming, however, the supremacy of judicial subjects which were considered particular feature of Anglo-Saxon point of view, are being avoided and balance of educative subjects is being forwarded stage by stage. Legal and economic subjects are being taught in equal relation and are being strengthened with humanitarian and mathematic theory².

The main requirements put for civil servants are professional education and special preparation.

And the particular feature of French point of view is that according to it in stage management the section of political and administrative subjects are drawn much attention. Training of servants for state management organs includes preliminary professional preparation of servants called "continual professional preparation" and improving experience. In accordance with that, civil servants of different ministries organize direct elections for corpus. This is a feature differing the samples of Germany and France.

In its order the system of training civil servants as in France and Germany has centralized character and structures of many stages. However, while German projects of educations are distinguished with high degree of the balance of economic and legal subjects, French point of view is directed to learning economy deeply. In Spain, selecting servants is accomplished with the help of examinations with open selection on administrative law, state economy, state management, ruling budget and finance.

¹Додонов В.Н.Прокуратуры стран мира. Справочник.//Под общей научной редакцией. проф. С.П. Щербы. Юрлитинформ.: М. 2006.-С.144, 226.

²Государственная служба. Сборник . - М. 2005. №4- С.140.

However, in America state management is always closely connected with legal subjects, including administrative law. During the last years the tendency of strengthening the economic administration of civil servants is emerging¹.

In organs of state management working with the reserve of cadres is accomplished based on normative requirements by the services of cadres from organizational point of view, unique methodological and political directions. For the organs of state management in America, one of foundations of selecting cadres is examinations of selection. Here standards of experience are put to the basis of examinations of selection. Standards of experience define certain professional, labor and personal requirements to the person who wants to work in certain position.

In foreign countries civil servants' starting the job and their improvement has its particular features. Here special attention is drawn to provision of equal opportunities on starting the public service. Those servants who found themselves degraded may claim directly the administrative court².

In Great Britain commission, directly ministry and agencies deal with selecting candidate for public service. Secondary role in selecting is accomplished by the agency on assessing and selecting candidates for public service.

The process of selecting candidates for governmental positions is accomplished in several stages, and the first of them is written report on given theme, and after candidates who passed this exam take tests and interviewed. Currently, forms of tests and interview form main importance in assessing candidates' ability. After that, representatives of the section hold final discussion on gained scores; as a result the problem of accepting the candidate to service is solved. Besides their scores, recommendations of places where candidates had their educational course- universities and schools are taken into consideration³.in Germany assignment of candidates to position is accomplished after confirming suitability of servants to public service by the result of examination. If the servants

¹Государственная служба. Сборник . - М. 2005. №4- С.145-147.

²Государственная служба в зарубежных странах. Сборник . – Уфа. РИО БАГСУ. 1995.- С.48-49.

³Литвинцева Е.А. Государственная служба в зарубежных странах. Сборник . – Изд-во РАГС. 2004.- С.25-27.

is younger than 32, he may be assigned for public service only after probation period. Here assignment to preliminary positions is allowed only. In order to prove professional suitability officer is allowed to accomplish probation period not exceeding 5 years.

To conclude, it is important to analyze the experience of foreign countries and take their positive sides in the rotation of civil servants in Uzbekistan.

Conclusions of the third chapter

If we conclude the third chapter, taking into consideration features of civil servants and assessment of working in current situation are directed to solving following problems of management:

- Selecting cadres, here assessing professional experience and personal values;
- defining degree of suitability to current position;
- improving usage of cadres;
- estimate distribution of the employee in the results of the work;
- transferring civil servants and defining the need of improving experience;
- improve the structure of management body, clarifying the number and the structure of cadres according to positions;
- improving management.

Comparatively analyzing problems of civil servants and their rotation in foreign countries, following conclusion was made:

Firstly, before holding any kind of rotation working capacity of employees must be defined and it is relevant to use the method of scientifically proved assessment for that;

Secondly, while assessing the quality of the work of employees, individual values and distinguishing features of this activity must be taken into account. In acceptance of this system to practice getting promoted according to the principle of rotation, assigning employees to relevant positions and using their ability in more efficient way is important;

Thirdly, it is purposeful to design draft laws on “Ethic code” and “On the ethics of civil servants” as Japan and many other countries.

CONCLUSION

Currently, continual and effective holding of reforms in our country, firstly depends on its strategy, also on legal basics regulating the accomplishment of its mechanism. So, the Constitution of the Republic of Uzbekistan which is considered to be the fundamental of national legal system strengthens the most important and basic rules on its social and governmental system, basics of relation between person and society and state as the Main law of the country. As the President of our country stressed in particular, “It is natural, that representing feature and honor of any country is its Constitution”¹.

The Constitution of the Republic of Uzbekistan determined constitutional norms of the activity of state organs of the Republic of Uzbekistan.

Although, we may observe that sometimes legal documents do not concord each other, some of them are old and do not suit circumstance and practice of current time.

Besides, social relations become more complicated and many-sided, and designing clear and efficient mechanism of legally regulating them is considered the requirement of the time.

In addition, in the process of reforms all spheres of state, economic, socio-cultural reform must be completely regulated judicially. Especially, continual reform of spheres of regulating public management and formation is of a big importance.

These all emerge the necessity of developing laws and documents under the law.

Based on abovementioned opinions, we state following suggestions and opinions:

1. We think that organs of state authority and management must design and accept the law “On civil service”, considering the responsibility to protect control and the law, and diversity of rights and obligations of authorized persons’. The

¹Каримов И. А. Биздан озод ва обод Ватан колсин. - Т. Узбекистон, 1996, 92-бет

document of this law must consist of norms of different judicial spheres and have complex character.

2. We think that control on designing “Rules of behavior of servants of state organs” including the requirement of servants’ of organs of prosecutors’ office to have certain professional abilities, rules of discipline for them to behave in the society, labor and treatment rules as a state servant and following them must be assigned to the inspection for providing internal safety within the organs of prosecutors’ office of the Republic of Uzbekistan.

Rules of ethics mentioned above are accepted in the 43rd and 44th articles of the Law “On prosecutors’ office”.

3. It will be expedient to accept law “On accomplishing service in state organs” and appoint servants of prosecutors’ office with it.

We may include followings to the content of these documents of law: peculiar features of labor: status, positions, category of experience required from them; special and military awards; legal status of officer, determining degrees of civil service in of prosecutors’ office, determining management organs and device of public service, determining assignments of the department working with cadres, forming reserve of cadres, appointing them to relevant positions and other problems.

Designing and confirming documents of this law are accomplished according to the 48th article of the law “On prosecutors’ office”.

For example, in this article it is stated: “The order of accomplishing service in organs and agencies of prosecutors’ office, giving military awards and awards of degree to officers of organs and agencies of prosecutors’ office or ceasing them, stimulating and provide disciplinal responsibility is stipulated with the regulation “On accomplishing service in state organs” confirmed by the President of the Republic of Uzbekistan.

Servants of organs of prosecutors’ office have right to carry gun or other means of personal protection in the order stipulated by the law”

4. We can see efficiency of the order appointment of chiefs of higher sections of the execution discipline in the organs of local government authority by the head of state in the history of statehood development of Uzbekistan. For example, acceptance of this law in Russian Federation proves rightness of Uzbekistan's way in this sphere. In addition, in connection with strengthening democratic foundations of the society the problem of forming local chiefs of organs of local authority through election may be crucial.

There is need to reform requirements in appointment in order to increase responsibility and answerability of authorized persons responsible for providing discipline of execution in local executive organs.

5. State organs included in the system of organs of local executive authority, including authorities make decisions and regulations having commonly obligatory character in order to provide discipline of execution in its administrative location, for this reason problem of relevance of this form of normative documents to the requirements of technique of legislation plays especially crucial role.

In some cases in the Regulations and under law documents on local organs of executive authority tasks and functions of organs of local executive authority are confused and mixed.

Therefore, it is needed to strengthen judicial theoretical knowledge of employees of judicial department within organs of local executive authority.

Thereby currently it is important to wisely organize relation between local executive organ and legislative authority for the practice of the principle of separation of bodies. Important features of the problem are, on one hand, specialty of local executive authority from organizational, financial, personal and functional point of view in comparison with other branches of the authority, on the second hand, the fact that local executive authority is given assignment of legislation by the legislative organs. It should be stressed in particular, that there are objective and subjective reasons of this case. Objective reasons are: the fact that legislative authority "handles" the legislative power to local executive – generality of norms of laws, importance of accepting acts under law in order to provide their execution

in the territory of the country. the important thing is providing and controlling its following the framework of assignments stipulated in normative legal documents designed in order to provide executive discipline in the territory of local executive authority.

Besides, real status of local executive authority, necessity to provide legislation in its activity of provision of executive discipline, the necessity of control on its activity by legislative authority. With this relation currently legislative authority must increase coefficient and make more complicated efficiency of organizational-legal devices directed to prevent unwisely strengthening of local executive authorities at it and this problem has theoretical, practical and political importance.

Organs of state management included in the system of local executive authority carry out activity related to provision of discipline of execution in order to protect judicial and legal interests and other sides of life of citizens, thereby the importance of controlling provision social justice and following human rights, legislation in the activity of this authority is crucial.

The following conclusion was made by the result of comparative analysis on problems of civil servants on state management and rotation of civil servants in foreign countries:

Firstly, before any kind of rotation working capacity of employees must be estimated and it is purposeful to use scientifically proved method of estimation for this;

Secondly, while estimating working capacity of employees individual features and differences of this activity must be considered. Bring this system into practice must cause getting promoted according to the service based on the principle of rotation, assigning employees to relevant positions and use their abilities more efficiently.

Thirdly, we must design draft law “On ethics of civil servants” and “Code of ethics” as foreign countries, including Japan and other many countries.

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