

The Legal Procedure of Attestation of Public Servants

Armen Yezekyan

Abstract—The main purpose of this research is to comprehensively explore and identify the problems of attestation of the public servants and to propose solutions for these issues through deeply analyzing laws and the legal theoretical literature. For the detailed analysis of the above-mentioned problems we will use some research methods, the implementation of which has a goal to ensure the objectivity and clarity of scientific research and its results.

Keywords—Attestation, attestation commission, competition commission, public servant, public service, testing.

I. INTRODUCTION

ATTESTATION has a big importance in the sphere of activities of public servants. Attestation has a double function. On the one hand it contributes to the completion of public service, the accurate implementation of the service activities by public servants, the enhancement of their perfection and efficiency; on the other hand it is an efficient means for choosing personnel and promoting them, as well as in the process of their legal accountability [1].

The relations concerning the attestation of public servants are regulated by the laws of the Republic of Armenia On Public Service and On Municipal Service, as well as by other legal acts which regulate specific forms of public service (civil service, civil special service etc.).

II. OBJECT OF RESEARCH

According to the 9th subparagraph of the 1st paragraph of the 5th article of the law of the Republic of Armenia On Public Service - attestation is a process which is directed to decide the accordance of public servants' professional knowledge and working skills with the position they are holding [2]. The law On Civil Service [3] views attestation as determination of the conformity of the professional knowledge and working skills of the civil servants to the position occupied. It is thought that the given definition of certification given in the law On Civil Service is not reflecting the full essence of the attestation process since it is not only about deciding the accordance but a one big process the product of which is making a decision by the attestation commission. From this point of view the definition given in the law On Public Service is more preferable and it's not a coincidence that the 3rd article of the law On Municipal Service [4] states quite an important clause according to which the main concepts of the municipal service are comprehended the way their meanings are given in the 5th article of the law On Municipal Service.

Armen Yezekyan has PhD in law, is an Associate Professor and the Chairman of the Law Department at the Public Administration Academy of the Republic of Armenia, Kievyan str. 8, Yerevan, RA (phone: +37494474252; e-mail: armenyezekyan@yahoo.com).

As about the legal regulation of the main process of attestation, the law On Public Service shows passivity. It leaves the regulation of the relations connected with conducting the attestation, forming the commission, evaluating the performance to the discretion of the laws regulating municipal service and different types of public services (civil service, civil special service etc.), not even stating the general principles based on which the attestation process should be held.

And so to fully explore the attestation process we should explore the clauses of the laws On Municipal Service and On Civil Service. Both the law On Civil Service and the law On Municipal Service differentiate two types of attestation – regular and extraordinary. The regular attestation of the civil servant is to be carried out once every three years. And the extraordinary attestation of the civil servant is to be carried out at least one year after the regular attestation. In contrary to the law On Municipal Service the law On Civil Service states one imperative clause according to which every year at least one third of the civil servants of the corresponding body are to be subject to mandatory attestation.

The extraordinary attestation of civil servant is to be carried out on the basis of a reasoned decision by the official having jurisdiction to appoint him to the position. The law On Civil Service provides one exception from the general rule, and that is – the extraordinary attestation of the Staff's Chief of a ministry of the Government of the Republic of Armenia, of a state body operating under a ministry of the Republic of Armenia, of a state administrative body attached to the Government, and of a Regional Governor's office is to be carried out on the basis of a reasoned decision by the corresponding minister, head of the Republican Executive Body of the Republic of Armenia, head of State Administrative Body attached to the Government or the governor. The law does not detail of what kind of reasoned decision is spoken about and especially does not mention in which cases that reasoned decision can be made.

At the same time it is stated in the law the number of persons who are not subject to attestation. According to the 6th paragraph of the 19th article in the law On Civil Service the following persons are not subject to attestation:

- a) the civil servants occupying the given position for less than three years, unless they express such wish;
- b) the civil servants on pregnancy leave or on leave for care of a child under age 3, unless they express such wish;
- c) the civil servants who have returned from mandatory military service - for one year, unless they express such wish;
- d) the civil servants occupying the civil service positions which are determined in the 2nd paragraph of the 34th article in the law On Civil Service.

The last <<d>> subparagraph relates to those civil servants whose maximum age for occupying a civil service position was attained but they have expressed a wish and have gained an agreement to continue to hold their corresponding civil service position for a period of one more year. The civil servants on pregnancy leave or on leave for child care are subject to attestation no sooner than one year after coming back from the leave of absence, unless the latter have expressed a wish for an earlier attestation.

The civil servants subject to attestation but on leave, on secondment, as well as temporarily unable to work, are subject to attestation within one month after coming back to work.

It is essential to point out that the <<a>> subparagraph of the 6th paragraph of the 19th article of the law On Civil Service does not apply to the cases of occupying a civil service position according to the 1st paragraph of the 12² article as well as to the 29th article. We are talking about the civil servants who have attained the vacant positions through out-of-competition procedure or through out-of-competition procedure for the emerged vacant position as a result of reorganization or structural changes in the corresponding body.

It is necessary to mention that the people who are not yet civil servants, are not yet appointed to the junior civil service positions but have gained the junior civil service certificate which would allow them to occupy the appropriate junior civil service position (and the period of validity of which is one year) by being declared the winners in the competition conducted by the Civil Service Council are not subject to attestation. If a citizen wants to he may take part in the aforementioned competition again to gain a new certificate after the validity period of the former one. Hence, it would be senseless to make them undergo attestation since actually they are not yet public servants [5].

III. SCIENTIFIC NOVELTY (SUGGESTIONS)

Taking into consideration the aforementioned legal regulations we think that it is necessary to clearly legally identify the cases of the extraordinary attestations of civil servants, especially state that in the following cases they are necessarily subject to the extraordinary attestation:

- a) in the cases of reorganization or structural changes (or renaming) of the corresponding body accompanied by a reduction in the number of positions,
- b) in the cases of substantial changes in the salary,
- c) in the cases of the significant changes in the legislation regulating public service sphere.

The attitude on this matter is completely the same in the law On Municipal Service (concerning the municipal servants who are not subject to attestation) so in order not to overburden this research paper we will not cover this regulation again.

Attestation is conducted by attestation commission. The legislation determines two-level system for competition and attestation commissions. The attestation for the civil servants of the highest and chief civil service positions is conducted through the commission formed by the CSC. As for the civil servants of the leading and junior civil service positions, their

attestation is conducted by the attestation (in the cases for getting appointed to the leading civil service positions – the competition) commission.

The formation of attestation and competition commissions is determined by the 40th article in the law On Civil Service according to which the compositions of the civil service competition and attestation commissions are randomly selected from the candidates input in the computer for that purpose no sooner than 24 hours before conducting each competition or attestation, with the following ratio:

- one third - representatives from the Civil Service Council;
- one third - representatives from the corresponding body, and in the case of the competition for occupying the vacant position of the Chief of Staff of a ministry of the Republic of Armenia, of a state body operating under a ministry of the Republic of Armenia, of a state administrative body attached to the Government, of a Regional Governor's office as well as in the case of his attestation - also the representatives from the official (or body) having jurisdiction to appoint him to the position;
- one third – representatives of scientific and academic institutions of the given area having relevant specializations.

The NGO representatives are participating in the attestation and competition processes with the observer status.

The working procedures of the civil service competition and attestation commissions for the highest and chief civil service positions are being approved by the Civil Service Council and by the corresponding bodies for the attestation and competition commissions of the leading civil service positions and for the attestation commissions of the junior civil service positions.

The way municipal service attestation and competition commissions are formed significantly differs from that of civil service. Despite the fact that the two-level attestation and competition commissions are also present in here the separation is done not on the basis of positions classification but on the territorial principle, based on Yerevan city and other communities. The reason is that the way of formation (election) of the local self-government and its head bodies (community council and chief of community) are different in Yerevan. The attestation and competition commissions in Yerevan are formed in the following proportions:

- one third – representatives from the state administrative body delegated by the Government of RA;
- one third – representatives from Yerevan city hall;
- one third – representatives of scientific and academic institutions of the given area having relevant specializations.

The corresponding Chief of Community, up to five members from the corresponding Community Council and three representatives from the corresponding Regional Governor's office are included in the commissions of the other communities of RA. The Community Chief decides the Community Council members who are to be included in the attestation and competition commissions of municipal service.

If necessary, a commission can additionally include an appropriate specialist in with its decision.

The working procedures of the municipal service competition and attestation commissions are being approved by the corresponding Community Chiefs based on the competition and attestation commissions' working procedure sample approved by the state administrative body delegated by the Government of RA which in this case is the Ministry of Territorial Administration.

To our deep belief the attestation and competition commissions' formation process is not effective. In particular, in attestation commissions are included Community Chief and Community Council members who usually don't even have higher education and it's unacceptable that they evaluate a municipal servant's abilities without having the appropriate knowledge. It is essential to involve experts and people who possess the knowledge in the corresponding field. It is also incomprehensible the involvement of the Regional Governor's representatives since thus increases Regional Governor's influence on local self-government bodies which in turn may violate the independence and dispersal principles of local self-government. Therefore they should be replaced by the representatives of a state administrative body delegated by the Government [6]. So we propose the following people in the attestation commissions:

1. Community Chief,
2. two members from Community Council – those who have higher education,
3. two members from state administrative body delegated by the Government,
4. two members from scientific or academic institutions.

The civil service legislation determines the following ways of attestation:

- a) documentary;
- b) testing and interview.

The civil servants who have higher civil service classification grade envisaged by the law for the subgroup of the position occupied and the civil servants who have been attested while on the civil service position are subject to documentary attestation.

Documentary attestation is held on the basis of the service description through an interview. The interview is held through questionnaires in the framework of the provisions of the given civil service position passport with the purpose of checking their working abilities.

As a result of documentary attestation, attestation commission adopts one of the following decisions:

- a) conforms to the position occupied;
- b) is subject to attestation through testing and interview.

Attestation commission for each civil servant puts to the vote the <<conforms to the position occupied>> decision and in the case of not being adopted by majority vote of the commission members who have taken part in the voting, the <<is subject to attestation through testing and interview>> decision is being adopted.

The following civil servants are subject to attestation through testing and interview:

- a) who are not subject to documentary attestation;
- b) in regard to whom the attestation commission has adopted the relevant decision.

Testing may be held by computer or in writing. The tests are produced, the interviews held and the results assessed by attestation commission.

Those participants who answered correctly at least 90 percent of the test assignments obtain the right to participate in the second stage of the competition - the interview. The interview with the participants is held by using written examination papers with the purpose of checking their professional skills, professional competence, practical abilities and administrative skills.

After answering each question in an examination paper each member of the commission evaluates a participant's answer for a maximum of 10 points. After the examination is finished a participant's total number of collected points and its percentage is being published.

The results of interview is evaluated (whether they are right or false) by attestation commission which holds a voting for each participant on the basis of interview results. Attestation commission adopts one of the following decisions on the basis of the testing and interview results:

- a) conforms to the position occupied;
- b) does not conform to the position occupied.

Attestation commission for each civil servant puts to the vote the <<conforms to the position occupied>> decision and in the case of not being adopted by majority vote of the commission members who have taken part in the voting, the <<does not conform to the position occupied>> decision is being adopted.

The decisions of attestation commission, and in the case of attestation results appeal - the decisions of Civil Service Council are mandatory for the official (or body) having the jurisdiction to appoint the civil servant to the position.

Civil servant has the right to become acquainted with the attestation results and appeal against them according to the order defined in the law.

The attestation results are submitted to the official (or body) having the jurisdiction to appoint civil servant to position within a period of three days after the attestation day. The official (or body) adopts a decision of releasing civil servant from the position occupied in the case of the attestation results of unconformity with the position occupied.

The decision of releasing civil servant from the position occupied is adopted by the official (or body) having the jurisdiction to appoint civil servant to position no later than within a three-day period from the day of receiving attestation results.

During the period of civil servant's temporary disability to work and that of his leave of absence the official (or body) having the jurisdiction to appoint civil servant to position adopts the above-mentioned decision within a three-day period after the day of his return to work.

IV. CONCLUSION

Based on the 16th paragraph of the 19th article of the law On Civil Service, the Civil Service Council of RA determined the procedure of conducting attestation for civil servants in its decision adopted on June 13, 2002 [7]. The clauses relating to attestation already set in the law On Civil Service as well as clauses directed to regulate organizational matters are included in the decision.

The municipal servants' attestation procedure takes place completely in the same manner. Although in here the Ministry of Regional Administration plays a key role. This is due to the corresponding decision of the Government adopted on March 3, 2005 wherewith the Ministry of Regional Administration is the delegated state administrative body on municipal service matters [8]. By the decision of the latter is determined the attestation procedure of municipal servants which like the decision of CSC is regulating the very process of organizing attestation.

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