

REPLACEMENT OF STATE SERVICE POSITIONS UNDER CONDITIONS OF QUARANTINE: STATE AND CHALLENGES

Bila-Tiunova L. R., Nehara R. V.

INTRODUCTION

The spread of acute respiratory disease COVID-19 caused by the coronavirus SARS-CoV-2 (hereinafter – COVID-19) in Ukraine and the introduction of quarantine and other restrictive measures to resist it affected without exaggeration all spheres of public life, including state service, the replacement of state service positions in particular. On the one hand, the existing procedure for replacing state service positions in accordance with the Law of Ukraine «On State Service»¹ (hereinafter – Law № 889) proved to be ineffective under quarantine conditions, since competition as the main method of replacing state service positions provides direct participation of all persons wish to enter the state service at the stages of evaluation (testing, solving situational tasks, interview, interview with the subject of appointment / head of the state service), which is impossible in quarantine, and transfer, although it allows, subject to the established requirements, to ensure the replacement of state service positions in some state bodies, causes problems of replacement of state service positions in other bodies, and therefore makes it impossible to comprehensively address the issue of replacement of state service positions. In turn, on the other hand, the need for rapid replacement of state service positions (those that became vacant before or during quarantine, or new positions introduced in the staff list of state bodies, which are responsible for combating COVID-19) only increased, and the timeliness and effectiveness of the exercise of their powers by public authorities, especially with regard to the implementation and enforcement of quarantine and other restrictive measures, depend on both the results of countering COVID-19 and the duration of these measures.

All this has led to the search for new mechanisms to replace state service positions that can, at least temporarily, but provide solutions to these problems. At the same time, the Council of Europe emphasizes that the main challenge will be their ability to respond effectively to this

¹ Pro derzhavnu sluzhbu: Zakon Ukrainy vid 10.12.2015 № 889-VIII. Data onovlennya: 18.04.2020. Ofitsiyyny veb-portal Verkhovnoyi Rady Ukrainy. URL: <https://zakon.rada.gov.ua/laws/show/889-19>.

crisis, ensuring respect for the values of democracy, the rule of law and human rights².

Changes in the conditions and procedure for replacing state service positions during the period of quarantine and other restrictive measures aimed at preventing the spread of COVID-19 on the territory of Ukraine were carried out in two ways. The first is related to the resolution of the Cabinet of Ministers of Ukraine from 16.03.2020 № 230³ changes to the Procedure for the competition for state service positions, approved by the resolution of the Cabinet of Ministers of Ukraine from 25.03.2016 № 246⁴ (hereinafter – the Procedure № 246), by which the subject of appointment or the head of the state service is authorized to suspend the competition in case of quarantine in accordance with Art. 29 of the Law of Ukraine «On protection of the population from infectious diseases»⁵ and / or the imposition of a state of emergency. The second is from the adoption of the Law of Ukraine «On Amendments to the Law of Ukraine «On the State Budget of Ukraine for 2020»⁶ dated 13.04.2020 № 553-IX (hereinafter – the Law № 553), in item 8 of section II of the «Final Provisions» there have been temporarily suspended the provisions of Law № 889 and the Law of Ukraine «On Central Executive Bodies»⁷ regarding the holding of competitions for state service positions and appointments to state service positions based on the results of the competition, as well as the Procedure for appointment to state service positions for the period of quarantine validity established to prevent the spread of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2 in Ukraine, approved by the Cabinet of Ministers of Ukraine dated

² Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis: a toolkit for member states: information documents 7 April 2020 SG/Inf(2020)11. URL: <https://www.coe.int/en/web/congress/covid-19-toolkits>.

³ Про внесення зміни до Порядку проведення конкурсу на зайняття посад державної служби: постановою Кабінету Міністрів України від 16.03.2020 № 230. Дата оновлення: 16.03.2020. Офіційний веб-портал Верховної Ради України. URL: <https://zakon.rada.gov.ua/laws/show/230-2020-%D0%BF>.

⁴ Про затвердження Порядку проведення конкурсу на зайняття посад державної служби: постановою Кабінету Міністрів України від 25.03.2016 № 246. Дата оновлення: 16.05.2020. Офіційний веб-портал Верховної Ради України. URL: <https://zakon.rada.gov.ua/laws/show/246-2016-%D0%BF>.

⁵ Про захист населення від інфекційних хвороб: Закон України від 06.04.2000 № 1645-III. Дата оновлення: 16.05.2020. Офіційний веб-портал Верховної Ради України. URL: <https://zakon.rada.gov.ua/laws/show/1645-14>.

⁶ Про внесення змін до Закону України «Про Державний бюджет України на 2020 рік»: Закон України від 13.04.2020 № 553-IX. Дата оновлення: 19.05.2020. Офіційний веб-портал Верховної Ради України. URL: <https://zakon.rada.gov.ua/laws/show/553-20>.

⁷ Про центральні органи виконавчої влади: Закон України від 17.03.2011 № 3166-VI. Дата оновлення: 18.04.2020. Офіційний веб-портал Верховної Ради України. URL: <https://zakon.rada.gov.ua/laws/show/3166-17>.

22.04.2020 № 290⁸ (hereinafter – the Procedure № 290), which defines the mechanism of selection state service positions during this period.

1. Suspension of the competition in the state service

Suspension of the competition, according to para. 1 item 5¹ of the Order № 246, is the right of the corresponding subject of appointment or the head of state service which occurrence and possibility of realization is connected exclusively with such legal facts as establishment of quarantine according to Art. 29 of the Law of Ukraine «On protection of the population from infectious diseases» and / or the imposition of a state of emergency (according to the Law of Ukraine «On the legal regime of the state of emergency»⁹).

The simultaneous use of the connecting conjunction «and» and the separating «or» between these facts can be explained by the fact that quarantine is a set of measures used to prevent the spread of particularly dangerous infectious diseases (Articles 1, 29 of the Law of Ukraine «On Protection of Infectious Diseases»), and a state of emergency may be imposed in the event of particularly severe emergencies of man-made and natural nature, in particular pandemics that threaten the lives and health of large sections of the population (item 1, paragraph 2, Article 4 of the Law of Ukraine «On Legal Regime of a state of emergency»). In other words, for example, in order to prevent the occurrence and spread of coronavirus disease (COVID-19), both quarantine and a state of emergency can be established, it is clear that depending on the threats of the infectious disease and the actual capacity for action (quarantine or emergency) ensure the prevention of all negative consequences. At the same time, according to the provisions of the Procedure № 246, the grounds for establishing quarantine or imposing a state of emergency are irrelevant.

At once attention should be drawn to the doubtfulness of the authorization of the subject of appointment or the head of the state service to suspend the competition, which we attribute to the fact that Law № 889 does not provide for the suspension of the competition at all and the existence of such powers of the subject of appointment or the head of the state service. In addition, this actually expanded the scope of powers of the head of the state service

⁸ Деякі питання призначення на посади державної служби на період дії карантину, установленого з метою запобігання поширенню на території України гострої респіраторної хвороби COVID-19, спричиненої коронавірусом SARS-CoV-2: постанова Кабінету Міністрів України від 22.04.2020 № 290. Дата оновлення: 22.04.2020. Офіційний веб-портал Верховної Ради України. URL: <https://zakon.rada.gov.ua/laws/show/290-2020-%D0%BF>.

⁹ Про правовий режим надзвичайного стану: Закон України від 16.03.2000 № 1550-III. Дата оновлення: 28.12.2015. Офіційний веб-портал Верховної Ради України. URL: <https://zakon.rada.gov.ua/laws/show/1550-14>.

by a bylaw (Procedure № 246), and in accordance with item 13 of Part 2 of Art. 17 of the Law № 889 the head of the state service exercises his powers exclusively in accordance with the laws.

In order to determine the time limits within which the subject of appointment or the head of the state service may suspend competitions, the procedure for establishing a quarantine and a state of emergency should be investigated. Thus, quarantine is established by the decision of the Cabinet of Ministers of Ukraine, for example, the resolution of 11.03.2020 № 211¹⁰, from the moment of entry into force of which the right to suspend competitions can be exercised. State of emergency, in accordance with Part 1 of Art. 5 of the Law of Ukraine «On the legal regime of the state of emergency» is introduced by the Decree of the President of Ukraine, which is subject to approval by the Verkhovna Rada of Ukraine within two days from the address of the President of Ukraine. From the moment of entry into force of such Decree of the President of Ukraine, the subject of appointment or the head of the state service may suspend competitions.

In marked aspect, we will also pay attention to the terms for which a quarantine or a state of emergency may be imposed. From the analysis of Art. 29 of the Law of Ukraine «On protection of the population from infectious diseases» provides that quarantine is established for the period necessary to eliminate an epidemic or outbreak of a particularly dangerous infectious disease, as stated in the decision to establish quarantine, i.e. the law does not specify the period for which quarantine could be established. According to Part 1 of Art. 7 of the Law of Ukraine «On the legal regime of the state of emergency» state of emergency in Ukraine may be imposed for a period not exceeding 30 days and not more than 60 days in certain localities, which if necessary may be extended, but not more than 30 days. Therefore, the maximum period for which a state of emergency can be established is 60 days (throughout Ukraine) and 90 days (in some areas), and therefore during these periods the competition may be suspended. In this case, the abolition of the quarantine¹¹ and cancellation of the state of emergency before the term for which it was imposed, in case of elimination of circumstances that

¹⁰ Про запобігання поширенню на території України гострої респіраторної хвороби COVID-19, спричиненої коронавірусом SARS-CoV-2: постанова Кабінету Міністрів України від 11.03.2020 № 211. Дата оновлення: 16.05.2020. Офіційний веб-портал Верховної Ради України. URL: <https://zakon.rada.gov.ua/laws/show/211-2020-%D0%BF>.

¹¹ Цілком ймовірно, що відміна карантину можлива і до закінчення строку, на який його було введено, у разі, наприклад, досягнення цілі його введення – ліквідації епідемії чи спаху особливо небезпечної інфекційної хвороби, хоча положеннями Закону України «Про захист населення від інфекційних хвороб» це не врегульовано.

necessitated the introduction of the state of emergency (Part 1 of Article 8 of the Law of Ukraine «On the legal regime of the state of emergency»).

As a quarantine and a state of emergency can be imposed both on the whole territory of Ukraine and on the territory of particular administrative-territorial units, for example, oblast, rayon, which must be indicated in the relevant decisions of the President of Ukraine and the Cabinet of Ministers of Ukraine, there is a need to define territorial limits of exercising the right to suspend the competition. In case of a quarantine or imposition of a state of emergency on the whole territory of Ukraine, the right to suspend competitions arises and may be exercised by the subjects of appointment or the heads of state service of all state bodies, and in case of their introduction on the territory of particular administrative-territorial units – by the subjects of appointment or the heads of the state service only in those state bodies whose jurisdiction extends to the territory of the particular administrative-territorial units.

If there are denoted grounds, taking into account the time and territorial boundaries, the exercise of the right to suspend the competition by the subject of appointment or the head of the state service is carried out by making a decision (order, instruction), which is notified to candidates no later than the next working day. The analysis of the provisions of Procedure № 246 shows that the decision to suspend the competition can be made at any time, i. e. at any stage or phase of the competition procedure, regardless of pre-determined dates and times.

The only legal consequence of the suspension of the competition, in accordance with para. 2 item 51 of the Order № 246 there is a suspension of the course of the terms defined by part 6 of Art. 23 of the Law № 889. Thus, both the deadline for submission of information for participation in the competition (which is determined in the announcement of the competition) and the 45-day period for publication of the results of the competition are suspended.

Similar to the suspension, the competition is resumed, i. e. in the form of a decision (order, instruction) by the subject of appointment or the head of the state service. Let's just clarify that the resumption of the competition is no longer a right but a duty of the relevant subject of appointment or the head of the state service, which arises from the abolition of the quarantine or cancellation of the state of emergency (including in some administrative-territorial units, to which the jurisdiction of these state bodies extends), and therefore the procedure for its implementation requires some specification, which, unfortunately, the provisions of Procedure № 246 do not provide. Thus, in particular, it is said that after the resumption of the competition continues from the same stage at which it was suspended, as well as the

period during which the decision to resume the competition should be made to avoid delays in competitions.

Summing up, it should be noted that the authorization of the subject of appointment or the head of the state service to suspend the competition is aimed only at postponing the competition (with mandatory completion of such a competition) and not violating the terms of the competition established by Part 5 of Art. 23 of the Law № 889. The National Agency of Ukraine for State Service Affairs (hereinafter – NASS) in the explanations of 27.03.2020 № 88-r / z draws attention to the fact that the decision (*to suspend the competition*) will not require re-submission of information by the candidates through The only portal for state service vacancies or passing them again to the relevant stages of the competition that took place earlier¹². At the same time, it is clear that the suspension of the competition does not solve the problem of replacing state service positions during the relevant period of time during which the quarantine or state of emergency is in effect.

2. Temporary procedure for replacing state service positions

In accordance with para. 1 item 8 of section II of the Law № 553 for the period of quarantine established by the Cabinet of Ministers of Ukraine in order to prevent the spread of COVID-19 in Ukraine it is provided for the following changes in the conditions and procedure for replacing state service positions: 1) suspended provisions of Law № 889 and the Law Ukraine «On Central Bodies of Executive Power» in terms of holding competitions for state service positions and appointments to state service positions based on the results of the competition; 2) the procedure for completion of competitions for state service positions announced before the establishment or during the quarantine period (before the entry into force of Law № 553); 3) the subject of appointment or the head of the state service is authorized to appoint a person to state service positions by concluding a contract on state service for the period of quarantine, in accordance with the procedure established by the Cabinet of Ministers of Ukraine.

Determining the mechanism of selection for vacant state service positions for the quarantine period established by the Cabinet of Ministers of Ukraine in connection with the COVID-19 pandemic, in particular the completion of announced competitions and appointing a person to state service positions

¹² Щодо призупинення конкурсів на зайняття посад державної служби та оголошення нових в умовах карантину: роз'яснення Національного агентства України з питань державної служби від 27.03.2020 № 88-р/з. Офіційний веб-сайт НАДС. URL: <https://nads.gov.ua/npas/shchodo-prizupinennya-konkursiv-na-zajnyattya-posad-derzhavnoyi-sluzhbi-ta-ogoloshennya-novih-v-umovah-karantynu> (дата звернення 20.05.2020 р.).

by concluding a contract, is carried out by Procedure № 290 para. 5 item 8 of section II of the Law № 553. According to item 2 of the specified Procedure selection and appointment of persons to vacant positions is carried out in the exceptional cases connected with necessity of performance of tasks and functions of state bodies for the period of quarantine.

Therefore, the «exclusivity» of such cases must be justified, so not all state service positions can be replaced. In the explanations of 28.04.2020 № 93-r/z¹³ NASS expresses the opinion that these may be positions that are necessary for the uninterrupted functioning of the state body (for example, heads of state bodies and their deputies, heads of independent structural units and their deputies, and also positions of the corresponding experts which are entered in case of inexpediency of formation in state bodies of separate structural divisions, for performance of separate functions). These are not only positions whose work responsibilities are aimed at countering COVID-19, but also other positions in the state service, both managerial and specialist positions, such as legal counsel, accountant, etc.

These changes are temporary and will therefore take effect over a period of time. According to the current version of para. 1 item 8 of section II of the Law № 553 (as of 29.05.2020) such period of time is the time of quarantine established by the Cabinet of Ministers of Ukraine for the purpose of prevention the distribution in the territory of Ukraine of COVID-19. Therefore, the validity of these changes does not depend on the quarantine in general, but on the quarantine established in connection with the COVID-19 pandemic. It should be noted that the previous version of the Law № 553 (as of 13.04.2020)¹⁴ extended these above-mentioned changes for another 30 days from the date of cancellation of this quarantine, allegedly as a transitional period, which was unjustified, given the total duration of quarantine. However, the provisions of Procedure № 290 in this part are not brought in correspondence with Law № 553.

The questions arise also about the grounds for suspending the provisions regarding competitions for state service positions and appointment to state service positions based on the results of the competition only of the Law

¹³ Щодо виняткових випадків призначення на вакантні посади державної служби на період дії карантину: роз'яснення Національного агентства України з питань державної служби від 28.04.2020 № 93-р/з. Офіційний веб-сайт НАДС. URL: <https://nads.gov.ua/npas/shchodovinyatkovih-vipadkiv-priznachennya-na-vakantni-posadi-derzhavnoyi-sluzhbi-na-period-diyi-karantynu> (дата звернення^ 20.05.2020 р.).

¹⁴ Про внесення змін до Закону України «Про Державний бюджет України на 2020 рік»: Закон України від 13.04.2020 № 553-IX. Дата оновлення: 13.04.2020. Офіційний веб-портал Верховної Ради України. URL: <https://zakon.rada.gov.ua/laws/show/553-20>.

№ 889 and the Law of Ukraine «On Central Executive Bodies», because these laws does not exhaust the list of the laws that regulate the positions' replacement according to the results of the competition, it is also the Laws of Ukraine «On Local State Administrations»¹⁵, «On the Diplomatic Service»¹⁶, «On the Judiciary and the Status of Judges»¹⁷ etc., so it is not clear how in relation to all these laws, the Law № 889 is general, so let us consider, first of all, its provisions.

A specific list of the provisions of the Law № 889, the effect of which is suspended, is not given, but the subject of their legal regulation is defined – «holding competitions for state service positions» and «appointment to state service positions based on the results of the competition».

Completion of competitions for state service positions announced before the establishment or during the quarantine will be carried out depending on the stage of such competition. The first option involves completing the announced competitions by determining their results. The second is the cancellation of announced competitions (all others), the results of which have not been made public. Moreover, these options apply equally to competitions for all categories of state service positions («A», «B», «C»).

If the Commission for Senior State Service (hereinafter – the Commission) or the competition commission has proposed to the subject of appointment or the head of the state service, the candidates to determine the winner and when the deadline for publication of competition results exceeds 45 calendar days from the date of publication of such competition – the competition is completed by determining their results. The general review of the identified options indicates the levelling of the authority of the subject of appointment or the head of the state service to suspend the competition for the period of quarantine or the state of emergency provided for in item 5¹ of the Procedure № 246, because the competition is either completed or cancelled in accordance with item 8 of section II Law № 553.

The absence of an indication of the specific time at which the nominations for the winner must be proposed by the Commission or the selection board of the appointing authority or the head of the state service results in legal

¹⁵ Про місцеві державні адміністрації: Закон України від 09.04.1999 № 586-XIV. Дата оновлення: 02.04.2020. Офіційний веб-портал Верховної Ради України. URL: <https://zakon.rada.gov.ua/laws/show/586-14>.

¹⁶ Про дипломатичну службу: Закон України від 07.06.2018 № 2449-VIII. Дата оновлення: 07.06.2018. Офіційний веб-портал Верховної Ради України. URL: <https://zakon.rada.gov.ua/laws/show/2449-19>.

¹⁷ Про судоустрій і статус суддів: Закон України від 02.06.2016 № 1402-VIII. Дата оновлення: 11.03.2020. Офіційний веб-портал Верховної Ради України. URL: <https://zakon.rada.gov.ua/laws/show/1402-19>.

uncertainty and may therefore provoke enforcement problems. We propose in this case to proceed from the moment of quarantine (in our case from the entry into force of Law № 553, namely from 18.04.2020, as the resolution of the Cabinet of Ministers of Ukraine from 11.03.2020 № 211 quarantine was introduced from 12.03.2020), as of the Commission or the competition commission must carry out all the stages of the competition stipulated by the provisions of the Procedure № 246 before compiling the rating list of candidates (determining five candidates and submitting them to the subject of appointment or the head of the state service to determine the winner) inclusive. However, the practical application of these provisions is also complicated by the fact that the provisions of Procedure № 246, as a rule, do not contain deadlines for the stages of the competition, which should be carried out within the general time limits during which the results of the competition should be made public. For example, the general rating of candidates is compiled after the interview and reflected in the minutes of the meeting of the Commission or the competition commission (item 56 of the Procedure № 246), but the deadlines for determining the overall rating of candidates and for drawing up the minutes are not determined. Meanwhile, it is established that the subject of appointment or the head of the state service proposals on certain candidates or information on the absence of such candidates is made no later than the next working day from the date of signing the minutes (paragraph 4, item 57 of the Procedure № 246).

The winner (winners) of the competition is determined by the subject of appointment or the head of the state service, as in the general order, by conducting an interview with each candidate. Such an interview may be conducted by an authorized person upon the decision of the subject of appointment or the head of the state service. The authorized person shall notify the subject of appointment or the head of the state service in the state body in writing of the results of the interview within a period not exceeding three calendar days (item 4 of the Procedure № 290).

Conducting such an interview is allowed both in general way, i. e. with the personal participation of the subject of appointment or the head of the state service (authorized persons) and candidates, and remotely by videoconference (subject to technical feasibility). With regard to chosen mechanism for closing competitions (including interviewing by the subject of appointment or the head of the state service remotely by videoconference), it becomes unclear why the possibility is limited, for example, of conducting interviews with candidates and the Commission or the competition commission also remotely, which did not necessitate cancellation.

This shows that the availability of technical capability should be determined equally by a state body (the subject of appointment or the head of the state service) and by candidates, and not, for example, be established unilaterally by a state body. In addition, the communication channel (or appropriate software to be used for videoconferencing), the time and date of the interview (videoconferencing only) should be agreed with the candidates, although during the competition the general time and date of the relevant stages of the competition, including interviews with candidates to determine its results, are not agreed with the candidates, but only brought to their notice.

The organizational gaps in conducting a videoconference interview include uncertainty of consequences, for example, the lack of technical capacity of the candidate to conduct an interview in videoconference mode; occurrence of technical problems during the interview, which make it impossible to conduct it further, etc. In order to eliminate these shortcomings, it would be expedient to add item 5 of the Procedure № 290 with a new paragraph as follows: «If there is no technical possibility to conduct the interview remotely by videoconference, such an interview is conducted in the general order. If the interview by videoconference was interrupted or did not take place due to technical reasons, a new time and / or date of the interview with the candidate (candidates) shall be agreed upon».

Identification and confirmation of the identity of the candidate is carried out by presenting a passport of a citizen of Ukraine or other identity document that confirms the citizenship of Ukraine. The list of these identity documents and confirming the citizenship of Ukraine is defined in item 1, part 1 of Art. 13 of the Law of Ukraine «On the Unified State Demographic Register and documents confirming the citizenship of Ukraine, identity or special status»¹⁸, it is also in particular the passport of a citizen of Ukraine to travel abroad, official passport of Ukraine, etc.

In all other cases, the interview by the subject of appointment or the head of the state service (authorized persons) is carried out in the general order, as provided by the provisions of Procedure № 246, and based on its results a decision is made to determine the winner (winners) or his (their) absence, within one working day after receiving the information on the decision of the subject of appointment or the head of the state service shall be notified to the candidates with whom the interview was conducted, in

¹⁸ Про Єдиний державний демографічний реєстр та документи, що підтверджують громадянство України, посвідчують особу чи її спеціальний статус: Закон України від 20.11.2012 № 5492-VI. Дата оновлення: 21.12.2019. Офіційний веб-портал Верховної Ради України. URL: <https://zakon.rada.gov.ua/laws/show/5492-17>.

any available way, including by means of telecommunication. Information about the winner (winners) or about his (their) absence is published on the Unified portal of state service vacancies.

Cancellation of competitions. Other vacancies for state service positions, the results of which have not been made public, are cancelled. These other competitions include competitions that cannot be completed in accordance with the previous paragraph, and therefore the reason for cancellation is the lack of a ranking list of candidates and not making it to the subject of appointment or head of state service (although as noted above there may be difficulties in confirming these grounds). In addition, it is also seen that this fully applies to competitions that were suspended in accordance with item 5¹ of the Procedure № 246 (before the adoption of the Law № 553 and its entry into force), which should be abolished, as currently the quarantine is established in connection with the COVID-19 pandemic, the right of the subject of appointment or the head of the state service to suspend the competition becomes declarative, as there are currently no conditions for its implementation. Thus, the requirement to cancel individual competitions demonstrates the inconsistency of the approach to conducting competitions under conditions of quarantine and replacement of state service positions in general.

Cancellation of competitions is imperative (mandatory), at the same time the procedure (persons authorized to do so and the form) of such cancellation, the need to confirm certain grounds, etc. are not specified. We are convinced that the authority to cancel the competition, in accordance with para. 3 item 8 of section II of the Law № 553, belong to the persons authorized to announce competition for certain positions of state service, therefore to the subjects of appointment or the heads of state service. Analysis of law enforcement practice shows that the cancellation of the competition is conducted by cancelling acts (orders, instructions) on the announcement of such competitions, for example, the order of the Cabinet of Ministers of Ukraine from 06.05.2020 № 513-r¹⁹, from 20.05.2020 № 563-r²⁰ or cancellation of competitions directly, for example, the order

¹⁹ Про скасування деяких розпоряджень Кабінету Міністрів України: розпорядження Кабінету Міністрів України від 06.05.2020 № 513-р. Дата оновлення: 06.05.2020. Офіційний веб-портал Верховної Ради України. URL: <https://zakon.rada.gov.ua/laws/show/513-2020-%D1%80>.

²⁰ Про скасування деяких розпоряджень Кабінету Міністрів України: розпорядження Кабінету Міністрів України від 20.05.2020 № 563-р. Дата оновлення: 20.05.2020. Офіційний веб-портал Верховної Ради України. URL: <https://zakon.rada.gov.ua/laws/show/563-2020-%D1%80>.

of the State Service of Maritime and River Transport of Ukraine dated 24.04.2020 № 85²¹, without specifying the grounds for cancellation of such competitions.

In general, the abolition of competitions provided by Law № 553 completely neglects the rights of candidates to hold state service positions, in particular their right to access the state service, without establishing any possibilities for the restoration of their rights or protection. The practice of cancelling the competitions by state bodies, by which they were declared, was recognized as illegal in court. For example, the Supreme Court in its decision of 06.12.2019 in case № 826/4662/18²² cancelling the order to cancel its own order announcing the competition indicated that the State Ecology Inspection had no legally established grounds for cancelling the competition, and its consequence was the restriction of implementation by citizens the rights to public service.

Appointment of a person to state service positions by concluding a contract for state service for the period of quarantine is allowed in case of absence or rejection by the subject of appointment or the head of the state service of candidates proposed by the Commission or the competition commission based on competitive selection procedures. At the same time, the NASS clarifies that the scope of the Procedure № 290 extends to vacant state service positions, regardless of whether they were advertised before the entry into force of the Law № 553 or not (explanation of the NASS from 24.04.2020 № 92-r/z²³), and therefore the appointment by concluding a contract does not require prior announcement of a competition for the relevant positions.

The decision on the need to appoint a vacant state service position for the period of quarantine is made by the subject of appointment (for positions of category «А» and category «В»), which exercise the powers

²¹ Про скасування конкурсу на зайняття вакантних посад державної служби категорії «Б», оголошеного наказом Державної служби морського та річкового транспорту України від 16.04.2020 № 83: наказ Державної служби морського та річкового транспорту України від 24.04.2020 № 85. Офіційної веб-сайт Державної служби морського та річкового транспорту України. URL: <https://marad.gov.ua/ua/npa/pro-skasuvannya-konkursu-na-zajnyattya-vakantnih-posad-derzhavnoyi-sluzhbi-kategoriyi-b-ogoloshenogo-nakazom-derzhavnoyi-sluzhbi-morskogo-ta-richkovogo-transportu-ukrayini-vid-16042020-83>.

²² Постанова Касаційного адміністративного суду у складі Верховного Суду від 06.12.2019 р. у справі № 826/4662/18 / Єдиний державний реєстр судових рішень. URL: <http://reyestr.court.gov.ua/Review/86162091> (дата звернення 20.05.2020 р.).

²³ Щодо призначення на вакантні посади державної служби на період карантину: роз'яснення Національного агентства України з питань державної служби від 24.04.2020 № 92-р/з. Офіційний веб-сайт НАДС. URL: <https://nads.gov.ua/npas/shchodo-priznachennya-na-vakantni-posadi-derzhavnoyi-sluzhbi-na-period-karantynu> (дата звернення 20.05.2020 р.).

of heads of state service in public bodies) and the head of state service (for other positions of categories «B» and «C») by issuing an appropriate order (instruction). In order to monitor the application of temporary mechanisms for the replacement of state service positions, the NASS introduced weekly updates of data on state service positions for which candidates are selected under contract. So, for example, as of 12.05.2020 the total number of announced vacancies was 443 (of them: «A» – 7, «B» – 161, «C» – 275)²⁴; as of 18.05.2020 – 663 (from them: «A» – 19, «B» – 250, «C» – 394)²⁵; as of 26.05.2020 – 900 (of which: «A» – 21, «B» – 339, «C» – 540)²⁶, which indicates the urgent need to replace state service positions of all categories.

The same decision of the subject of appointment or the head of the state service on the need to appoint to a vacant state service position for the period of quarantine also determines the authorized person (who is responsible for the organization of selection) and approves the announcement of selection. Thus, the organizational support and selection of candidates for appointment by concluding a contract is entrusted to another person, specially authorized by the appointing entity or the head of the state service, and no requirements for such a person are set.

The information on the need for appointment to a vacant position is published on the Unified State Service Vacancies Portal. The deadline for submission of information is determined in the published announcement and may not be less than three or more than seven calendar days from the date of publication in the prescribed manner of the decision on the need for appointment.

A person wishing to participate in the selection for a vacant position submits through the Unified Portal of State Service Vacancies the information specified in item 17 of the Procedure № 290, in particular, a statement indicating the main reasons for the position, resume, etc. It also provides for the need to confirm the submission of a declaration of a person authorized to perform state or local self-government functions for last year only for category «A» positions and simplifies the verification of foreign

²⁴ Інформація щодо добору на вакантні посади державної служби на період дії карантину станом на 12.05.2020. Офіційний веб-сайт НАДС. URL: <https://nads.gov.ua/news/informaciya-shchodo-doboru-na-vakantni-posadi-derzhavnoyi-sluzhbi-na-period-diyi-karantinu> (дата звернення 20.05.2020 р.).

²⁵ Дані щодо добору на вакантні посади державної служби на період дії карантину станом на 18.05.2020. Офіційний веб-сайт НАДС. URL: <https://nads.gov.ua/news/dani-shchodo-doboru-na-vakantni-posadi-derzhavnoyi-sluzhbi-na-period-diyi-karantinu> (дата звернення 20.05.2020 р.).

²⁶ Щодо добору на вакантні посади державної служби на період дії карантину станом на 26.05.2020. Офіційний веб-сайт НАДС. URL: <https://nads.gov.ua/news/shchodo-doboru-na-vakantni-posadi-derzhavnoyi-sluzhbi-na-period-diyi-karantinu> (дата звернення 27.05.2020 р.).

language proficiency, only by submitting documents proving foreign language proficiency.

This information is checked by the personnel management service within three working days and is passed for consideration to the authorized person (except for the information of persons who do not meet the established requirements), which identifies the candidates for the interview. That is, only candidates selected by an authorized person are admitted to the interview.

The interview is conducted in accordance with item 5 of the Procedure № 290, i. e. in the general order or remotely by videoconference, subject to technical feasibility, which we have already considered in this work.

After the interview, the authorized person submits a substantiated submission to the subject of appointment or the head of the state service on the appointment of a candidate to a vacant state service position by concluding a contract with him. The subject of appointment or the head of the state service shall consider such an application and decide on the conclusion of a contract for state service for the period of quarantine or on the rejection of the submitted candidacy.

If a decision is made to enter into a contract, it is concluded on the basis of a Standard Contract approved by Procedure № 290, and after its signing by the subject of appointment or the head of the state service, a decision on appointment to a state service position is made.

It is necessary to dwell separately on determining the term of the contract. In accordance with para. 2 item 21 of the Procedure № 290 the term of the contract is set for the period of quarantine and until the date of determination by the subject of appointment or the head of the state service of the winner based on the results of competitive selection in accordance with the law. According to para. 6 item 8 of section II of the Law № 553 the term of stay of the person in a position of state service makes no more than two months after cancellation of the quarantine established by the Cabinet of Ministers of Ukraine. At the same time, item 21 of the Model Contract stipulates that the term of a person's tenure in the specified state service position is not more than four months after the abolition of quarantine, which requires compliance with Law № 553. Information on the decision is published on the Single Portal state service vacancies.

CONCLUSIONS

The need to ensure the replacement of state service positions during the quarantine period established to resist the COVID-19 pandemic has led to the introduction of new mechanisms for the selection and appointment of

persons to state service positions. Nevertheless, competition is and remains the main way to replace state service positions, the use of which has only been postponed during the quarantine period.

The analyzed changes in the procedure and conditions of replacement of state service positions during quarantine show inconsistency, as the introduced mechanisms contradict each other, lack of a comprehensive approach to the problem of replacement of state service positions, which complicates the functioning of public bodies and restricts citizens' access to state service.

Taking this into consideration, the conditions in which the state and society find themselves and the consequences caused by COVID-19 should be instructive, focusing on improving the procedures for replacing state service positions as a guarantee of stability and smooth functioning of public bodies.

SUMMARY

The article is devoted to the study of ways to replace state service positions in quarantine, established to combat COVID-19. Attention is drawn to the impossibility of full-fledged replacement of state service positions as a result of the application of existing methods of replacement of state service positions (competition and transfer). The changes introduced during the quarantine in the replacement of state service positions are analyzed: suspension of the competition, suspension of the provisions of Law № 889 on competition, completion of announced competitions, appointment to state service positions by concluding a contract. In order to correct the identified problems and shortcomings in the replacement of state service positions during the quarantine period, changes and additions to current legislation are proposed. There is a need to improve the procedures for replacing state service positions that can ensure the smooth functioning of public authorities in quarantine and other similar situations.

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Information about authors:

Bila-Tiunova L. R.,

Doctor in Law, Professor,

Head of the Department of Administrative and Financial Law
National University “Odesa Law Academy”
23, Fontanska doroha str., Odesa, 65009, Ukraine

Nehara R. V.,

Post-degree Student at the Department
of Administrative and Financial Law

National University “Odesa Law Academy”
23, Fontanska doroha str., Odesa, 65009, Ukraine