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# TERMINATION OF CIVIL SERVICE AT THE INITIATIVE OF THE APPOINTING ENTITY: CERTAIN PROBLEMS OF LAW ENFORCEMENT

*The article examines current problems of law enforcement in the field of termination of civil service at the initiative of the appointing entity. It reveals certain problems that are most typical for this category of legal relations, related to the ambiguity of the interpretation of the concepts of "liquidation" and "reorganization" of a state body, which directly affects the legality of dismissal and provision of guarantees for civil servants. Based on the analysis of judicial practice, in particular the decisions of the Supreme Court, the study proves that the formal use of the term "liquidation" does not always mean the termination of the existence of the body if the functional load is transferred to a newly formed structure. In this case, there is a reorganization of the state body (reduction in the number or staff of civil servants, reduction of civil service positions due to changes in the structure or staffing of the state body), which provides for compliance with additional guarantees for those civil servants whose positions are reduced. The issue of insufficient regulation in the legislation on the state service of guarantees for socially vulnerable categories of employees - pregnant women and women with children – is separately highlighted. It was established that the legislation on civil service does not contain*

*special norms prohibiting the dismissal of such categories of civil servants, therefore, in practice, the relevant provisions of the Labor Code of Ukraine should be applied. It was concluded that the provisions of the current legislation regarding the termination of civil service at the initiative of the appointing entity require further improvement and more systematic interpretation by the judiciary. Ways to eliminate the identified conflicts and gaps are proposed, taking into account modern standards of legal certainty, the principle of social protection and equality for all categories of employees, regardless of the form of ownership, type of activity and industry affiliation of enterprises, institutions or organizations.*

***Keywords:*** *civil service; civil servant; guaranteeing human rights; termination of civil service legal status of women; protection of civil servants; judicial protection; administrative proceedings.*

**Statement of the problem.** According to the National Agency of Ukraine for Civil Service (NACS), in 2024 the number of civil service positions authorized by staffing schedules in Ukraine was 192,172, while the actual number of serving civil servants was 156,276. Since the beginning of 2024, 35,074 civil servants have been appointed and 37,673 have been dismissed from office [1].

When these figures are compared with the total number of cases concerning dismissal from public service filed in first-instance administrative courts in 2024 (22,370 cases were lodged; 18,703 were adjudicated, of which 15,415 claims were granted [2]), it emerges that in response to roughly every second dismissal a civil servant who disagrees with the grounds or conditions of dismissal brings legal proceedings – and 69 % of such claims are upheld at first instance.

These statistics underscore the need to re-apply a rigorous scholarly approach to the analysis of current Ukrainian legislation on the grounds for termination of civil service. In particular, greater attention should be paid to terminations initiated by the appointing authority.

**Analysis of recent scientific research and publications.** Termination of civil service at the initiative of the appointing authority is one of those grounds whose application gives rise to numerous disputes, violations of civil servants' rights and, consequently, litigation seeking their reinstatement. It is therefore unsurprising that NACS has addressed this issue in its guidance, striving to summarize the most common errors in law-enforcement practice and improve the dismissal procedure (NACS Clarification No. 132-r/z of March 15, 2021 [3]; NACS Clarification No. 151-r/z of April 21, 2022 [4]). From time to time, the Law of Ukraine "On Civil Service," encompassing the provisions that define the grounds for termination of civil service, attracts the attention of scholarly teams in the form of scientific-practical commentaries [5]. Individual authors – such as A. Hryshchuk [6], V. Kohan [7], and Ya. Fenyč [8] (on the grounds, procedure and consequences of civil-service termination) – also provide a foundation for academic analysis. However, the rapid evolution of the current Ukrainian legislation quickly renders these studies archival in character: useful for generalization, but not fully up-to-date for resolving present law-enforcement challenges. This underscores the need for further scholarly inquiry in this area and for developing timely guidance on the proper application of the existing statutory provisions.

**The purpose of this article** is to outline specific problems arising from deficiencies in the application of statutory provisions on termination of civil service at the initiative of the appointing authority, and to resolve them through scholarly methods and analysis of judicial practice.

**Presentation of the main material.** The Law of

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Ukraine “On Civil Service” structurally differentiates the grounds and procedure for termination of civil service in Article 83, depending on the circumstances and/or the initiator of termination of these legal relations. Termination of civil service at the initiative of the appointing authority (Art. 87) is part of the comprehensive system of norms that define the grounds and procedure for termination of civil service.

The Constitutional Court of Ukraine affirms that “all labor relations must be based on the principles of social protection and equality for all enterprises, institutions, and organizations, regardless of ownership form, type of activity, or sectoral affiliation, as well as for individuals working under an employment contract, which, in particular, must be reflected in the establishment of an exhaustive list of conditions and grounds for termination of such relations” [9] – a position that reflects the European Court of Human Rights’ jurisprudence on eliminating discrimination of individuals’ rights and embodies the fundamental values enshrined in the Constitution of Ukraine regarding the protection of all employees’ interests, including protection from unlawful and unjustified dismissal. Article 87 of the Law of Ukraine “On Civil Service” plays a key role in ensuring legal certainty in the dismissal process for civil servants (as a specific category of employees), establishing a balance between the interests of the state and those of the civil servants. This provision contains the grounds, guarantees, and certain compensatory mechanisms in the event of circumstances triggering termination of civil service at the initiative of the appointing authority and is intended, on the one hand, to protect this category of employees from arbitrary dismissal and, on the other, to "preserve a professional and stable civil service corps" [5, p. 657], maintaining a stable and optimal mode of operation of the state body by establishing a clear list of grounds for dismissal of those civil servants whose performance or conduct fails to meet the requirements of the position held and/or the principles of civil service.

Authors of one scientific-practical commentary on Art. 87 of the Law of Ukraine "On Civil Service" rightly note: "termination of civil service at the initiative of the appointing authority is a means of unilateral termination of civil service relations, which is possible only on the basis of the grounds defined by law. The appointing authority’s initiative is the result of its forced choice, prompted by changing conditions of activity, or is the authority’s reaction to unsatisfactory performance evaluation of the civil servant" [5, p. 658]. However, unlike termination of civil service due to loss or restriction of the right to civil service, where "the appointing authority is obliged to dismiss the civil servant…" (Part 2, Art. 84), termination at the appointing authority’s initiative is not unconditional – when grounds specified in Art. 87 arise, the legislation leaves it to the appointing authority’s discretion to decide on dismissal of the subordinate civil servant, taking into account objective and subjective factors.

The grounds listed in the article can be grouped as follows:

a) those unrelated to the civil servant’s performance (resulting from reorganization or liquidation of the state body);

b) those not dependent on the servant’s will but indirectly adversely affecting the state body’s efficiency (prolonged absence from service due to temporary incapacity);

c) those arising from negative evaluation of the civil servant’s performance or behavior.

Since the first two groups are not caused by professional incompetence, where grounds under paragraphs 1 and 1–1 of Part 1 and Part 2 of Art. 87 arise, the legislation secures certain guarantees and

compensatory mechanisms to protect the rights of the affected individuals.

The guarantees, when grounds under paragraphs 1 and 1–1 of Part 1 of the commented article exist, include: advance notice by the appointing authority of its intention to dismiss the civil servant; for grounds under paragraph 1, a mandatory offer of another equivalent or, as an exception, lower civil service position; dismissal only where no suitable position can be offered or if the servant refuses the offered position; where grounds under Part 2 arise, retention of the civil servant's post until recovery or determination of disability. The compensatory mechanism provided by law for dismissal under paragraphs 1 and 1–1 of Part 1 of Art. 87 is the state's obligation to pay the civil servant severance pay equal to two average monthly salaries [10].

As case law shows, disputes over termination of civil service at the appointing authority's initiative arise under every ground listed in Article 87. In this article, we focus on several problematic aspects that recur in these disputes.

By design, the legislator separated two grounds for termination at the appointing authority's initiative –reorganization (including staff reductions) and liquidation of the state body – so that each would trigger different dismissal procedures and social guarantees. A close reading of Article 87 confirms that liquidation of the state body, unlike reorganization, carries no additional conditions for dismissal.

Scholar V. Kohan highlights a conflict between the Labour Code of Ukraine and the Law "On Civil Service." Under the Labour Code, the protections of Articles 40 and 49-2 (which apply to employees dismissed under Article 40) are withdrawn both in cases of reorganization and liquidation of an employer. Yet the special civil-service law requires that, upon reorganization of a state body (Art. 87(1)), the appointing authority must offer the affected civil servant an equivalent – or, as an exception, lower – civil-service post consistent with their training and competencies, giving them preferential retention rights under labour law. No such duty arises on liquidation of the body [7, p. 80].

In practice, courts often see parties dispute the very existence or scope of the organizational change – whether the body was truly liquidated or merely reorganized. Liquidation of a public legal entity must be effected by a formal act of the authority empowered to do so and must include sufficient reasoning that its functions are no longer needed or are better handled by another executive organ. Mere reference to "liquidation" without substantiating objective reasons is insufficient. Thus, when courts consider reinstatement claims, they must examine not only the procedural legality of the dismissal but also whether the alleged "liquidation" actually occurred. In case No. 640/15797/21 (judgment of 30 November 2022), the Supreme Court held that a court must determine if the body was in fact dissolved –or simply restructured – before permitting termination on that ground [11].

Similarly, in case No. 160/1643/23 (judgment of 29 November 2023), the Supreme Court explained that "liquidation" as a dismissal ground requires both issuance of the formal liquidation act and evidence that the state relinquished the functions or transferred them to another body (for example, to avoid overlap of powers). In other words, an entry in the Register of Legal Entities indicating liquidation does not itself prove the state body ceased to exist in substance. A merger of several organs into one – granting the new entity the same powers –reflects only a change in form, not true liquidation. Where functions remain intact, a genuine reorganization has occurred, not a liquidation [12].

For example, in its ruling of November 29, 2023 (case No. 160/1643/23), the Supreme Court's panel upheld the first-instance court's approach, which required examining the true nature of organizational changes in the regional Labour Inspectorates – and their legal consequences – before deciding the dispute. The court found that after the so-called "liquidation" of the Labour Inspectorates in Kirovohrad, Dnipropetrovsk, and Zaporizhzhia regions, those bodies were in fact reorganized by merging into the South-Eastern Interregional Labour Service, to which all powers, tasks, and functions had simply been transferred. They had not been liquidated. That legal assessment of what actually happened to the state body was decisive in determining the correct grounds and procedure for dismissing its civil servants. Accordingly, the Supreme Court concluded that the Dnipropetrovsk Regional Labour Inspectorate ceased to exist by reorganization – and therefore, under Article 87(1) of the Civil Service Law, a civil servant there could only be dismissed if no suitable alternative position could be offered, or if they refused a proposed transfer [12].

Another critical issue under Article 87 is the special guarantees for pregnant women and for women with young children when their service is terminated at the appointing authority's initiative. In practice, appointing authorities do not always respect these protections, leading to court challenges. Since the Civil Service Law is lex specialis to the Labour Code, it should govern both entry into and termination of civil service. Although A. Hryshchuk notes that the Civil Service Law provides more detailed grounds than the Labour Code [6, p. 306], it nonetheless fails to specify dismissal protections for these categories (other than excluding maternity leave from the computation of temporary incapacity). Because the special law is silent, courts have correctly applied the general Labour Code provisions. Pursuant to Article 184(3) of the Labour Code, "dismissal of pregnant women and of women with children under three years of age, and of women with children under six if the child requires home care (Art. 179(6)), as well as of single mothers with children under fourteen, or with a child with a disability, at the initiative of the employer or its authorized body is not permitted, except in cases of complete liquidation of the enterprise, institution, or organization, when dismissal is allowed with mandatory re-employment."

In such cases, an additional compensatory mechanism applies: the employer must continue paying the woman's average salary for up to three months following the end of her fixed-term contract [13]. This does not relieve the appointing authority of its obligation to pay severance equal to two average monthly salaries under Article 87(1) and (1–1). As the Vinnytsia Administrative Court held on May 28, 2024 (case No. 120/1639/24), severance is a one-time payment under paragraph 4(b) of the Cabinet of Ministers' 1995 Procedure for Calculating Average Wages (CMU Res. No. 100, as amended) [14]. The Kharkiv Commercial Court similarly explained on January 30, 2024 (case No. 922/2167/23) that severance is a statutory, one-off payment intended to support a dismissed employee while seeking new work, distinct from wages, since it depends solely on the fact of dismissal for specified legal reasons [15]. Meanwhile, Article 184(3) Labour Code's wage-continuation provision remains fully in force for up to three months.

**Conclusions and Prospects for Further Research.**

In summary, Article 87 of the Law of Ukraine "On Civil Service" is an essential legal tool for regulating the termination of civil service. However, beyond merely delineating the technical grounds for dismissal at the appointing authority's initiative, this provision embodies a balance between the need to

ensure effective functioning of state bodies and the protection of civil servants' rights, by providing clear criteria and guarantees when employment is terminated. This is achieved through: clarity and exhaustiveness of dismissal grounds (the legislator prescribes an exhaustive list of grounds for termination at the appointing authority's initiative, which minimizes subjectivity in dismissal decisions and ensures compliance with legal norms); protection of civil servants' rights (a key aspect is the establishment of procedural guarantees for those facing dismissal, which ensures the possibility of continuing a career in civil service and reduces the risk of unlawful dismissals); guarantees and compensatory mechanisms (the law provides for payment of severance in cases of organizational liquidation or staff/position reductions, which serves as important social protection for civil servants).

At the same time, even from the examples presented in this study (issues arising from distinguishing the foundational concepts that ensure civil-servant protections – reorganization versus liquidation of a state body; guarantees for pregnant women and mothers under dismissal at the appointing authority's initiative), it is evident that neither the legal framework nor its practical application is free from shortcomings. In this context, judicial practice becomes particularly significant for ensuring the balance of interests between civil service and protection of civil servants' rights: analysis of court decisions shows that courts frequently annul dismissals for procedural violations, thereby creating precedents that apply existing legislation in synergy – drawing on administrative, labour, and other related branches of law – to fill regulatory gaps.

Finally, it should be emphasized that further problematic issues arise under other grounds for termination (not addressed in this study), which likewise require application of a scholarly approach and represent a promising direction for our future research.

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