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PROBLEMS OF DIFFERENTATION OF DISCIPLINARY AND ADMINISTRATIVE RESPONSIBILITYOF STATE CIVIL SERVANTS IN RUSSIAN FEDERATION

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Abstract. *The article deals with the problems of applying disciplinary and administrative liability measures to state civil servants. The issues related to the need to improve the legal regulation of these institutions are revealed.*

Keywords: *civil service, civil servant, responsibility of civil servants; administrative responsibility, disciplinary responsibility, official responsibility, official duties, regulations.*

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Introduction

The civil service is one of the main institutions of organization of absolutely all modern societies, regardless of the socio-political system and the type of state structure. It can be noted that the civil service plays a crucial role both in the structure of national power and in the implementation of socio-political, financial and other reforms carried out by all branches of government in the Russian Federation.

The Institute of public service in the Russian Federation is currently undergoing reform, and one of the goals of improving this Institute is to provide scientific justification for methods of improving discipline for more effective management of civil servant behavior. One of the most effective legal means to improve the level of discipline is the application of liability measures for violations committed by employees.

State civil servants bear various types of responsibility: criminal, administrative, disciplinary, material and civil law. However, it is disciplinary responsibility that is the mechanism aimed at the most effective maintenance of law and order in the system of public administration.

Literature Review

Disciplinary responsibility is a type of legal responsibility that is implemented within the framework of protective legal relations. Its distinctive feature is that the

application of this type of responsibility to the guilty state civil servant is possible in the order of subordination by a higher state body (official) authorized to appoint the employee to a public position. The main features of disciplinary responsibility of state civil servants are its application in the order of subordination; a specific subject that simultaneously acts as an employee and a bearer of authority; the lack of systematic legislation on disciplinary responsibility, as a result of which both the norms of administrative and labor law are applied to state civil servants (Kostov, 2017; Mayurov, 2014; Mayurov, 2003).

Disciplinary responsibility of state civil servants is characterized by certain fundamental principles. The current legislation does not contain the concept and list of principles of responsibility of State civil servants. In legal science, there are general legal principles, such as the principle of justice, equality, recognition and respect for the rights and freedoms of man and citizen, which equally extend their effect to legal responsibility. It seems that the application of disciplinary responsibility to state civil servants should be based on strictly observed principles of legality, inevitability of disciplinary responsibility, reasonableness and justice, presumption of innocence, expediency of disciplinary punishment (Channov, 2018).

Despite the absence of a clear regulation of the stages of disciplinary proceedings in the framework of scientific research, a number of scientists, including us, call mandatory and optional stages. the mandatory stages should include the initiation of a case on a disciplinary offense, the basis of which is sufficient data indicating the signs of the composition of the disciplinary offense, and the reasons that need to be fixed by law – documentary information about the committed offense; internal audit; consideration of the disciplinary case and decision-making, as well as execution of the decision. As optional stages, it is proposed to consider the appeal of the decision and the early removal of the disciplinary penalty. In our opinion, this classification of the stages of disciplinary proceedings is the most logical and correct. For more information, see (Kandrina, 2017; Mayurov, 2005; Mayurov, 2008).

In turn, administrative responsibility of state civil servants today is one of the elements of the legal status of an employee, contributing to improving the quality of work of the state civil service, excluding persons who use their official position for selfish purposes, increasing the level of professionalism of employees, and therefore provides protection of the rights and freedoms of citizens and organizations whose rights, freedoms and legitimate interests are violated in the event of an illegal act committed by a state civil servant.

The main source of bringing this person to administrative responsibility is the Code of Administrative Offences of the Russian Federation of 30.12.2001 No. 195-FL, in the General and Special parts of which there are provisions regulating the procedure for applying sanctions to a civil service official (Code of administrative offences of the Russian Federation, 2002).

A state civil servant is a special subject of an administrative offense. this is due to the fact that for a number of illegal acts specified in the Special part of the Code of Administrative Offences of the Russian Federation, an official can be brought only if this act affects the interests of the civil service in connection with the performance of

the employee's official powers. At the same time, it can also act as a General subject when it commits an administrative offense, regardless of the position of a state civil servant.

Methods

The basis for bringing to administrative responsibility in the General sense for any category of persons is the fact of committing an administrative offense, which is expressed in an act-action or omission. In art. 2.4 of the Code of Administrative Offences of the Russian Federation that an official is subject to administrative responsibility if he commits an administrative offense in connection with non-performance or improper performance of his official duties.

Results

Recently, the scope of application of administrative responsibility to these subjects has been expanding. Code of Administrative Offences of the Russian Federation introduced new articles on administrative responsibility of officials, for example: Article 5.63 (violation of legislation on the organization of the provision of state and municipal services), Article 5.39 (refusal to provide information). Thus, the legislator expands the list of cases when administrative penalties are applied for violating the duties of an employee, that is, official misconduct is transferred to the category of administrative offenses, and we believe this is correct, especially from the position of today.

A civil servant is subject to administrative responsibility if he commits an administrative offense in connection with non-performance or improper performance of his official duties, as a result of which the rights and interests of citizens and legal entities are violated. However, given the fact that the legislation provides for an extensive list of grounds for bringing state civil servants to administrative responsibility, this phenomenon is extremely rare in legal practice compared, for example, with disciplinary penalties (Medvedev, 2017).

Disciplinary and administrative responsibility quite often overlap and, within the framework of the institute of state civil service, disciplinary measures are more often applied. although administrative liability measures are more objective, civil servants are often limited to disciplinary actions only. and the possibility of applying an alternative punishment is due to the ambiguity of the provisions of the legislation.

Thus, article 2.4 of the Code of Administrative Offences of the Russian Federation specifies that an official is subject to administrative responsibility if he commits an administrative offense in connection with non-performance or improper performance of his official duties (Code of administrative offences of the Russian Federation, 2002).

And the provisions of article 57 of the Federal law "On state civil service of the Russian Federation" follows that for committing disciplinary misconduct, that is, for non-performance or improper performance of civil servants through his fault assigned to it official duties, a representative of the employer has the right to apply one of the disciplinary penalties:

- comment;
- reprimand;
- warning about incomplete official compliance;
- the dismissal (On the state civil service of the Russian Federation, 2004).

The application of both disciplinary and administrative responsibility for a violation depends on the official who applies it, which cannot indicate the effectiveness of the punishment. In this connection, you need to enter a civil servant in the category of subjects of administrative responsibility of the Code of Administrative Offences of the Russian Federation, as well as to determine the list of the offences of non-compliance individual state bans civil servants.

Thus, as part of the implementation of liability measures applied to state civil servants, the issue of competition between administrative and disciplinary measures against violators has emerged.

A special aspect of the question of the ratio of administrative and disciplinary responsibility in ensuring the rule of law in the state and municipal service is the ability of each of these types of responsibility not only to punish the offender, but also to perform a preventive function of not allowing persons who have committed sufficiently serious offenses (misdemeanors) to enter the state (municipal) service (Pyshkina, 2020).

The priority of applying disciplinary measures is due, in our opinion, to the fact that the application of administrative liability measures entails more significant consequences. However, to date, the law does not determine which type of legal liability is more subject to application in the performance (non-performance) of the duty assigned to a state civil servant, which allows the employer to assess the offense individually. This approach is not always able to ensure a fair and effective impact on the violator. The employer's own discretion in the matter of bringing to this or that type of responsibility does not always correspond to the signs of objectivity and allows some selectivity. This implies the need to publicize decisions made within the framework of the application of the institute of disciplinary responsibility. In this case, when exercising their powers, the power subject will not be able to show loyalty to some violators and be excessively strict with others (Mukoseeva, 2019).

Discussion

Both administrative and disciplinary responsibility are necessary mechanisms implemented within the framework of the Institute of public civil service, each of which has certain goals and consequences of application. To date, the mechanism of the disciplinary liability objectively requires the specification, as evidenced by:

1. No special legal act regulating matters of disciplinary liability of civil servants in the Russian Federation shall entail the problem of the right use of mechanism such liability.

2. The possibility of the subject of disciplinary power to exercise its powers through the application of an alternative type of punishment entails the bias of the sanctions applied, and, as a consequence, the ineffectiveness of this type of punishment.

3. The absence of elements of publicity in the application of disciplinary measures by the power subject against the violator – a state civil servant.

4. The absence of legally established principles of disciplinary responsibility of civil servants, including the principle of legality, humanism, individualization of disciplinary responsibility of civil servants and punishment, the expediency of disciplinary responsibility, the inadmissibility of double responsibility for the same offense, and the inevitability of disciplinary responsibility.

5. The absence of a closed list of disciplinary actions, as well as provisions on the financial responsibility of state civil servants.

6. The absence of a standard procedure for bringing a state civil servant to disciplinary responsibility, which deprives the violator of the right to an exhaustive, objective and comprehensive assessment of the circumstances of the disciplinary case.

7. The absence of a legally established list of grounds for refusal to initiate a disciplinary case or its termination.

Conclusion

Thus, despite the existence of various penalties and punishments applied to civil servants, the ultimate goal of state coercion is to achieve a positive version of public administration without applying any administrative measures at all. Having considered the problems of applying measures of responsibility for violations within the institutions of administrative and disciplinary responsibility of state civil servants, we can conclude that there is a need for normative improvement of these institutions. First of all, innovations are necessary in terms of applying the mechanism of disciplinary responsibility of employees, including expanding the list of disciplinary penalties and detailing the disciplinary procedure. Administrative and disciplinary responsibility should not be opposed, however, when implementing measures of responsibility, the power subject must have an objective, normative and reasonable idea of the division of types of misconduct and violations that fall under certain measures of influence.

References

Code of administrative offences of the Russian Federation (2020). Federal law No. 195-FL of 30.12.2001: [ed. from 15.10.2020, with ed. from 16.10.2020] // Collection of legislation of the Russian Federation. - 2002. - No. 1 (part 1). - Article 1.

On the state civil service of the Russian Federation (2004). Federal law No. 79-FL of 27.07.2004: [ed. from 08.12.2020] // Collection of legislation of the Russian Federation. - 2004. - No. 31. - Art. 3215.

Kandrina, N. A. (2017). Disciplinary and administrative responsibility of state civil servants: problems of determining the legal nature / N. A. Kandrina // Bulletin of the University name of O. E. Kutafin (MSAL). – 2017. – No 2. – P. 142-146.

Kostov, A. V. (2016). The problem of bringing to administrative responsibility of officials of public authorities / A.V. Kostov // The Law. – 2016. – No. 7. – P. 12-15.

Medvedev, P. C. (2017). Administrative responsibility of public servants / P. S. Medvedev, D. P. Rataev// Issues of Russian and international law. - 2017. - Book 7. - No. 5A. - P. 224-237.

Mukoseeva, N. N. (2019). Actual problems of administrative and disciplinary responsibility of civil servants / N. N. Mukoseeva, G.V. Ogrina // Legal science. - 2019. - No. 5. - P. 83-85.

Pyshkina, D. S. (2020). Problems of attracting a civil servant to administrative and disciplinary responsibility / D. S. Pyshkina / / Young scientist. – 2020. – № 35 (325). – P. 127-129.

Channov, S.E. (2018). Disciplinary and administrative responsibility of state and municipal employees: issues of efficiency / S.E. Channov // Journal of Russian law. – 2018. – № 2(254) – P. 59-69.

Mayurov, N. P. (2005). Service check as factors of improvement of disciplinary legal relations in police bodies //History of state and law. 2005. - No. 2. - P. 32-36.

Mayurov, N.P.; Byalt, V.S. (2008). Problems of administrative and legal regulation of disciplinary responsibility of employees of the bodies of internal Affairs. // "Black holes" in Russian legislation. Legal journal, 2008. - No. 6. - P. 176-179.

Mayurov, N. P. (2014). Actual questions of personnel work in the sphere of state service of the Russian Federation / / In the collection: Actual problems of modern social and humanitarian sciences. Materials of the fourth international scientific and practical conference. In 2 books. Federal state budgetary educational institution of higher professional education "Perm state national research university"; Limited liability company " Training center "Informatics". 2014. - P. 31-38.

Mayurov, N. P. (2003). Legal features of service discipline of police officers // History of the state and law. 2003.- No. 5. - P. 17-19.