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PRINCIPLE OF CORRELATION OF THE MUNICIPAL SERVICE AND THE STATE CIVIL SERVICE

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Abstract

This article clarifies the content of the concepts of municipal service and state civil service, identifies similar and distinctive features of these types of state activity. A parallel is drawn between the construction of municipal system and the organization of state civil service system of the Russian Federation. The principle of municipal service and state civil service correlation is analyzed as one of the fundamental principles in the activities of municipal employees. The concepts of unity and correlation of the municipal and state civil service are explained. Relations to which unity applies are outlined, the question of legal means that achieve uniformity and interconnection of the state and civil service is highlighted, in particular, the fundamental requirements of qualification compliance of state and municipal employees are analyzed, which coincide in their basic part and differentiate with respect to requirements for holding an office depending on the knowledge and skills that are required for it. On the other hand, the study draws attention to those relations that suggest the correlation of municipal and state civil service. This applies to the basic conditions of remuneration and social guarantees for municipal employees and state civil servants, the basic conditions for the pension provision of citizens who have retired, as well as for their family members in case of loss of the bread-winner. In addition, the article considers the problem of normative reduction (reflection in the current legislation) of this principle in the context of the correlation of these types of power activities.

Keywords: Municipal service, state civil service, principle of municipal service, principles of law, civil servants, municipal servants.

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1. Introduction

The most important fundamental foundation of the municipal service, although it did not receive direct legislative consolidation in the norm of Art. 4 of the Federal Law "On Municipal Service in the Russian Federation", is the principle of the correlation of the municipal service with the state service serves. It is based, first of all, on the recognition of the fact that the basic rights and obligations of employees who carry out different activities, when it comes to the subject of their labor, as well as its nature are largely similar. The correlation between the municipal and state civil service is also reflected in the general ideas of the competence and professionalism of employees, their non-partisanship and responsibility.

2. Problem Statement

The state and municipal services in no way duplicate one another or relate to each other as a whole and as part. However, it is difficult not to notice that they have a similar nature. Thus, public and municipal service usually refers to professional public activities of both state and municipal employees, who are vested with significant powers in this regard to exercise power management functions (Schmidt-Aßmann, 2006). However, state civil and municipal services have not only the same nature, but also a number of common characteristic features. In particular, both are based on similar principles of organization and activities of the main institutions (Eremyan, 2006).

Thus, as we see, the principle of interconnection and interaction of the state civil and municipal service follows from the current legislation and is the beginning that underlies the organization and activities of municipal authorities. The aforesaid is also confirmed by the practice of implementing legislation on municipal service: the entire system of municipal authorities is built in accordance with the above principle in such a way that, within certain limits indicated by the current legislation, they have similarities with the system of state civil service bodies of the Russian Federation.

In Art. 5 of the Federal Law “On Municipal Service in the Russian Federation”, the legislator mentions those means of law that achieve uniformity and interconnection of state and municipal services:

- Uniform requirements for qualification compliance on which the procedure for filling the posts of both services is based;
- Uniform restrictions for employees of state and municipal services regarding their work;
- Uniform requirements underlying the training of employees;
- Uniform principles for calculating the length of service of state and municipal service employees;
- The correlation of the principles of remuneration of labor, guarantees of social and state pension provision for employees - both state and municipal bodies.

Thus, the principle of the correlation of state civil and municipal services, on the one hand, is reflected in the current legislation, has its own regulatory reduction, on the other hand, is embodied in the actual construction of the municipal service system in the Russian Federation

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3. Research Questions

In order to disclose the content of the principle of the correlation between state and municipal services, the legislator uses the terms “unity” and “correlation” (Article 5 of the Federal Law “On Municipal Service in the Russian Federation”). The use of such terminology raises legitimate questions. Firstly, both of these terms need clarification: what exactly should be understood by unity and correlation? Secondly, to which specific relations the principle of unity can extend, and to which the principle of relativity? Thirdly, if we are talking about unity - should it be interpreted as absolute?

These questions however do not imply harsh and unambiguous answers. It seems that their decision should be based on two basic principles. First. The question of the unity of state and municipal services should be considered at the level of constitutional legal regulation (this applies, for example, to legal regulation of the status of state and municipal servants). The second one. It is appropriate to speak about the correlation of state and municipal services at the level at which the specifics of local self-government can manifest themselves (European Charter of Local Self-Government of 15.10.1985), taking into account their specific, in particular financial capabilities (for example, in matters of remuneration of municipal employees) (Velieva, 2005).

4. Purpose of the Study

The purpose of this study is to analyze the principle of the relationship between the municipal service and the state civil service as a fundamental principle in the activities of municipal employees. This problem is considered in two aspects: from the point of view of unity in the organization and functioning of municipal and state civil services, as well as through the prism of the correlation of these two varieties of power activities.

5. Research Methods

The study used a number of general scientific and legal methods. So, the fundamental method is the systemic method, which, as you know, allows you to establish the place of a phenomenon in the general picture of the world, in this case, the place of the principle under discussion among the principles of municipal service, in particular, and the principles of law in general. The analysis method makes it possible to distinguish two aspects of the correlation between the municipal service and the state civil service, and the formal legal one - to clarify the semantic content of the concepts of “unity” and “correlation”. Using the comparative legal method, it becomes possible to compare the legislative solution of similar issues in the legislation on municipal service and state civil service.

6. Findings

Of course, the unity of the municipal and civil service cannot mean the full similarity of the legal regulation of certain relations. So, as it is already mentioned above, the legislator proceeds from the unity of the fundamental requirements for qualification of state and municipal employees. From the context of the article under consideration of the Federal Law, it is easy to see the fact that it deals only with some

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basic matching requirements, their minimum standard set, and not at all with all requirements of this kind (Kireeva, 2008). These include such requirements:

- Professional education;
- Specialization;
- Qualification;
- Work experience.

These requirements stem from the principle of professionalism of state and municipal employees as one of the most important principles for the implementation of the management apparatus. The aforesaid allows us to conclude that the normative reduction of the discussed principle of uniformity of qualification requirements for state and municipal servants essentially implies two basic requirements: regarding the level of their professionalism, firstly, and competence, secondly. As for the replacement of a specific position, then here the requirements can significantly differentiate depending on the knowledge and skills that are required for this. Which, in general, is understandable and justified. If we further develop this idea, it is worth noting that further unification of the qualification requirements of state and municipal employees, its wider dissemination is not only not advisable, but hardly possible.

In this case, there are cases in which the legislator allows unreasonable differences. For example, consolidation of the unity of obligations and various restrictive measures during the passage of the municipal service and the state civil service in Art. 5 of the Federal Law “On Municipal Service in the Russian Federation” (On Municipal Service in the Russian Federation, 2007). However, the analysis of Art. 13 of the Federal Law “On Municipal Service in the Russian Federation” (On Municipal Service in the Russian Federation, 2007) and Art. 16 of the Federal Law “On the State Civil Service of the Russian Federation” (On the State Civil Service of the Russian Federation, 2004) provides a basis for the conclusion that the restrictions established for civil and municipal employees are different.

It should be noted that some differences are largely formal in nature (Chapus, 2001). Let us consider as an example the relationship regarding the loss of the employer's confidence in a public servant in cases of non-compliance with the restrictions and prohibitions established in order to combat corruption. At first glance, the legislation on municipal service does not fix such a restriction, but upon closer examination of this issue we find a similar rule that an employee dismissed on the grounds of loss of confidence cannot occupy a position in the municipal service. Thus, in this case, it would seem that we are talking about specifics, however, this specificity actually hides the uniformity of the legislative solution to the issue in relation to similar situations.

However, there are cases not so obvious. Thus, persons who are not citizens of the Russian Federation or possess the citizenship of another state are not allowed to take up public service positions in the Russian Federation, except as otherwise provided by international obligations of the Russian Federation. Regarding the municipal service, the issue of admission is decided differently - more strictly. So, regarding the occupation of the posts of the municipal service of persons without citizenship of the Russian Federation, the legislator retains his position: it is prohibited. But in addition, he imposes a ban on the presence in the municipal service of the Russian Federation of persons holding either a residence permit or another document confirming the citizen's right to permanent residence in the territory of a foreign state. This rule applies to cases where there is no corresponding agreement between the Russian

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Federation and a foreign state that would provide for a citizen's right to fill the posts of the municipal service of the Russian Federation. It seems to us permissible to establish such a restriction, since a person residing in the territory of a foreign state may already have greater loyalty to this state than to the Russian Federation (International covenant On civil and political laws), and therefore engaging in public activities in our country is not permissible. Thus, it seems to have real reason to bring the legislation on the state civil service in line with the legal solution to the issue of municipal service.

Significant differences relate to the legislative decision on the issue of admission to the posts in the state and municipal service of persons against whom a court conviction has entered into force. Let us first examine how this issue is being applied to the state civil service. The law provides for two reasons when staying on it for an appropriate reason is prohibited:

- Conviction of a citizen to punishment by a court verdict that has entered into legal force;
- The conviction is not withdrawn or not canceled .

Thus, we see that in this case the legislator connects the ban for those with a criminal record. From the point of view of the criminal law (the norm, part 1 of article 86 of the Criminal Code of the Russian Federation), a person who has been convicted of a crime is convicted from the day the conviction of the court comes into force until the conviction is canceled or removed (Channov, 2010).

Of course, the norm also applies to cases when a citizen is already filling a position in the municipal service. The legislator resolves this issue unambiguously. At the municipal service, things are very different. Based on the meaning of the norms of paragraph 2 of Part 1 of Art. 13 of the Federal Law “On Municipal Service in the Russian Federation” it can be concluded that in relation to municipal employees, the legislator connects the ban not so much with a criminal record, but with serving a sentence that excludes the possibility for a municipal employee to fulfill his official duties. In other words, the sentencing, not related to real deprivation of liberty, does not become an obstacle to the continuation of municipal service relations.

In our opinion, such an approach causes serious criticism, such content and a double standard for determining a legal norm do not work for the benefit of the municipal service. Local governments are manifestations of democracy (Dworkin, 1977), and municipal employees should be role models, respect the law and order (Salomatin, 2017). As a result, the legislator must bring the norms of the municipal service in line with the Federal Law “On the State Civil Service of the Russian Federation” (On the State Civil Service of the Russian Federation, 2004). It is proposed to set out paragraph 2 of Part 1 of Art. 13 of the Federal Law “On Municipal Service in the Russian Federation” as follows: sentencing him to a punishment that excludes the possibility of fulfilling official duties by the position of the municipal service, by a court verdict, which has entered into legal force, as well as in the case of availability not withdrawn or not paid off in the manner established by federal law for a criminal record.

In the ratio of the application of these types of activities, it is worth paying attention to the implementation of the principle of the relationship of the municipal service and the state civil service. First of all, it is necessary to reveal the concept of relativity. According to the Explanatory Dictionary of the Russian Language, the term relativity is defined as being in relation to something. Correlation is the establishment of a relationship between two objects (Ozhegov, 1992).

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In the legislation on municipal service, we see the ratio of the basic conditions of remuneration and social guarantees of municipal employees and state civil servants; the basic conditions for the provision of pensions to citizens who have undergone municipal service, and citizens who have undergone state civil service, as well as members of their families in case of loss of the bread-winner. It can be argued that in this case it is only a question of the correlation of the main elements, although the full structure may differ, for example, remuneration of labor, state and municipal employees.

Regarding the solution of the question of the correlation of pension provision in relation to municipal employees, the provision is fixed according to which the determination of the state pension of a municipal employee is carried out in accordance with the law of the constituent entity of the Russian Federation. Along with this, the maximum size of the state pension of a municipal employee cannot exceed the maximum size of the pension of a civil servant of the subject of the Russian Federation for the corresponding position of the state civil service of the subject of the Russian Federation. Apparently, correlation is defined in this case only as a ratio in a smaller direction. We consider this approach not entirely fair, because when establishing job ratios, it allows to determine the size of pensions of municipal employees only to a smaller side. As a result, it turns out that the pension of a municipal employee can be 2 times less than the pension of a civil servant. In this case, it would be fair to establish both the upper and lower limits on the size of the pension.

A similar situation is manifested in the correlation of wage conditions. The legislator does not put forward special requirements for the correlation of remuneration of employees. Of course, at the level of the constituent entities of the Russian Federation, attempts are made on correlation, but there is no single approach. In the legal literature, two legislative models are used to determine the size of wages of municipal employees. We see this approach as very interesting. It consists in the development of legislative acts of the constituent entities of the Russian Federation, establishing approximate sizes of official salaries of municipal employees, and not the limiting standards for subsidized municipal formations, as was established by the now canceled part 3 of Art. 22 of the Federal Law “On Municipal Service in the Russian Federation”, as well as in the case of establishing the size of the official salary of municipal employees in multiples of the official salaries of state civil servants of a constituent entity of the Russian Federation (Kireeva, 2010).

7. Conclusion

Nowadays, the question of implementing the principle of the relationship of the municipal and state civil service is relevant. This principle is based on the unity of the legal nature of these types of performance management, which are focused on the implementation of the competence of public authorities. Since the municipal service should be based on, function accordingly and have similarities with the state civil service of the Russian Federation. It is necessary to ensure the effective construction of these types of services on the basis of unity and correlation. As a result, harmonization of the legislation of the municipal service and the state civil service is required. Thus, it is necessary to note that this study shows that the principle of the correlation between the municipal and state civil service is currently not fully implemented, due to the difference between these two types of public authority.

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