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OPTIMIZATION OF DISCIPLINARY PENALTIES IN THE CIVIL SERVICE IN THE RUSSIAN FEDERATION

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Abstract

The article discusses the prospects for improving the effectiveness of the institution of disciplinary responsibility in the civil service system of the Russian Federation by improving disciplinary penalties. It is concluded that the effectiveness of disciplinary penalties is a kind of an indicator of the effectiveness of the institution of disciplinary responsibility in the public service system. The study found that the most serious problems in the practice of functioning of the state service of the Russian Federation are connected with the disciplinary actions of a moral nature, the impact of which largely depends on the personality of the offender. As a solution to this problem, it is possible to combine – if necessary - moral disciplinary penalties with some additional disciplinary measures that have a material nature or restrict the career growth of an official (reduction or deprivation of monthly monetary incentives; elimination of various benefits and compensations; deprivation of breastplate badges, etc.). Separately, it is necessary to regulate the issue of establishing restrictions on the possibility of entering the civil service of persons dismissed due to loss of confidence. To do this, it is necessary to introduce a new disciplinary penalty in the form of deprivation of the right to fill public service positions for a certain period, applied as an additional one. The introduction of these changes will increase the effectiveness of disciplinary measures against offenders.

Keywords: Civil service, official legislation, disciplinary responsibility, effectiveness of legal responsibility, disciplinary penalties, dismissal due to loss of trust

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1. Introduction

Disciplinary responsibility of civil servants refers to special types of responsibility (Yakhina, 2015) and is currently one of the main tools for influencing their behavior. At the same time, the legislation on disciplinary liability is not systematic, significantly and not always reasonably different for different types of public service, contains numerous gaps, due to which it is not always possible to assess the relationship between the measure of influence applied to an employee and his behavior.

One of the ways to improve legislation in this area is to increase the effectiveness of disciplinary sanctions, since the effectiveness of their application is a kind of indicator of the effectiveness of the institution of disciplinary responsibility in the civil service system and it directly determines the state of service discipline in the apparatus of state bodies.

2. Problem Statement

The effectiveness of disciplinary responsibility is a relative concept - both in dynamics and in statics. On the one hand, the effectiveness of disciplinary responsibility in the civil service system of a particular country may increase or decrease over time (the latter indicates the need to reform the relevant legislation). On the other hand, the effectiveness of the disciplinary responsibility of employees may differ in individual state bodies, in different constituent entities of the Russian Federation.

The institutional-functional approach to a comprehensive analysis of the effectiveness of disciplinary responsibility in the public service system (Presnyakov, 2020) objectively determines the need to consider the issue of the effectiveness of disciplinary sanctions.

In the scientific literature, it is noted that the low efficiency of disciplinary liability for the commission of disciplinary corruption offenses contributes to the further deformation of the legal consciousness of civil servants, which in an extreme form can result in a corruption crime (Golovko, 2006).

In this regard, it is necessary to know how effective the applied disciplinary sanctions are, what impact they have on the consciousness and behavior of civil servants. Otherwise, without reliable data on the effectiveness of disciplinary sanctions, it is impossible to optimize the practice of their application, to improve state and service legislation governing the legal institution under study.

3. Research Questions

The subject of the research in this article is the provisions of the Russian legislation that establish the types of disciplinary sanctions applied in the civil service of the Russian Federation and the answer to the questions.

- What is the effectiveness of various disciplinary sanctions?
- What are the reasons for its increase or decrease?
- How to optimize the current system of disciplinary sanctions to increase their effectiveness?

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4. Purpose of the Study

The aim of the work is to analyze the system of disciplinary sanctions used in the civil service of the Russian Federation, and determine the need, as well as possible ways, to improve the efficiency of their use.

5. Research Methods

When preparing the article, various traditional methods of legal science were used: description, comparison, classification, analysis and synthesis, which were aimed at identifying the current state of legal regulation of disciplinary sanctions in the civil service of the Russian Federation.

The authors also used a comparative legal method aimed at studying legislation and judicial practice in this area in various states and regions of the world, as well as a comparative historical method that made it possible to compare the effectiveness of the use of various disciplinary sanctions in modern Russia, the USSR and the Russian Empire.

6. Findings

The Civil Service of the Russian Federation is a rather complex system that includes various types and levels of service. At the same time, each type of service is characterized by its own system of disciplinary action against offenders. This leads to the presence of a fairly large number of types of disciplinary penalties, some of which are applied to all types of public service, while others characterize only certain types of it. In addition, a number of disciplinary penalties applied in various types of public service, although they differ in their names, in fact, in their impact on the offender, do not differ much from each other. This entails the need, first of all, to systematize disciplinary penalties in order to determine their ratio and type of impact.

Administrative scientists propose various classifications of disciplinary penalties. So, according to Adushkin (1984), they can be divided into measures of a moral, organizational, property, mixed nature Bakhrakh (1997) and Sergeyev (2005) divided all disciplinary sanctions into moral and legal sanctions and sanctions that change or terminate a person's ties with the official collection (the latter, obviously, belong to the legally-restrictive types of penalties). Other more detailed classifications of disciplinary penalties are also proposed (Leschina, 2019).

It seems that for the purposes of the effectiveness analysis, four groups of disciplinary penalties can be distinguished:

1) penalties of a moral nature;

2) penalties of an organizational nature;

3) status penalties;

4) penalties related to physical deprivation.

As for the disciplinary penalties of the first group, they are currently the most numerous in the civil service of the Russian Federation. These include a remark; a reprimand; a strict reprimand (applied in all

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types of public service, except civil); a warning about incomplete official compliance. It is noteworthy that this penalty is applied to customs officials based on the results of certification.

The essence of disciplinary penalties of a moral nature is a negative assessment of the behavior of civil servants who violate their official duties. The moral character of disciplinary sanctions is explained by the nature of public service activities carried out in a relatively stable team of employees.

Like labor relations, public-service relations have a more or less permanent, long-term character. Under the condition of a healthy moral and psychological climate, the collective of employees of the state body is distinguished by collective cohesion, commitment to the values of the state body; the absence of unproductive competition; the absence of intra-collective conflicts; mutual emotional support (Channov & Dobrobaba, 2020).

At the same time, in their actual consequences for the person to whom they are applied, as a rule, disciplinary penalties of a moral nature differ little from each other. For example, the line of disciplinary penalties according to the increasing degree of severity in the public service of various types (in the prosecutor's office, the bodies of compulsory execution of punishments, the federal fire service, etc.) is: remark, reprimand, severe reprimand. Theoretically, the application of a more severe disciplinary penalty should have a greater impact on the offender from a psychological point of view. However, in reality, the effectiveness in this case depends more on the characteristics of the offender's personality than on the penalty applied to him. And this is quite logical: disciplinary penalties of a moral nature, as it is obvious, are directly related to the moral qualities of the person being brought to justice. If a civil servant is basically indifferent to the censure of his actions, then in most cases he will not care at all whether he is reprimanded, reprimanded, or severely reprimanded. In this case, from the point of view of the impact on the employee, the difference disappears not only between the mentioned disciplinary penalties themselves, but also between them and the moral condemnation applied for violating the Model Code of Ethics and Official Conduct of Civil Servants of the Russian Federation and Municipal Employees (Flavier et al., 2017).

It must be said that in the labor legislation of the Soviet period (the civil service was then regulated mainly by the norms of labor legislation), the distinction between disciplinary penalties of a moral nature still existed, since dismissal for repeated violation of labor duties presupposed the consistent application of the entire "ladder" of penalties: a remark, a reprimand, a strict reprimand. Currently, there is no such division in either the Russian labor or the Russian service legislation.

In this regard, the allocation of these three types of disciplinary penalties raises some doubts from the point of view of expediency. Perhaps it makes sense to reduce this list by eliminating the disciplinary penalty in the form of a strict reprimand in those types of service where it exists.

In general, the problem of not always proper effectiveness of disciplinary sanctions of an exclusively moral nature requires their specific reform. We have to admit that the current system of disciplinary penalties of a moral nature does not always allow us to achieve the goal of disciplinary responsibility. We agree with the opinion that «the sanction should be such as to create a sufficient counter-motive against misconduct, so that it is "more profitable" not to commit an offense than to commit» (Kurylev, 1964). In this regard, moral punishment by its very nature will not be equally effective against persons with different value systems.

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Since the main motivation of public service activity is to build a career and improve the level of material security, it seems appropriate to expand the list of disciplinary penalties by introducing measures aimed at depriving the benefits determined by the stay in the public service or acquired during the stay in the public service-or to temporarily restrict the use of such benefits. So, the proposal of Grishkovets (2001) to introduce as penalties "deduction from service time" seems interesting. It is also possible to introduce other types of disciplinary penalties that have a material nature or restrict the career growth of an official (reduction or deprivation of monthly monetary incentives; removal of various benefits and compensations; reduction in part of the size or deprivation of additional payments to the pension, calculated on the basis of the length of public service, etc.).

The second group of disciplinary penalties in the civil service of the Russian Federation is formed by disciplinary penalties of an organizational nature. These include penalties that directly affect the position of a civil servant in the service hierarchy: demotion in a class rank, military or special rank, as well as transfer to a lower position. Demotion in the class rank applies only to employees of the prosecutor's office; demotion in the special rank – to employees of the Investigative Committee; demotion in the military rank-to military personnel. Transfer to a lower-level position can be applied to employees of the internal affairs bodies, employees of the federal fire service and to military personnel, and in military service, a reduction in military rank by one step can be combined with a simultaneous reduction in military position.

If the application of a disciplinary penalty in the form of a reduction in a military position does not raise any questions in relation to military personnel, then in relation to other types of public service, the Russian scientific literature has reasonably raised the question of the admissibility of its application from the standpoint of constitutional requirements, as well as international legal obligations of the Russian Federation (Khatyushenko, 1999). The fact is that by all its signs, the transfer of an employee to another position without his consent (and the institution of disciplinary responsibility does not provide for the consent of the person involved in it) falls under the signs of forced labor. This is prohibited not only by the Constitution of the Russian Federation (p. 2, a. 37), but also by the Convention of the International Labor Organization No. 29 "On Forced or compulsory labor" (it does not apply to military personnel).

It should be noted that the issue of compliance with the norms on the transfer of employees of internal affairs bodies to lower positions as a disciplinary measure was once considered by the Supreme Court of the Russian Federation (Supreme Court of the Russian Federation…, 2010). The Supreme Court of the Russian Federation then concluded that the transfer of employees of the internal affairs bodies to a lower position as a disciplinary measure is not forced labor and does not contradict a. 4 of the Labor Code of the Russian Federation, as well as the ILO Convention “On Forced or Compulsory Labor”.

However, it is quite difficult to agree with the conclusions of the Supreme Court of the Russian Federation on this issue. In support of its position, the court, in particular, pointed out that the transfer of an internal affairs officer to a lower position is not an isolated and unique measure for Russian legislation, since "the transfer of an employee to a lower position as a disciplinary penalty is also provided for by laws regulating the passage of civil service by employees of other state bodies that have a similar legal status to those who serve in the internal affairs bodies" - military personnel and civil servants. However, as noted above, military service in accordance with a. 11 of the Labor Code of the Russian Federation is not subject to labor legislation and is not covered by the ILO Convention " On Forced or Compulsory Labor "(based

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on p. 2, a. 2 of the same Convention). As for the disciplinary penalty, which during the consideration of this issue by the Supreme Court of the Russian Federation was provided for in sub-paragraphs 4 of p. 1, p. 10 of a. 57 of the Federal Law "On the State Civil Service of the Russian Federation", it consisted not in demotion, but in the release of a civil servant from a civil service position with simultaneous inclusion in the personnel reserve for filling another civil service position on a competitive basis. Of course, there was no question of any forced labor in this case, since being in the personnel reserve does not imply the implementation of labor (official) activities.

Thus, the transfer of civil servants to a lower position as a disciplinary penalty is a clear example of forced labor carried out without the consent of the employee and under the threat of punishment (dismissal). Accordingly, it contradicts not only a. 4 of the Labor Code of the Russian Federation and p. 2 of a. 37 of the Constitution of the Russian Federation, but also the international legal obligations assumed by the Russian Federation and, in the future, should be completely excluded from Russian legislation.

But as for the disciplinary penalty in the form of a reduction in the class rank, military or special rank, on the contrary, it seems that the potential of this penalty, which combines both organizational, moral, and material impact on the offender, allows you to expand its application, extending it to all types of public service.

The third group of disciplinary penalties consists of penalties related to certain physical deprivation. These include penalties applied to military personnel: deprivation of another dismissal from the location of a military unit or from a ship to shore and disciplinary arrest. In addition, cadets of various types of public service are subject to such a penalty as being sent on duty. This group of penalties, as can be seen, has significant specifics.

Finally, the last group is represented by penalties of a status nature. These include the deprivation of badges and medals; dismissal as a disciplinary measure and dismissal due to loss of confidence. In addition, in relation to cadets of departmental universities, such a penalty is applied as a deduction from an educational organization.

The deprivation of badges and medals is currently applied only to prosecutors, employees of the Investigative Committee of the Russian Federation and military personnel. Considering that badges and insignia are also established in the system of a number of other departments, it seems appropriate to supplement the list of penalties with this disciplinary penalty for all types of public service where such badges and insignia exist.

With regard to the application of this penalty, it can be noted that in federal laws regulating disciplinary relations in certain law enforcement agencies (internal affairs agencies, enforcement agencies, federal fire service agencies, etc.), the name of the employee who is subject to the disciplinary penalty is excluded from the book of honor or from the honor board of the relevant federal executive authority (p. 4 of a. 50 of the Federal Law «On Service in the Internal Affairs Bodies and Amendments to Certain Legislative Acts of the Russian Federation» dated 30.11.2011 No. 342-FZ) (Federal Law.., 2011). Taking into account that an important means of disciplining influence is the development of a system of incentives in the civil service, it is necessary to support the proposal to create an electronic honor board for civil servants in each state body (Umanskaya & Malevanova, 2020). This will allow, as an additional disciplinary

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penalty, to apply an exception from the honor book or from the honor board (electronic board) for each type of public service.

The problem of the effectiveness of the most severe status disciplinary penalties applied in all types of public service – dismissals and dismissals due to loss of trust - deserves a separate analysis. The difference between them is the legal consequences of the disciplinary penalty imposed. So, if the dismissed persons as a disciplinary penalty have the opportunity to continue their public service activities in another state body, then the legal consequence of dismissal due to loss of trust is the inclusion of information about the dismissal of an employee due to loss of trust in a special register for up to 5 years, the meaning of which is to prevent persons prone to deviant behavior from entering the public service.

Unfortunately, it should be recognized that the inclusion of this information in the register does not impose any additional restrictions on employees; civil servants dismissed due to loss of confidence can re-enter the service without any legally established restrictions.

The use of the experience of pre-revolutionary Russia, where a flexible system of termination of state-service relations was established by law, could serve to increase the effectiveness of disciplinary responsibility. Thus, those who committed the most serious disciplinary offenses, including those of a corrupt nature, were permanently deprived of the right to continue their official activities, while those guilty of less serious violations could return there after some time.

It should be noted that the scientific literature drew attention to the need for regulatory restrictions on the ability to enter the civil service of persons dismissed due to loss of confidence. To solve this problem, it is possible to introduce a new disciplinary penalty in the form of "deprivation of the right to fill public service positions for a certain period of time", which is applied as an additional penalty (Grishkovets, 2013). At the same time, if the main disciplinary penalty in the form of dismissal is imposed by the employer's representative himself, then the said additional restriction on the constitutional right of a citizen to equal access to public service (p. 4 of a. 32 of the Constitution of the Russian Federation) must be imposed by the court, where the employer's representative can apply with the appropriate representation.

At the same time, it is necessary to resolve the issue of the possibility of applying this measure to civil servants convicted of committing not only corruption offenses, but possibly other gross violations of official discipline, provided that an exhaustive list of such violations is given in the legislation on state and municipal service.

7. Conclusion

The effectiveness of disciplinary sanctions is a kind of indicator of the effectiveness of the institution of disciplinary responsibility in the public service system. For the purposes of the effectiveness analysis, four groups of disciplinary penalties can be distinguished:

1) penalties of a moral nature;

2) penalties of an organizational nature;

3) penalties of status;

4) penalties related to physical deprivation.

The greatest problems in the practice of functioning of the civil service of the Russian Federation are associated with disciplinary penalties of a moral nature, the degree of impact of which, in many respects,

depends on the identity of the offender. As a solution to this problem, it is possible to combine – if necessary - moral disciplinary penalties with some additional disciplinary measures that have a material nature or restrict the career growth of an official, such as:

- reduction or withdrawal of the monthly cash incentive;
- withdrawal of various benefits and compensations;
- reduction in part of the size or withdrawal of additional payments to the pension, calculated on the basis of the length of public service;
- deprivation of the right to fill the positions of the state civil service;
- deprivation of breastplate (honorary merited) badges;
- exclusion from the honor roll;
- exclusion from the personnel reserve;
- demotion in the class rank (military, special rank, diplomatic rank).

Separately, it is necessary to regulate the issue of establishing restrictions on the possibility of entering the civil service of persons dismissed due to loss of confidence. To do this, it is necessary to introduce a new disciplinary penalty in the form of deprivation of the right to fill public service positions for a certain period, which is applied as an additional penalty. At the same time, it is necessary to resolve the issue of the possibility of applying this measure to civil servants convicted of committing not only corruption offenses, but possibly other gross violations of official discipline, provided that an exhaustive list of such violations is provided in the legislation on state and municipal service.

In addition, taking into account the uniformity of disciplinary penalties applied to employees engaged in activities in the system of the federal public service related to law enforcement, in the future it should be unified in a single comprehensive legislative act aimed at regulating public-service relations, which will simplify the legal institution of disciplinary responsibility of civil servants. An exception may be cases when certain disciplinary penalties are caused by the peculiarities of the implementation of professional activities by employees of certain state bodies.

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