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Legal Aspects of the Functioning of the State Civil Service

Aspectos jurídicos del funcionamiento del servicio público estatal

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ABSTRACT

In this work, various methods are used to reveal the topic: a systematic approach to the analysis of research on the organization and implementation of the public civil service, as well as the method of using logic, as in the presentation of all the material of the work, the relevant conclusions are formulated. The primary task of passing of the public civil service in the Russian Federation is signing of the service contract about the form of conducting a certain type of public service, and also establishment of the order and the reasons of dismissal from the public civil service.

Keywords: Legislation; modernization; regulation; technology.

RESUMEN

En este trabajo se utilizan diversos métodos para formular el tema: un enfoque sistemático en el análisis de la investigación sobre la organización y ejecución de la función pública, así como el uso del método lógico en la presentación de todo el material de trabajo, se formulan las conclusiones pertinentes. La tarea principal de la transición del servicio público en la Federación de Rusia es la firma del contrato de servicios sobre la forma de realizar un determinado tipo de Servicio público, así como el establecimiento de la orden y las razones de despido del servicio público.

Palabras clave: Legislación; modernización; regulación; tecnología.

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INTRODUCTION

In the study of the features of the mechanism of legal regulation of the public service, it is important to consider the system of legal principles. The word "principle" means basis. Therefore, it is logical that the principles of law – "it is expressed in the law of the original normative guiding principles that characterize its content, its foundations, enshrined in it the laws of social life." The question of principles of public service is the most important in the structure of the Institute of public service, the legal system not only of the Russian Federation but also of other countries. The term "principles of public service" indicates the fundamental features, essential characteristics, the most important content and importance of the public service itself, as well as the main legal provisions in the structure of the legal institution of the same name. The modern legislator does not define the principles of the state civil service, although it lists them in various regulations. Thus, it is possible to talk about the legal principles of the civil service (Gideon, 2017).

Under the principles of civil service should be understood-the basic ideas, the establishment, the requirements that guide civil servants in the process of their professional activities. They Express the necessary grounds for the functioning of the state hardware management. They set the basic rules for this activity (Arena, 2015). The principles form the basis for the formation and further functioning of the civil service as an administrative authority. According to the content of the principles of civil service are guidelines, some grounds for the regulation of social relations, management of social phenomena and processes. They ensure the integration of certain types of management activities in various bodies of the public administration system, their mutual coherence and the overall focus on the implementation of the goals. On the basis of these principles, the actual process of administrative management is organized, that is, the administrative process. well-thought and justified regularity of actions for the implementation of administrative management functions, the choice of methods and techniques of administrative influence (Wehlander, 2016).

The principles of the modern civil service are contained in several current Federal laws, the Central of which are "on the system of the public service of the Russian Federation" and "on the public civil service of the Russian Federation" (Wehlander, 2016).

The principles of the civil service objectively reflect its essence and most important features. They reveal the General nature of the administrative, Executive and administrative and other administrative activities of civil servants, fix them in the norms included in the social and legal Institute of civil service.

LITERATURE REVIEW

Therefore, it is possible to conclude that the Federal law only enumerates the principles without revealing their value. The laws of the subjects of the Russian Federation, even if they contain the very wording of the principles, too, as a rule, do not. At the same time, given the importance of the principles of law, which are the principles of public civil service, it is especially important to understand their content. Therefore, it is simply necessary to characterize the principles of the public civil service (Krajewski, 2011).

The principle of federalism ensures the unity of the system of civil service and the observance of the constitutional distinction between the subjects of jurisdiction and powers between the Federal bodies of state power and the bodies of state power of the subjects in the Russian Federation.

DATA AND METHODOLOGY

Based on the content of the Constitution of the Russian Federation, our country is a Federal state, so the state power in it is exercised by both Federal state bodies and state authorities of the subjects of the Russian Federation: republics, regions, cities of Federal importance, Autonomous region, Autonomous

districts (Batura, 2016). Therefore, between the state bodies of the Russian Federation and the bodies of the subjects of the Russian Federation provides for the separation of powers and powers. This principle is manifested in the fact that the Federal service is under the jurisdiction of the Russian Federation, and the state civil service of the subjects of the Russian Federation is under their joint jurisdiction. As part of the differentiation of these subjects of jurisdiction, the scope of powers of the Russian Federation should be sufficient for the organization of the state civil service as a single legal institution of state power. The implementation of this principle objectively requires a single legal regulation of the foundations of the organization of the state civil service and the foundations of the legal status of civil servants of the Russian Federation.

RESULTS AND DISCUSSION

Principle of legality. Part 1 of article 19 of the Constitution States: "All are equal before the law and the court." This means that the state body and the activities of civil servants are regulated by legal norms and are carried out in order to implement the provisions of the law, with strict observance of the rights and freedoms of citizens, the rights and legitimate interests of all participants in management relations. Executive authorities, local authorities, officials and citizens are obliged to comply with the Constitution of the Russian Federation and the laws of the Russian Federation, as well as generally recognized principles and norms of international law, international treaties of Russia, which are part of the legal system. If an international Treaty of the Russian Federation establishes rules other than those provided by law, the rules of the international Treaty shall apply (Van Duzer, 2015).

In addition, the principle in question is not only the principle of the organization of the public service, but also the principle of activity, since the article of the law refers to the performance of public servants' duties. That is why the rule of law is the basis of the discipline of public servants.

The principle of priority of human and civil rights and freedoms, their direct effect, the obligation of their recognition, observance and protection. This principle is reflected in the administrative law and the Institute of public service in the constitutional provision that "the human person, his rights and freedoms are the highest value, and the recognition, observance and protection of human and civil rights and freedoms are the duty of the state" (Krajewski, 2011). This provision is a manifestation of a common approach in our law to the essence and purpose of the state, to the place in it of both the citizen and the person in General, the foundations of their relationship. The Russian state, having established in the Constitution the rights and freedoms of man and citizen, undertakes through the activities of the authorities, the court, the Prosecutor's office and the protection of law and order to guarantee their implementation and protection (Madsen, 1992). "The mechanism of action of human and civil rights and freedoms is directly implemented. i.e. if a person is guided by them, his behavior is considered legitimate and, thus, in addition to the constitutional establishment, no additional confirmation of their action is required. Because of this, there is no need for real support from the state and civil servants. Civil servants of all public authorities, carrying out law enforcement and exercising the relevant powers, are guided, first of all, by the need to recognize, ensure and protect the rights and freedoms of man and citizen". The Constitution of the Russian Federation in article 18 establishes: "the Rights and freedoms of man and citizen are directly applicable (von Kielmansegg, 2006). They determine the meaning, content and application of laws, the activities of the legislative and Executive authorities, local self-government and are provided with justice" (Hatzopoulos and Stergiou, 2011).

Ultimately, the activities of state bodies should be aimed at the implementation and protection of constitutional rights, freedoms and legitimate interests of citizens. All state bodies and civil servants, within the limits of their powers, are obliged to contribute strictly to: creation of conditions ensuring a decent life and free development of a person, protection of labor and health of people; state support of family, motherhood,

fatherhood and childhood, disabled and elderly citizens; implementation in practice of the equality of human and civil rights and freedoms, regardless of gender, race, nationality, language, origin, property and official status, place of residence, attitude to religion, beliefs, membership of public associations, other circumstances; creation of equal opportunities for the realization of their rights and freedoms by men and women; protection of the dignity of the individual, prevention of its derogation on any grounds by public administration bodies and officials.

The principle of equal access of citizens to the public service means the right of citizens to hold any position of office in accordance with their abilities and professional training, without any discrimination. Based on the content of the Constitution of the Russian Federation, the public service is defined as the most important institution of direct participation of citizens in the management of state Affairs, they have equal access to this service. The Federal law "on the state civil service of the Russian Federation" establishes that "the right to enter the civil service are adult citizens of Russia, unless otherwise provided by law." When entering the civil service, as well as its passage is not allowed to establish direct or indirect restrictions and benefits depending on social, national, linguistic or religious affiliation. Also, in this law, namely in article 16, only such restrictions are formulated, which are related to health, judicial punishment, refusal of the procedure of registration of access to classified information, the presence of citizenship of another state, and others. Therefore, it turns out that civil servants can only be a citizen of the Russian Federation, capable of professionally ensuring the performance of functions assigned to the relevant body for their health and their business qualities. The principle of equal access to the civil service is implemented in the participation of citizens in the competition for vacant public positions of the civil service. The limitations provided for in the act do not weaken this principle or imply exceptions to it. They are derived from the fact that civil servants exercise authority and the specifics of specific functions (Nistor, 2011).

The principle of the unity of legal and organizational bases of public service, involving the legislative consolidation of a unified approach to the organization of public service. According to it, the basic requirements are common for both the Federal public service and the public service of the Russian Federation and, accordingly, for the activities of civil servants (Grellet, 2010). "The unity of the basic requirements is carried out through the system of regulation and coordination of the status of public positions, the sequence of relationships and procedures for the functioning of all elements of the Institute of public service." For example, in accordance with the groups of state civil service positions, class ranks are established, according to which, in turn, the candidates are required by law to meet the qualification requirements. In addition, various requirements for public positions of the civil service may be established both by Federal laws and the laws of the subjects of the Russian Federation, as well as by regulations of state bodies – in respect of civil servants of these bodies. Consequently, this principle provides obtained a government employee an equal opportunity to implement their duties, promotes fairness, and quality performance of official functions (Manunza and Berends, 2013).

The principle of openness of public service and its availability to public control, objective information of society on activity of public servants (Batura, 2016). This principle is also based on the Constitution of the Russian Federation, which States that all laws, and, consequently, laws on public service, are subject to official publication. Therefore, citizens have the right to know the situation in the public service. At present, the official publication of normative acts is considered to be the publication of their full text in the "Rossiyskaya Gazeta" or the "Collection of legislation of the Russian Federation". And, the media should highlight the practice of the activities of the state structures, its successes and shortcomings, material and other support, etc. It is because of the transparency can be set public control over the activities of the public service (Maresca, 2013).

As noted by A. F. Nozdrachev, in the Federal law "on the basics of public service" for the first time in the regulatory form of the obligation of civil servants to provide information. Thus, the law refers to information on the implementation of public service, including the one that is not important for the implementation of rights and freedoms.

Therefore, information may be more diverse. Yu. N. Starilov in his work reasonably believes that this "has a positive effect on public opinion, under the influence of which the work of the entire state apparatus, and the civil servant can improve."

According to the content of this principle is due, on the one hand, to the provision on the need for citizens to participate in the management of the state and society, on the other – the need to constantly take into account the views of citizens in solving state problems. Practice shows that in order to ensure transparency in the public service, it is necessary to:

- create a mechanism for taking into account the views of citizens;
- to create legal conditions of safety of citizens in case of criticism of state bodies, officials, administrative structures;
- to ensure transparency in the process of implementation by public servants of their powers and competence of state bodies through the media.

The principle of publicity necessarily leads to the facts of corruption in the state apparatus, prohibited by law, the combination of some civil servants of state and business positions, etc. (Dralle, 2018).

The public servants themselves are convinced that excessive openness and transparency in the work of the state apparatus is detrimental to the cause. The same position and some authors who believe that "the necessary degree of independence can be an important means of attracting qualified professionals to the public service, for whom professional independence is an important value guide in life." However, it is the secrecy of information about the work of state bodies that most often undermines the credibility of them. Therefore, it is necessary to define the boundaries of free provision of information. Thus, the legislator has established limitations of this principle, fixing the obligation of the public servant to keep the state or other secret protected by the law, and also not to allow disclosure of data which became known to it in connection with execution of the official duties.

Regulation of issues related to state secrets is devoted to the law "on state secrets", which contains an exhaustive list of persons entitled to include information to state secrets, as well as a list of information that cannot be included in this category.

The principle of professionalism and competence of civil servants reflects the essence of the public service as a highly significant activity to ensure the execution and execution of the powers of Federal and Federal subjects of state bodies. The public service should be considered a profession that is relevant to the whole of the state and requires special skills, acquired and maintained through systematic and continuous education. The performance of functions of the state administration is the main occupation of a civil servant (Kettiger and Lienhard, 2016).

D.M. Ovsyanko (2007) believes that "professionalism is the execution of public officials of their duties continuously and regularly receive the reward. And competence, in his opinion, reflects the amount of knowledge and experience of the employee. Therefore, professionalism is considered by him as "an incentive to expand and improve knowledge, filling experience, development of organizational skills, high level of service and performance discipline."

All together, this principle makes it possible to state that civil servants are bound by it:

- be constantly ready to implement the job powers;
- it is good to know the subject of their own public service activities;
- to know their rights and duties, to fully and qualitatively perform the functions and powers provided by the legislation by the official regulations and instructions;
- own the rules and procedures of the bodies public authority;
- have General and professional training;
- know the legal and moral and ethical standards in the field of performance.

The principle of protection of civil servants from unlawful interference in their professional activities of both state bodies and officials, as well as individuals and legal entities this principle is revealed in the fact that civil servants are under the constant protection of the state, its laws and law enforcement agencies. No one has the right to interfere in their official activities, except for persons directly authorized to do so by regulations.

In the Law "on the state civil service of the Russian Federation" under the state protection of a civil servant and his family members are understood various measures of protection against violence, threats, other illegal actions in connection with the performance of their duties in the manner and under the conditions established by the Federal law.

When classifying the principles of public service, it is advisable to distinguish three groups of principles: constitutional, organizational and auxiliary. The constitutional principles are determined by the provisions of the Constitution of the Russian Federation, which are specified in this legislative act. The organizational principles reflect the mechanism of construction and functioning of the public service, the state apparatus and its units, the division of administrative work, ensuring effective administrative activity in the state bodies (Dralle, 2018).

Thus, out of the nine principles of public service, the first four are constitutional and the remaining five are organizational. All Federal bodies and public authorities of the Russian Federation are obliged to follow these principles. Public servants must adhere to them in their work. In addition to these two groups, in real life civil servants are guided by auxiliary principles. Which for the most part are scattered in various regulations.

There are other classifications of principles, D. N. Bakhrakh proposes to consolidate all fixed normative principles of public service three: "1. legality, 2. democracy, 3. professionalism, and in addition, emphasizes the principle of social and legal protection of employees".

B.N. Gabrichidze and A. G. Chernyavsky (2007) propose to consider "two groups of principles: principles of public service and principles of service law". The principles of public service, in their view, are broader than those of service law. It seems that for such classification of principles the authors used significantly different grounds for their selection than those proposed by Yu. Starilov, who classified the principles of public service on the constitutional and organizational. However, in the aggregate and the General list, and the content of the principles proposed by Yu. Starilov, B. N. Gabrichidze and A. G. Chernyavsky are close to each other. B. N. Gabrichidze, and A. G. Chernyavsky (2007) emphasizes "the principles of democracy, humanity, civilization service law."

In addition to the above principles, the Law "on the state civil service of the Russian Federation" highlights such principle as the stability of the civil service. Its essence is that "under the stability of the civil service is meant the constancy of public-service relations, which is expressed in the irremovability of civil servants and continuity in the conduct of the state personnel policy, in the formation of the foundations of the state apparatus. This principle is based on the desire of the state for its permanence." The stability from the point of view of the legislator is manifested in the maintenance of the civil service management, in a way that will allow it to perform the functions of the state qualitatively. Stability is provided by many institutions of modern service law and measures to improve performance and professional development of civil servants:

- appointment to the positions of the civil service of persons taking into account their merits in professional performance and business qualities;
- development of professional skills of civil servants; the use of the potential of additional professional education of civil servants in accordance with the professional development programs;
- facilitation of career advancement of civil servants on a competitive basis;
- the formation of personnel reserve on a competitive basis and its effective use;
- the assessment of results of professional office activity of employees through the use of institutions for the certification and qualification examination.

CONCLUSION

Therefore, it can be concluded that the essence of this principle in its General form is to ensure the construction and proper functioning of the state apparatus. Many authors agree that the principle plays an important role directly for public servants. In particular, it should be "a guarantee against unlawful dismissal and other arbitrary actions affecting their professional position or career".

Studying the Federal laws" on the system of public service of the Russian Federation "and" on the public civil service of the Russian Federation", we can see that if the Federal law" on the system of public service of the Russian Federation "discusses the principles of construction and functioning of the system of public service, the Federal law" on the public service of the Russian Federation", we are talking about the principles of the civil service. However, these principles are similar and practically duplicate each other.

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