

Reasons and Conditions for Disciplinary Offenses in the Civil Service System

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ABSTRACT

The article analyzes the causes and conditions for disciplinary offenses in the public service system using the example of the Russian Federation. The authors conclude that, despite some similarities between the causes and conditions, they cannot be identified, since the conditions themselves, without the presence of reasons, cannot give rise to a consequence - a disciplinary offense of the employee. The criterion for distinguishing between causes and conditions is the subjective nature of the reasons for the commission of disciplinary offenses and the objective nature of the conditions conducive to their fulfillment. The identification of differences between the causes and conditions for the commission of disciplinary offenses and their systematization makes it possible to use various means to neutralize and eliminate them. Based on the research, in order to increase the effectiveness of disciplinary responsibility, the article proposes: 1) to provide psychological selection using a methodology for identifying professional and personal qualities in relation to applicants; 2) in the process of carrying out public service activities - to prevent the deformation of the personality of a public servant; 3) to ensure the creation of objective conditions determining the lawful behavior of public servants.

Keywords: *public service, disciplinary liability, official tortology, reasons and conditions for disciplinary offenses*

1. INTRODUCTION

The emergence and development of any illegal manifestations in the public service system are facilitated by the causes and conditions caused by the interaction of a number of social factors, which, being refracted through the individual psychological characteristics of the personality of a public servant, form a negative attitude to established norms of official legislation aimed at maintaining discipline in the apparatus of state bodies.

Analysis of the scientific literature allows us to conclude that there is no systematic research that highlights the causes and conditions conducive to the commission of disciplinary offenses in the public service system.

At the same time, their identification will contribute to a deeper understanding of the nature of disciplinary misconduct in the public service system, which will allow them to counter consciously developed preventive measures related to both improving public service legislation aimed at regulating disciplinary relations and taking into account the law enforcement activities of subjects disciplinary jurisdiction.

2. APPROACHES TO UNDERSTANDING THE REASONS AND CONDITIONS OF PERFORMANCE OF OFFENSES

Considering the connection between administrative and official tort, methodologically, we should look at the developments in the field of administrative tort, as well as criminology. Questions about the causes and conditions of committing offenses and crimes were considered by various Russian and foreign scientists. Analysis of their points of view allows us to conclude that there are several positions.

Some experts do not differentiate causes and conditions, using this combination as a stable expression [1]. Others suggest completely abandoning the use of this terminology, replacing it with the single word «factors» [2]. Still others use the term «determinants» to indicate the phenomenon under investigation [3].

The position according to which the concept of «factor», although very close to the concepts of «cause» and «condition», but is not identical to them, is seen as more justified, it is broader than causes and conditions [4]. Pointing to the relative conditionality of the factors of administrative offenses, O.S. Rogacheva distinguishes their following groups: 1) socio-demographic; 2)

economic; 3) social and socio-psychological; 4) legal [5]. As for the delimitation of factors and determinants, then, in our opinion, we are talking about single-order phenomena, the difference is only in the name.

Thus, in relation to any offense, the factors (determinants) that contribute to their commission are a generalized concept, the contents of which are the causes and conditions of the offense.

Considering the social nature of service tort, in relation to disciplinary offenses in the public service system, we should talk about the reasons and conditions for their commission [6]. When deciding on the distinction between these categories, we should proceed from the generally accepted scientific concept of causal relationship.

Unlike the cause, the condition is a complex of phenomena that themselves do not give rise to the effect, but accompanying the causes, influencing them, provide a certain development, necessary for the emergence of the effect [7]. In other words, the condition creates an environment in which offenses arise, develop and cease [8]. Consequently, the cause and conditions of the offense have different internal contents.

In the field of public service, the reasons for the commission of a disciplinary misconduct can be defined as the individual psychological characteristics of the personality of a public servant, which, under certain conditions, inevitably lead to a violation of official discipline in the apparatus of public authorities, qualifying as a disciplinary misconduct in the public service system.

In turn, the conditions for the commission of disciplinary misconduct in the public service system are a set of stable phenomena of a social nature, which themselves do not give rise to a public servant committing a disciplinary misconduct, but, contributing to the reasons, ensure its commission.

The distinction between causes and conditions is necessary, because it allows you to identify the possibility of influencing human behavior, both external factors, and the influence of personal characteristics of the individual on his actions [9].

The causal relationship in the mechanism of the commission of an unlawful act is most studied in criminology [10]. However, its manifestations are fully consistent with the disciplinary offense, in the mechanism of which:

- the cause always precedes in time the effect;
- the cause is not reduced to the effect, since the effect does not repeat the cause, but is the result of the transformation, change of the object;
- the cause and effect may change their places, since the investigation in certain circumstances may cause another effect;
- for the cause to give rise to a consequence, the onset of conditions is necessary to ensure such a development of a causal relationship under which the onset of the expected consequence is inevitable, since otherwise the latter may not occur, since conditions independent of the cause may counteract it;
- the action of the same cause under the same condition gives rise to the same consequence. So, if the cause of a

specific disciplinary offense is not eliminated, then under the same conditions, it is likely to lead to similar violations of official discipline in the future.

It is no accident that the Russian Federation's official legislation stipulates that, during disciplinary proceedings, during the internal audit, along with other circumstances, the reasons and conditions must be fully established, which contributed to the civil servants committing a disciplinary offense, and subsequently measures should be taken to eliminate not only the reasons, but also the conditions for the commission of disciplinary offenses. We believe that only with a breakdown of the causal relationship, which includes as an intermediate link the conditions for the commission of disciplinary misconduct, it is possible to guarantee the prevention of similar disciplinary misconduct by both the public servant who committed the disciplinary misconduct and other public servants.

In this regard, it is necessary to supplement the norms of official legislation governing the procedure for bringing to disciplinary liability for corruption offenses with provisions on the need to clarify the reasons and conditions for their commission (for example, article 59.3 of the Federal Law «On the State Civil Service of the Russian Federation»).

3. TYPES OF REASONS AND CONDITIONS FOR PERFORMING DISCIPLINARY OFFENSES IN THE SYSTEM OF PUBLIC SERVICE

The study of the causes and conditions for the commission of disciplinary offenses in the public service system necessitates their systematization. It should be noted that the causes and conditions for the commission of unlawful acts are most studied in criminology. As for disciplinary offenses, the absence of their normatively fixed systematic list makes it difficult to analyze the reasons and conditions for their commission.

Experts note that the behavior of public servants is influenced by their individual qualities (education, work experience, legal awareness, legal culture, psychological characteristics of personality) [11]. It should be noted that, while performing official duties, a public servant is constantly on the verge of choosing between existing and due. Despite the fact that the result of this choice is influenced by both objective and subjective factors, as a result, the choice of behavior is determined by the personal position of the civil servant.

It seems that the leading component in the mechanism of committing a disciplinary misconduct is subjective reasons, which from the point of view of a meaningful description should be understood as elements of social psychology that contradict the essence of public service activity, manifested in the deformation of moral values and legal consciousness, needs, interests and goals of state employees. Because of this, the scientific literature rightly points out the need already at the stage of selection, in

addition to the professional level of applicants for filling the posts of public service, to take into account their personal qualities, to pay great attention to staff selection (in a situation of real work this factor takes the last place) [12].

We believe that during the entering the civil service it is necessary to universally introduce a psychological selection mechanism in the civil service system using the methodology for identifying professional and personal qualities in relation to applicants, and in the process of public service activity it is very important to prevent the deformation of the personality of a public servant.

The main subjective reasons for the commission of disciplinary offenses by civil servants are:

poor professional and moral-psychological readiness. So, an example of poor professional readiness is a lack of knowledge of public service legislation;

low legal awareness;

lack of motivation;

personal and business qualities of a public servant that do not meet both the requirements related to the implementation of public service activities, and a replaced position. So, the main reason giving rise to disciplinary corruption offenses is the selfish personal interest of public servants in the performance of their official duties, which prejudices the authority of a state body.

Illegal behavior of a civil servant is also determined by objective conditions, the content of which is certain contradictions and deformations of social relations, the subject of which are civil servants.

First of all, the behavior of a public servant is influenced by the social environment - the collective of employees of a state body, since any collective has informal rules of behavior dictated by a collective interest. Each of the social groups creates its own system of values and group norms - standardized rules of behavior that are accepted by the participants as legal definitions of the expected functions of the group [13].

Moreover, in morally healthy groups, group norms play a positive role, since they do not violate universal human values and the requirements of public morality. Their action is aimed at maintaining professional patriotism, collective cohesion of the staff of the state body apparatus, social responsibility for their actions in accordance with the requirements of official ethics.

Teams with a healthy psychological climate operate on the basis of the principles of team building in the team: adherence to the values of a state body; lack of unproductive competition; lack of intra-collective conflicts; mutual emotional support. Noticeable positive effect on the satisfaction of public servants of management systems according to the results is noted in literature [14].

On the other hand, in groups with deviating goals, which are based on personal or departmental interests, pressure is exerted on the personality of a civil servant through a system of informal sanctions, forcing her to commit acts contrary to legal norms and established values in society.

An important point for the professional attitudes of civil servants is that they should be formed in the context of a legal culture. The personality of the head of a state body is

of great importance for the activities of a social group. He, providing the formation and development of the professional culture of the state body, must create comfortable organizational, technical and psychophysiological conditions for the professional activities of civil servants [15]. Otherwise, objective conditions are created for the commission of disciplinary offenses by civil servants. As the Russian Ministry of Labor pointed out, creating a moral and psychological climate in a team is possible only when the head of the state body takes care of subordinates, motivates and controls their responsibility for the quality and timely execution of tasks, and also encourages the enthusiasm and effectiveness of civil servants [16].

The behavior of a public servant is also significantly affected by legal conditions, such as: quality of public service law; the introduction of administrative and official regulations establishing criteria for the effectiveness and efficiency of public service activities; openness and accessibility of information about it [17]; approval of codes of honor, codes of ethics and official conduct.

In the psychological and legal literature, attempts are made to highlight conditions that negatively affect official discipline, taking into account the specifics of service in individual state bodies. A.S. Dushkin and E.A. Shchelkushkina to the conditions conducive to the violation of official discipline in the internal affairs bodies, include [18]:

- socio-economic problems, deficiencies in organizational and managerial activities, primarily the lack of proper departmental control;

- imperfection of the criteria for assessing law enforcement;

- inconsistency of departmental practice and provisions of the law;

- disadvantages in the professional psychological selection of candidates for service, formalism in the organization of entry into the post;

- legal nihilism and professional deformation of employees.

There is a mixing by the authors of the causes and conditions that contribute to the violation of official discipline, since legal nihilism and professional deformation of employees are the reasons for disciplinary offenses in the internal affairs bodies.

We believe that in relation to all types of public service objective conditions conducive to the commission of disciplinary offenses are:

- unhealthy moral and psychological climate in the staff of the apparatus of the state body;

- lack of professional culture of the state body;

- lack of a positive example in the observance of official discipline by the head;

- irrational distribution of the load among civil servants filling individual positions [19];

lack of systemic control over the activities of public servants;

- low quality and unsystematic state-service legislation, the norms of which provide the breadth of discretion of the subject of disciplinary jurisdiction, are distinguished by

the lack of detailed regulation of the mechanism for the procedural support of disciplinary responsibility in service law;

- disadvantages in the activities of the subject of disciplinary jurisdiction and other subjects of disciplinary legal relations. So, for example, many disciplinary offenses are "not noticed" by leaders;

- failure by the head to create the necessary organizational and economic conditions for normal performance. These conditions include: compliance with laws and other normative legal acts, conditions of a service contract, providing an employee with basic and additional guarantees provided by law and regulatory legal acts of a state body.

So, in particular, a civil servant, according to the Federal Law «On the State Civil Service of the Russian Federation», must be provided with: the possibility of completing a civil service and filling a specific civil service position (article 23); proper organizational and technical conditions necessary for the performance of official duties (article 14); necessary information and materials (article 14); timely and full salary (article 14, 52). In addition, according to labor legislation, safety, health and safety must be ensured (article 212, Labor Code of the Russian Federation).

It should be noted that the state of official discipline largely depends on the fulfillment by the manager of these duties to create the necessary organizational and economic conditions for normal career performance. As rightly noted in the scientific literature, poor organization of performance, violation of the rights of civil servants are that fertile environment that contributes to the growth of violations of official discipline [20].

Disciplining may be difficult (also impractical) if these conditions have not been created for a public servant, and in some cases even impossible - due to the lack of guilt of a public servant in a committed act. In judicial practice, when considering labor disputes, an approach has been developed in which the imposition of a disciplinary sanction for a disciplinary offense, which was caused by the employer's failure to fulfill the obligation to create conditions for the employee to fulfill his labor duties properly, is the legal basis for the employee to be disciplined.

4. THE IMPLEMENTATION OF PSYCHOLOGICAL SELECTION USING THE METHODOLOGY FOR IDENTIFYING PROFESSIONAL AND PERSONAL QUALITIES IN RELATION TO APPLICANTS – MEANS OF PREVENTING THE ENTRY INTO PUBLIC SERVICE OF PERSONS PRONE TO ILLEGAL BEHAVIOR

A civil servant comes to the service, being a person formed in the process of socialization. He has his own

moral and cultural baggage, accumulated under the influence of society and the social groups in which it developed and formed a sense of justice, as well as personal norms developed under the influence of existing values in society, ideals and stereotypes.

In this regard, it is very important to prevent the entry into the public service of people with a deformed legal consciousness, distinguished by selfish motivation, prone to illegal behavior. This is ensured by psychological selection using a special psychophysiological study using a polygraph when citizens enter the public service.

The state-service legislation does not directly mention the possibility of applying psychological selection using a polygraph to those who are applying for a position or already occupying it. At the same time, separate departments independently established the rules for using the polygraph. So, in the Ministry of Internal Affairs of Russia, the polygraph is used not only for conducting official inspections, but also for the purpose of studying the moral, ethical and psychological qualities when selecting candidates for service in the internal affairs bodies. This allows increasing the security of the Ministry of Internal Affairs of Russia from entering the service of persons with corruption and criminal inclinations who abuse alcohol or toxic drugs [21]. In scientific studies, it is noted that about 60% of the number of candidates surveyed are denied admission to service in the internal affairs department, which is associated with negative information received about them, indicating risk factors for deviant behavior [22].

In the FCS of Russia, a lie detector is used when hiring employees and appointing them to a new position, when performing selective control of performance of official activities, to resolve disputes based on the results of official checks, as well as when obtaining and confirming access to information classified as state secret, etc.

To determine the ability of citizens to perform official duties in enforcement bodies, a comprehensive psychological selection is carried out using psychophysical studies for candidates for individual positions to determine the ability of these individuals to perform official duties in their personal and business qualities, as well as to identify risk factors for deviant (socially dangerous) behavior. At the same time, the Government of the Russian Federation determined personal and business qualities that are studied during the selection process, as well as risk factors [23].

Recently, the President of the Russian Federation signed a law providing for a polygraph test of all those entering the military service, the federal state civil service or work in the National Guard troops, for military personnel and civilian personnel of the Russian Guard troops [24]. «The proposed measures will strengthen the work on the prevention of offenses, including corruption, as well as on the identification of unlawful actions on the part of the Rosguard personnel, and will ensure the improvement of personnel selection, especially when promoted to senior and command posts» [25].

In our opinion, psychological selection using psychophysical research can be applied in the civil service. First of all, it is about the possibility of conducting

psychological testing aimed at identifying the relevant personal qualities of the candidate, as well as the presence of the qualities necessary for the successful replacement of the position for which the person is applying. Unfortunately, most government bodies do not apply methods for identifying business personal qualities, abilities and knowledge (such as, for example, psychological tests, business games, solving cases, and other active forms of assessment).

As for the possibility of using the polygraph in the state civil service, its use is advisable only for admission to the civil service of applicants for managerial positions, the replacement of which is associated with corruption risks. In a number of constituent entities of the Russian Federation, voluntary psychophysiological studies using a polygraph are already actively practiced.

5. CONCLUSION

Thus, in official tortology, it is necessary to split up the causes and conditions of disciplinary misconduct in the public service system, which together act as factors (determinants) of their commission.

The reasons for the commission of a disciplinary offense are the individual psychological characteristics of the personality of a civil servant, which under certain conditions will inevitably lead to a violation of official discipline in the apparatus of state bodies, qualified as a disciplinary misconduct in the civil service system.

In turn, the conditions for committing disciplinary misconduct in the public service system are a combination of stable social phenomena that do not in themselves give rise to a public servant committing a disciplinary misconduct, but, in addition to the causal, increase the likelihood of committing.

The criterion for splitting up these categories is the subjective nature of the reasons for the commission of disciplinary offenses and the objective nature of the conditions conducive to their fulfillment.

The identification of differences between the causes and conditions for the commission of disciplinary offenses and their systematization makes it possible to use various means to neutralize and eliminate them.

Considering the decisive importance of subjective reason in the mechanism of disciplinary misconduct, in order to prevent violation of official discipline it is necessary:

- 1) to provide psychological selection using a methodology for identifying professional and personal qualities in relation to applicants;
- 2) in the process of carrying out public service activities - to prevent the deformation of the personality of a public servant;
- 3) to ensure the creation of objective conditions determining the lawful behavior of public servants.

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