



On the Issue of Legal Regulation of Public Service of Other Types in the Russian Public Service System

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Abstract

Introduction: the article is devoted to the analysis of public service of other types in the system of public service of the Russian Federation, introduced by the legislator instead of law enforcement service in 2015. Other types of public service currently include service in the internal affairs bodies of the Russian Federation, service in the Federal Fire Service of the State Fire Service, service in the Penitentiary System of the Russian Federation, service in customs authorities, service in enforcement bodies of the Russian Federation, service in the Investigative Committee of the Russian Federation, service in bodies and organizations of the Prosecutor's Office. *Purpose:* based on the analysis of the current legislation and scientific literature, to determine prospects for combining other types of public service into a single law enforcement service and propose a concept of its legal regulation. *Methods:* general scientific and special methods, including comparative legal, systematic and logical, analysis and synthesis, historical. *Results:* the analysis of domestic legislation regulating other types of public service shows that the scientific community and the legislator should again raise the issue of combining all these other types of public service into a single type, since there is a large number of unifying features of all other types of public service; a significant part of the federal law provisions of regulating certain types of public service of other types coincide; there are federal laws that apply to several types of public service. *Conclusions:* at present there are no obstacles to the unification of all other types of public service into a single type (law enforcement service) and adoption of two federal laws: one regulating the service procedure and another on social guarantees of civil servants of law enforcement service.

Keywords: public service system; other types of public service; law enforcement service; civil servant.

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Introduction.

Public administration in modern society is a complex socio-legal category that includes a variety of public relations, including those aimed at maintaining the established law and order, strengthening the rule of law, and ensuring security. The central place in ensuring implementation of the listed functions is assigned to specialized law enforcement agencies, as well as their officials. Law enforcement activities should be carried out by qualified and professionally trained law enforcement officers, and the legal regulation of public service should meet modern requirements for the formation and development of a democratic state [1]. The improvement of public administration is currently doomed to failure if attention is not paid to improving the efficiency of professional activities of civil servants, which, in turn, cannot be realized without building a unified system of public service. It is worth mentioning that the unity of organizational and legal foundations of the civil service is one of the fundamental principles of building the civil service system, enshrined in Part 1 of Article 3 of the Federal Law "On the civil service system of the Russian Federation" (hereinafter – Federal Law No. 58-FZ). This principle provides for the need to ensure a uniform approach to the construction, organization and legal regulation of civil service. In our opinion, the task of ensuring the unity of civil service today is an unsolved problem, which affects effectiveness of functioning of the state apparatus in Russia.

Public service of other types in the Russian public service system

The very first law adopted in modern Russia in relation to the civil service, which laid foundations for its legal regulation and construction, was the federal law "On the foundations of the civil service of the Russian Federation", adopted in 1995. The construction of a comprehensive modern system of public service in fact began in 2003 with the adoption of the Federal Law No. 58-FZ, establishing three separate types of public service: public civil service, military service and law enforcement service. However, Part 2 of Article 3 of this law fixed the need for separate federal laws on each type of public service. Part 1 of Article

19 of the Federal Law No. 58-FZ stipulated that the definition of law enforcement service as one of the types of federal public service would be applied only from the date of adoption and entry into force of the relevant federal law on law enforcement service (at the moment this norm is canceled).

So, according to the original plan of the legislator, the existing system of legal regulation of the civil service in our state would have to include a fundamental basic law defining key provisions concerning the service system as a whole (its role is assigned to the Federal Law No. 58-FZ) and federal laws on the existing separate types of civil service: civil, military and law enforcement. We believe that the implementation of this idea would have a positive impact on ensuring the integrity and unity of the civil service in our country, as well as on the state of its legal regulation.

As a separate federal law regulating one of the types of civil service, the Federal Law "On public civil service of the Russian Federation" (hereinafter – Federal Law No. 79-FZ) was adopted in 2004. Military service and other issues related to it are regulated by the Federal Law No. 53-FZ "On military duty and military service". However, there is no federal law regulating the service procedure and the legal status of law enforcement officers. Initially, the development of this law was entrusted to the Ministry of Internal Affairs of Russia. As A.A. Grishkovets mentions, there was a close discussion of the draft law without representatives of scientists, practitioners, and experts. The developers did not provide any opportunity for interested persons to familiarize themselves with the draft law. Though it took a long time to work out a draft law [2], it was never completed.

Instead, the Federal Law No. 342-FZ of November 30, 2011 "On service in the internal affairs bodies of the Russian Federation and amendments to certain legislative acts of the Russian Federation" (hereinafter – Federal Law No. 342-FZ) was adopted. Since the Federal Law No. 58-FZ still provided for the need to regulate the law enforcement service by a separate federal law, the adoption of a federal law on the service in the internal affairs bodies in the absence of a law on the law

enforcement service seemed illogical. Apparently, already by that period the legislator had understood that there would be no single law enforcement service [3].

Thus, the process of forming a unified public service system has not been completed. The Federal Law No. 262-FZ of July 13, 2015 abolished the term "law enforcement service" and introduced "public service of other types". According to the Clarification of the State Duma of July 6, 2016, the Russian legislation lacks a definition of the concept "law enforcement body", criteria and features to comply with; as well as a list of law enforcement bodies. Besides, the draft law took into account foreign experience, presupposing elaboration of separate laws for each direction of the law enforcement service [4]. When discussing the draft law in the State Duma, it was mentioned that "there was the task to differentiate the status of the law enforcement service, single out sub-statuses for various types of public service ... differentiate in order to highlight the features that are characteristic of each type of the law enforcement service" [5].

The abolition of the law enforcement service as an independent type of public service has divided scientists researching this problem into its supporters and opponents. For example, A.A. Grishkovets notes that the "attempt to define and consolidate a single universal term "law enforcement service" is hardly productive and is not practically justified in the sense of improving legal regulation of public service in the relevant bodies" [2]. R.V. Nagornyykh, on the contrary, believes that public service in the law enforcement sphere is an independent type of public service and should be fixed in the current legislation along with military and civil [6, p. 17]. The same opinion is shared by A.V. Ol'shevskii and E.D. Zayev [7]. S.E. Channov insists that "it is too early to put the point to the existence of the law enforcement service as a special type of public service of the Russian Federation" [3]. According to V.A. Kozbanenko, other types of public service fixed in the current legislation are a type of the federal public service related to the implementation of law enforcement activities [8].

In solidarity with the authors justifying the need to consolidate the law enforcement service as a separate type of public service, while not entering into a discussion about its name, we can state the following.

The term "public service of other types" enshrined in the Federal Law No. 58-FZ is not disclosed in the legislation. The legislation provides neither a list of state bodies where this kind of public service is carried out, nor enumeration of other types. The absence of this concept, as well as any objective criteria for attribution to other types of public service, do not make it possible to identify, in which specific state bodies of the state it is implemented. Also, the definition of "other types" suggests that the public service of other types does not necessarily have to be associated with law enforcement. In addition, as S.E. Channov rightly writes, now we do not have three types of public service, but an indefinite number of them [3]. The only requirement for each other type of public service is its introduction by the relevant federal law.

The uncertainty is also caused by the fact that according to Part 1 of Article 9 of the Federal Law No. 58-FZ, a list of standard positions of the federal public service of other types, included in the register of positions of the federal public service, must be approved. But to date, such a list has not been worked out. At the same time, there is no information that any work is being done on its creation.

In our opinion, the main arguments of the opponents of combining the so-called other types of public service into a single type are mainly reduced to the fact that combining these types would require unification of a number of legislative provisions. At the same time, for many public servants, especially employees of other types of public service, there is the privileged position of certain types of public service in relation to others, that is why equalizing the status of civil servants of various state bodies will cause some dissatisfaction. A.A. Grishkovets argues that "for example, the Russian prosecutor's office turned 295 in 2017. It is obvious that over the centuries-old history the supervisory authority has accumulated traditions, and for prosecutor's office employees themselves

belonging to such a body is of great moral importance, and for most of them to dissolve into an inexpressive and rather indefinite concept of “law enforcement service” is absolutely unacceptable” [2, p. 62]. According to V.A. Kozbanenko, the draft federal law on the law enforcement service was not agreed “due to unresolved disagreements between law enforcement agencies and the Prosecutor General’s Office of Russia on the legal status of law enforcement officers, unification of conditions, the order and procedures of their service that do not consider features of various federal government agencies, inevitable leveling of social guarantees and logistics, the structure of monetary maintenance and other similar issues” [8].

Researchers believe the legislator refuses to adopt a single federal law on the law enforcement service, since its introduction would require equalization of social guarantees of civil servants of all law enforcement bodies (housing, monetary allowance, pension provision, etc.). At the same time, as noted by A.V. Ol’shevskii and E.D. Zayaev, it should be done, so as not to worsen employees’ current situation [7], which would lead to an increase in the financial burden on the federal budget of the Russian Federation.

In our opinion, based on the analysis of the current federal laws on various state bodies, the following types of public service can be attributed to the public service of other types.

Table 1

Public service of other types

No.	Type of public service	Federal Law
1	Service in the internal affairs bodies of the Russian Federation	Federal Law No. 342-FZ of November 30, 2011 “On service in the internal affairs bodies of the Russian Federation and amendments to certain legislative acts of the Russian Federation”
2	Service in the Federal Fire Service of the Russian State Fire Service	Federal Law No. 141-FZ of May 23, 2016 “On civil service in the Federal Fire Service of the Russian State Fire Service and amendments to certain legislative acts of the Russian Federation» (hereinafter – Federal Law No. 141-FZ)
3	Service in the penal system of the Russian Federation	Federal Law No. 197-FZ of July 19, 2018 “On service in the penal system of the Russian Federation and amendments to the Law of the Russian Federation “On the institutions and bodies executing criminal punishment in the form of deprivation of liberty” (hereinafter – Federal Law No. 197-FZ)
4	Service in the customs bodies	Federal Law No. 114-FZ of July 21, 1997 “On service in customs bodies of the Russian Federation”
5	Service in the enforcement bodies of the Russian Federation	Federal Law No. 328-FZ of October 1, 2019 “On service of the enforcement bodies of the Russian Federation and amendments to certain legislative acts of the Russian Federation” (hereinafter – Federal Law No. 328-FZ)
6	Service in the Investigative Committee of the Russian Federation	Federal Law of December 28, 2010 No. 403-FZ “On the Investigative Committee of the Russian Federation” (hereinafter, Federal law No. 403-FZ)
7	Service in the bodies and organizations of the prosecutor’s office	Federal Law No. 2202-1 of January 17, 1992 “On the prosecutor’s office of the Russian Federation” (hereinafter, Federal Law No. 2202-1)

The presence of many types of public service and federal laws on its regulation results in their inconsistency, different legal status of civil servants of various types of public service and their various social protection, which

entails violation of the principle of unity of the legal and organizational foundations of public service, enshrined in Article 3 of the Federal Law No. 58-FZ. From an ethical point of view, the argument that public service in some

state bodies should be more prestigious due to the establishment of higher social guarantees is seen unacceptable rather than requiring discussion.

We believe that the listed types of public service of other types have common characteristic features, which also indicate the possibility of their unification. Unfortunately, the current legislation does not define terms “law enforcement body” and “law enforcement activity”. So, it is not clear what state authorities are engaged in law enforcement activities and belong to law enforcement bodies. According to Yu.V. Stepanenko, law enforcement activity of the state performs the protective function of law [9]. V.L. Barankov is sure that “law enforcement bodies are the ones whose main or special function is to protect law and order, the rights and freedoms of citizens, fight against crime, other offenses, ensure protection of public order and state security, restore violated civil rights, and, if necessary, apply sanctions provided for by law” [10]. So, we believe that all the bodies listed above should be attributed to law enforcement bodies in which the law enforcement service is implemented. What is more, the list should be supplemented by the Federal Security Service, the Federal Protective Service, and the Federal National Guard Service. However, employees of these federal services are military personnel or employees of the internal affairs bodies (Paragraph 3 of the Decree of the President of the Russian Federation No. 510 of September 30, 2016 “On the Federal National Guard Service”), therefore, no other types of public service are implemented in the listed bodies.

Having analyzed works of R.V. Nagoznykh [11], A.M. Bobrov, A. S. Telegin [12], D.N. Bakhrakh [13], we identified the following features of the law enforcement service.

1. Increased requirements for employees’ state of health, moral and psychological qualities, physical fitness level. For example, there is an age limit for entering the service (more often 35–40 years); besides, persons who have or have had a criminal record, as well as those released from criminal liability for non-rehabilitating grounds cannot serve.

2. Power and authority nature of professional activity. Additionally, this is emphasized

by oath-taking, after which law enforcement officers acquire the full scope of official rights and official duties, including performing tasks associated with risks to their life and health [12].

3. Civil servants are assigned special ranks (most often) or class ranks.

4. Employees are required to wear uniforms and insignia in accordance with the assigned special ranks and class ranks.

5. Additional restrictions and prohibitions apply to employees of the listed types of public service. The explanatory note to the draft federal law “On the service in the penitentiary system of the Russian Federation” notes that the “number of prohibitions and restrictions proposed for legislative regulation in the penitentiary service exceeds the number of prohibitions and restrictions on civil service and military service due to its specifics” [14]. In addition to the restrictions, prohibitions and obligations established by the Federal Law No. 273-FZ “On combating corruption”, articles 17, 18, 20–20.2 of the Federal Law No. 79-FZ, additional restrictions are established by Part 1 of Article 14, Part 5 of Article 17 of the Federal Law No. 197-FZ.

6. The observance of official discipline in these state bodies is ensured by a broader list of incentive measures and disciplinary penalties. If the Federal Law No. 79-FZ provides for 7 types of incentives and 4 types of disciplinary penalties, then the Federal Law No. 197-FZ provides for 10 types of incentives and 5 types of penalties. Federal laws No. 403-FZ and No. 2202-1 fix 10 types of incentives and 8 types of disciplinary penalties.

7. Employees of some listed types of public service are brought to disciplinary liability for committing administrative offenses (with the exception of administrative offenses provided for in Part 2 of Article 2.5 of the Code of Administrative Offenses of the Russian Federation).

7. The most important feature of the attribution of public service to law enforcement is the empowerment of a significant part of employees with the authority to use weapons, special means and physical force.

8. Performing their functions, law enforcement officers mainly specialize in the imple-

mentation of the law enforcement function of the state, in contrast to civil servants engaged, as a rule, in regulatory activities [13].

Substantiating the possibility of combining other types of public service into a single one.

Hence, we believe that the scientific community and the legislator should once again raise the issue of combining all these “other” types of public service into a single one and adopting one federal law for its regulation. The question of how this type of public service should be called, in our opinion, is secondary. The definition of “law enforcement service” seems to be the most successful, but it can also be “public service related to law enforcement”, “special public service” [8], “police service” [13], etc. The main thing here is a unified legislative regulation, without gradations of public service into more or less privileged. S.V. Vedyashkin and R.V. Nagornykh write about the need to form a unified system of public service in the law enforcement sphere of the Russian Federation as an integral administrative and legal institution [1].

Here are two, in our opinion, quite weighty arguments confirming the possibility of combining other types of public service into one.

First, the federal laws regulating various types of public service often coincide in many respects in their content. For example, the comparison of the Federal Law No. 197-FZ and the Federal Law No. 342-FZ shows that most of the articles coincide almost word for word. Principles of service, employees’ rights and duties, requirements for official behavior, restrictions and prohibitions, emergence and change of legal relations in the service, service procedure, service discipline, etc. are the same [15]. In many respects, the provisions of the Federal Law No. 328-FZ and the Federal Law No. 141-FZ get in line with these laws. Though there are differences in the content of these federal laws, they are of a private nature. For instance, these federal laws include about 100 articles (except for the final provisions), the content and titles of chapters and individual articles, definitions of basic terms, principles of service, a list of disciplinary penalties, the normal length of service time, types of vacations, etc. are almost identical. As A.V. Kalyashin rightly notes, the

legal acts adopted in recent years regulating certain aspects of the service (including at the departmental level), organization and the legal status of employees seem as if done “under one carbon copy” [16].

Second, the federal laws that simultaneously relate to several types of public service are already in force, particularly, the Law of the Russian Federation No. 4468-1 of February 12, 1993 and the Federal Law No. 52-FZ of March 28, 1998. The Federal Law No. 283-FZ of December 30, 2012 applies to employees of institutions and bodies of the penal system, enforcement agencies of the Russian Federation, the federal fire service and customs authorities of the Russian Federation. At the same time, the provisions of this federal law mostly coincide with the provisions of the Federal Law No. 247-FZ of July 19, 2011. As practice shows, the extension of the legal force of these federal laws to several types of public service does not entail any negative consequences.

Third, today there are various federal executive authorities, the service in which is regulated by one law. As we have already noted above, these are the Federal Security Service, the Federal Protective Service, and the Federal National Guard Service. In all these federal services, employees are military personnel (in the Federal National Guard Service they can also be employees of internal affairs bodies), their legal status is determined by the Federal Law “On military duty and military service”, but this does not entail any organizational problems.

Proposals for the creation of a unified concept for legal regulation of the public law enforcement service.

The analysis of the current legislation on various types of public service shows that today, as a rule, 2 federal laws apply to each service type. One of them regulates general provisions, service principles, legal status of employees, admission requirements, service procedure, service discipline, service and rest time, and service termination. Another federal law is devoted to social guarantees of employees, which, as a rule, include employees’ monetary allowance, housing, medical care and health-resort treatment, measures

of social support for family members of employees, died or missing when performing official duties. The exception is public service in the Prosecutor's Office of the Russian Federation and the Investigative Committee of the Russian Federation: both a service procedure and social guarantees of employees are regulated in one law.

It should be noted that the legal regulation of service in the Prosecutor's Office of the Russian Federation and the Investigative Committee of the Russian Federation has certain specifics, in particular, the service procedure and social guarantees are regulated not by the laws on certain types of public service, but by those fixing the legal status of these bodies, their powers, system, and public service as well. Moreover, if such legal regulation of prosecution service can be explained by the prescription of the adoption of the law, the Federal Law "On the Investigative Committee of the Russian Federation" was adopted quite recently, in 2010. This is probably due to the fact that the Investigative Committee of the Russian Federation was separated from the Prosecutor's Office and the Federal Law No. 2202-1 was taken as the basis for the development of the Federal Law No. 403-FZ. It should be also noted that the Prosecutor's Office and the Investigative Committee of the Russian Federation are not part of the system of executive authorities, unlike the rest, in which other types of public service are implemented.

The fact that the public service procedure, social guarantees of employees, and the legal status of a state body are regulated in one federal law, in our opinion, is rather a disadvantage than an advantage. To begin with, there is a fewer number of the norms devoted to legal regulation of public service and social guarantees of employees than in individual federal laws, and the current norms are smaller in scope and semantic content. Thus, the Federal Law No. 403-FZ contains 29 articles regulating service, the Federal Law No. 2202-1 – 27, and federal laws No. 342-FZ, No. 197-FZ, No. 328-FZ, No. 141-FZ – more than 90. This leads to gaps in the legal regulation of a number of individual aspects of public service and social guarantees for employees of

the Prosecutor's Office and the Investigative Committee of the Russian Federation. For Instance, federal laws No. 403-FZ and No. 2202-1, unlike federal laws No. 342-FZ and No. 197-FZ (let us take them as an example), do not disclose the following aspects of public service:

- service principles;
- rights and official duties of an employee;
- requirements for the employee's official behavior;
- emergence and change of legal relations in the service (Chapter 4 of the Federal Law No. 197-FZ, Chapter 4 of the Federal Law No. 342-FZ). Federal laws No. 403-FZ and No. 2202-1 have only the test for admission to service and the oath. Federal laws No. 197-FZ and 342-FZ also regulate the right to enter the service, documents submitted for admission to the service, grounds for the emergence of legal relations in the service, contract, its types and duration, its content, replacement of positions by competition, etc.
- gross violations of official discipline.

Regarding social guarantees of prosecutors and employees of the Investigative Committee, federal laws No. 403-FZ and No. 2202-1 contain only 3 articles: material and social security of employees, housing, mandatory state personal insurance of employees (articles 35, 35.1, 36 of the Federal Law No. 403-FZ, articles 44, 44.1, 45 of the Federal Law No. 2202-1). In relation to other types of public service, there are separate federal laws that disclose each social guarantee in more detail.

We believe that the existence of two federal laws for each type of public service is a successful experience and it is necessary to adhere to this principle of building legislation on public service in the future.

Conclusions

In our opinion, there are currently no obstacles to the unification of all other types of public service into a single one (law enforcement service) and the adoption of 2 federal laws: one regulating a service procedure and another – on social guarantees of civil servants of law enforcement service.

The first law should define a term of law enforcement service and basic terms, deter-

mine legal regulation of law enforcement service and enumerates types of law enforcement service and state bodies, in which it is carried out. Also, this law should fix positions of law enforcement service, special ranks, rights and duties of employees, restrictions and prohibitions, requirements for official behavior, admission, service and its termination procedures, service and rest time, service discipline, etc.

These aspects of public service are initially regulated by labor legislation, as a result of which federal laws on certain types of public service are rather uniform. In this regard, nothing hinders regulation of all listed aspects in one law. On the contrary, there arises a question: why civil servants should have different working hours and rest periods, types of vacations, disciplinary penalties and the procedure for imposing them, incentive measures, rights and obligations.

Similarly, social guarantees for employees of various types of public service should be enlisted in one law, since in general they are quite identical. For example, monetary allowance of any employee consists of a monthly salary in accordance with the position held and a monthly salary in accordance with the assigned special rank, as well as other monthly additional payments (for service experience, special conditions of service, qualifying rank, working with information constituting a state secret, etc.). Salaries for positions and special ranks are set at the subordinate level,

and nothing prevents them from being set different for different types of law enforcement service, depending on the complexity of the tasks performed and the relevance of this type of law enforcement service for the state at this historical moment. Also, the presence of a one-time payment for the purchase or construction of residential premises as a social guarantee in each type of public service does not negate the fact that the amount of funding allocated for these purposes is different for different state bodies. However, we believe that general provisions should be uniform for everyone.

Based on the above, we propose to amend Article 2 of the Federal Law No. 58-FZ regarding the introduction of a law enforcement service to replace the currently existing public service of other types. We propose to work out and adopt a federal law on law enforcement service, regulating a service procedure and a federal law on social guarantees for law enforcement officers.

The necessity of adopting a law on the law enforcement service is supported by A.M. Artem'ev [17, p. 13]. V.N. Isaenko proposes to develop and adopt a federal law "On law enforcement activities" [18].

The adoption of these laws will lead to restoration of the basic principle of the unity of public service and the unity of state bodies activities and will have a positive impact on the performance of public service as a unified system.

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