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Improving the Institution of Disciplinary Liability of Penal System Employees: Theoretical and Applied Aspects

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Abstract

Introduction: the article is devoted to topical issues of improving legal regulation of disciplinary liability of penal system employees in the general context of the development of the administrative and legal institution of disciplinary responsibility in the civil service system of the Russian Federation. The *purpose* of the article is to highlight theoretical and applied aspects of enhancing the institution of disciplinary liability in the penal system at the current stage of the civil service development in our country, improving the system of execution of criminal penalties, as well as current changes in legislation and law enforcement practice. The *methodological basis* of the work is formed by general scientific and private scientific (historical-legal, comparative-legal, descriptive, content-analysis) methods of cognition of legal reality. *Conclusions:* the theory of disciplinary liability has been formed. Disciplinary liability should be considered not just as a method of punishment, but as a tool for improving the work and development of the entire team of employees. Modern management approaches emphasize the importance of motivation, trust and respect in the team. In this context, disciplinary procedures should serve as feedback to help employees grow professionally, form the right values, and feel like part of a team. In this regard, in relation to activities of the penal system, it is necessary not only to detail administrative procedures in the field of disciplinary responsibility of the personnel, but also to review its content and grounds, including in the field of distinguishing disciplinary offenses from administrative offenses, defining and differentiating types of disciplinary penalties taking into account the severity of guilt, developing a list of typical disciplinary offenses and their corresponding penalties with regard to their social harmfulness, etc. The *scientific and practical significance* of the work consists in substantiating the provisions that the improvement of legal regulation of the institution of disciplinary liability in the penal system is possible on the basis of the adoption of a single normative legal act on disciplinary liability of civil servants of the civil service in the law enforcement sphere (other types of service) – the Disciplinary Code of the State Law Enforcement Service of the Russian Federation. Such a legislative decision is due to the long-overdue need to return to the idea of adopting a single federal law on the state law enforcement service of the Russian Federation and the need to standardize departmental regulation in the field of public service.

Keywords: service discipline; disciplinary liability; disciplinary penalties; penal system.

5.1.2. Public law (state law) sciences.

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Introduction

Disciplinary liability is a type of administrative liability and is applied in various social management systems. In a broad sense, discipline is considered as the order of behavior of members of organized collectives (employees) established by legal norms and other social regulators, as well as their obligation to comply with established requirements and conscientious performance of official or labor functions [1, p. 42]. In relation to the civil service, disciplinary liability is usually understood as a special administrative and legal means of coercion used by the bearers of disciplinary authority (authorized officials or bodies) to violators for disciplinary offenses.

In the domestic science of administrative law of the Soviet period, disciplinary liability was considered in the general context of the mechanism for administrative and legal coercion as a legal condition stipulated by the legal norm, which occurs as a result of a committed disciplinary or other offense [2, p. 150]. For example, V.M. Manokhin states that state discipline is “the precise and unwavering implementation by state organizations, workers and employees, public organizations and citizens of the rules and specific regulations established by the state for the practical exercise of state powers” [3, p. 11].

In foreign countries, disciplinary liability is usually included in institutions that regulate relations related to violations of labor or official discipline and provide for extrajudicial sanctions for misconduct. For example, in European national legal systems, understanding of disciplinary liability of civil servants is approached differentially based on the established legal traditions of national states. However, in general, liability of civil servants is usually fixed in civil law, criminal law and administrative law (disciplinary) codes [4, p. 14]. These options make up the so-called triad of liability.

First, civil liability of civil servants is a type of liability that is compensatory in nature: civil servants are responsible for damage caused dur-

ing the performance of their official duties providing for the restoration of the “status” and the elimination of the damage caused. The limits of this civil liability may vary. Government employees are usually responsible for damage directly caused to their employers, but they may not be responsible for damage caused to citizens, except in cases of intent or negligence.

Second, criminal legislation of European states also provides for offences that can only be committed by public servants or officials, and not by ordinary citizens (for example, torture) [5, p. 188]. They may also include some other crimes that can be committed by any person, but provide for more severe penalties for government employees who commit them.

Finally, legislation on public service provides public authorities with the opportunity to apply disciplinary measures on employees whose acts affect the performance of professional duties [6, p. 502].

In general, disciplinary liability abroad is a fairly dynamic legal phenomenon based on national traditions and preferences, however, in all systems, the main purpose of applying disciplinary coercion is always to protect public interests and ensure proper public administration.

Content of disciplinary liability

Modern works of Russian authors reflect certain evolutionary transformations in the field of developing understanding of disciplinary liability as a socio-legal phenomenon related not only to the application of disciplinary sanctions, but also providing significant guarantees to persons involved in this type of responsibility, as well as legal restrictions on disciplinary authorities. Disciplinary liability is gradually “drifting” from a purely coercive legal means towards protecting the rights of persons subject to disciplinary liability. Such constraints on excessive administrative discretion should include circumstances that exclude the possibility of disciplinary liability, establishment of a closed list of types of disciplinary penalties, imposition of duties on officials of service or labor

teams to strictly comply with the deadlines and procedures for the application of disciplinary penalties, etc. Special attention in the research is paid to characterization of the principles of disciplinary liability: legality, equality of all before the law, individualization of responsibility and punishment, justice, expediency, inadmissibility of double responsibility, the inevitability of responsibility and guilt [7, p. 144].

The modern Russian legal institution of disciplinary liability is interdisciplinary [8, p. 52], which causes objective difficulties in its theoretical understanding and practical application. The socio-legal phenomenon of disciplinary liability consists in the presence of a certain internal contradiction in it, which is conditioned, on the one hand, by the need to maintain internal order and ensure effective functioning of organizational structures (organizations), and on the other hand, by the need for strict observance and respect for individual rights and freedoms, honor and dignity of individuals performing official duties and other activities in these structures. In this regard, disciplinary liability is not only a tool for maintaining internal order in an organization, but also a means of resolving internal socio-psychological contradictions that arise within the framework of official relations. Moreover, discipline is an important means of educational influence in relation to members of service or labor teams, within the framework of which its external aspect of mandatory observance of internal order is complemented by an internal "subjective element – personal upbringing and training" [9, p. 19].

The subject of legal regulation of disciplinary liability and its content include the following groups (subsystems) of public relations:

- regulatory, related to the construction of optimal mechanisms for organizational activities, as well as the creation of a predictable and fair system of disciplinary sanctions;
- protective, related to ensuring the stability of official relations, protecting official relations from conflicts of interest, various forms of unfair performance of official duties and official discrimination;
- educational, related to the formation of high moral standards of professional behavior among employees;
- preventive, related to the prevention of disciplinary misconduct.

The object of official discipline is specific social relations that arise in the framework of realization of official, professional or corporate interests, the maintenance of which guarantees effective functioning of service or labor teams. In turn, the object of disciplinary liability is legal relations in the field of protection against encroachments on relations in the field of official discipline. The subject of disciplinary liability, in turn, are disciplinary offenses that infringe on the internal order of the organization, normal exercise of official activity, moral requirements for official conduct, etc.

Some researchers believe that the subject area of disciplinary liability should be expanded to violations committed by employees outside their official duties, which, however, may affect public opinion or have other negative effects on their main professional activities. So, for example, E.G. Belyaeva suggests that official discipline in the internal affairs bodies should be understood as "employee's compliance with the requirements of Russian legislation when performing official duties, as well as during off-duty hours, and his/her compliance with moral and ethical standards of behavior, including in information and telecommunications networks (the Internet)" [10, p. 12].

In general, researchers consider disciplinary liability as a complex socio-legal phenomenon. We back the point of view of E.L. Leshchina that disciplinary liability

- "is a protective legal relationship;
- reflects the need of the state, represented by the employer, to protect external and internal organizational relations from disciplinary misconduct;
- acts as a form of disciplinary coercion within the framework of intra-organizational official legal relations;
- is one of the main legal means to ensure conscientious performance of official duties and compliance with prohibitions and restrictions, as well as to prevent discipline violations;
- in terms of content, it consists in the establishment and application of disciplinary measures for committed disciplinary (in some cases, administrative) offenses;
- when imposing a penalty in a written act, it is implemented in a procedural form;
- responsibility implies suffering of the adverse consequences provided for by law,

caused by commission of the offense by an employee" [11, p. 55].

Structure of disciplinary liability

The structure of disciplinary liability consists of grounds, subjects, content and procedural order of implementation.

The basis for bringing to disciplinary liability is a disciplinary offense, that is, a culpable failure to perform or improper performance of official duties, non-compliance with the requirements of legislative and regulatory legal acts, orders, instructions, oath requirements, etc. In accordance with the legislation on public service in law enforcement agencies, disciplinary penalties may be imposed only on employees guilty of committing a disciplinary or administrative offense, for which disciplinary liability is provided (Article 49 of the federal law No. 197-FZ of July 19, 2018 (as amended on December 11, 2024) "On service in the penal system of the Russian Federation and on amendments to the law of the Russian Federation "On institutions and bodies executing criminal penalties in the form of imprisonment"). As noted in the specialized literature, the sign of guilt in cases of disciplinary liability means the mental attitude of a person to what he/she has done and its consequences, which may manifest itself in the form of intent or negligence. Until the employee's guilt is established in accordance with the procedure established by law, he/she is considered innocent [12]. As a rule, the nature of misconduct, circumstances, employee's previous behavior, his/her admission of guilt and other circumstances are taken into account, when determining a type of disciplinary action.

Disciplinary liability of civil servants is more related to the sphere of public regulation. This is due to the fact that a public administration authority with disciplinary powers is always a participant in a disciplinary legal relationship. The opposite obligatory part of a disciplinary legal relationship is a person who has committed a disciplinary offense. At the same time, the situation may be different in cases of disciplinary liability in labor teams already bearing disciplinary liability. In all cases, the essence of disciplinary liability is the application of measures of influence aimed at correcting behavior, maintaining order and preventing repeated violations by permanent members of stable organized groups of people.

The process of bringing to disciplinary liability in the penal system is strictly regulated by current legislation and subordinate regulatory legal acts. It includes the following stages: establishing a violation fact, receiving explanations from an employee, making decisions, processing them, notifying interested parties and providing an opportunity to appeal, as well as procedures for the actual execution of disciplinary penalties. At the same time, one of the directions for further improvement of the institution of disciplinary liability should be considered the definition of actual boundaries of the disciplinary authority of the head. Therefore, legislation and internal regulations should clearly define the grounds and procedure for the application of disciplinary penalties, including measures, procedure, deadlines and guarantees for employees.

An employee should be entitled to appeal a disciplinary penalty by contacting higher authorities, a labor dispute commission or the court. These mechanisms of judicial and extrajudicial appeals against actions of the administration should not only protect the rights of the employee, but also encourage the administration to objectively consider disciplinary misconduct.

Priorities for improving disciplinary liability

Modern approaches to disciplinary liability include integration of new management methods and legal technologies such as mediation, alternative conflict resolution, restorative practices and electronic control systems, etc. This is aimed at increasing efficiency, transparency, reducing conflict and creating a positive image of the organization. Besides, it is important to study the compliance of disciplinary liability with the principles of justice and humanism [13, p. 80].

When imposing disciplinary penalties, it is important to take into account not only formal violation of the rules and regulations, but also the severity of the offense itself. The decision to impose disciplinary action should take into account specific circumstances, the employee's past achievements, his/her intentions and the opportunity to remedy the situation. This requires that the authorities are rather competent, can assess the situation objectively and make appropriate decisions.

Disciplinary liability is the responsibility for actions of an employee or an individual that vio-

late rules or duties that may result in sanctions from the employer or authority. This concept presupposes the application by the employer (or other authority) of sanctions for “disciplinary offense”, which, on the one hand, are the administration’s reaction to an illegal act, and on the other hand, serve as a means of correcting behavior, maintaining order and ensuring responsibility within the framework of legal or organizational norms. This legal concept is interdisciplinary in nature and is based on the norms of labor and administrative legislation.

Further development of the institution of disciplinary liability should be associated with its understanding not only as a punitive measure, but, above all, as an organizational and legal tool for improving performance and maintaining a high level of moral and psychological well-being of the staff, increasing the level of positive motivation for performance, mutual trust and respect in the team. In this context, disciplinary measures can play the role of a feedback tool in the service team.

On disciplinary liability of penal system employees

Disciplinary liability is of particular importance in the system of official relations in bodies and institutions that execute criminal penalties. The specifics of the performed functions of the penitentiary system, high risks and the need for strict compliance with the regime of official activity determine special requirements for the state of internal organizational activities and, above all, for the quality of the staff of penitentiary institutions.

In this regard, the improvement of legal regulation of the institution of disciplinary liability of penal system employees should be considered in the general context of modernizing legislation on civil service and the personnel policy of public administration in the field of the execution of criminal penalties [14, p. 792]. Theoretically, disciplinary liability in the penal system is expressed in the form of official censure of an employee by the management of bodies or institutions executing criminal penalties, implemented by applying moral, material or organizational penalties to him/her.

The analysis of the institution of disciplinary liability in the penal system reveals a problem of actual discrepancy between legally established norms and actual implementation of disciplin-

ary procedures. For example, A.M. Koloskov draws attention to the fact that “disciplinary proceedings cannot be considered in isolation from disciplinary liability itself: the first becomes a condition for the manifestation of the second” [15, p. 11]. At the same time, a characteristic feature of the application of disciplinary proceedings is their preventive orientation. The main goal is not so much to punish, but rather to form socially expected standards of behavior among employees and establish strong discipline.

It should be noted that the legal structure of disciplinary proceedings existing in the legislation is far from ideal, many essential aspects of disciplinary proceedings are left to the discretion of officials, which is fraught with the use of excessive administrative discretion, and ultimately leads to administrative arbitrariness and violation of the balance between the tasks of service and social justice [16, p. 29]. In this regard, it is necessary not only to detail administrative procedures in the field of disciplinary liability of penal system employees, but also to review its content and grounds, including distinguishing disciplinary offenses from administrative offenses, defining and differentiating types of disciplinary penalties based on the severity of guilt, developing a list of typical disciplinary offenses and their corresponding penalties, taking into account their social harmfulness, etc. At the same time, it is quite obvious that the solution of such a complex task is impossible within the framework of only one department. An integrated approach is required to harmonize legislation in the field of general administrative and disciplinary liability in the civil service system.

This problem can be solved by adopting a single codified normative act regulating disciplinary liability of civil servants of law enforcement service [17, p. 139]. Such a legislative decision is due to the long-overdue need to return to the idea of adopting a single federal law on the state law enforcement service of the Russian Federation and the need to standardize departmental regulation in the field of public service of the so-called other types.

Results

As a priority for improving the institution of disciplinary liability, it is necessary to consider the adoption of a single normative legal act on

disciplinary liability of civil servants of law enforcement service – the Disciplinary Code of the State Law Enforcement Service of the Russian Federation, which requires:

- to establish a unified approach to the organization of disciplinary practice throughout the civil service system, including in other types of civil service and civil service in the penal system, in particular;

- to identify and differentiate types of disciplinary offenses and disciplinary penalties for their commission, taking into account the severity of the guilt;

- to introduce differentiated responsibility for minor disciplinary offenses, gross dis-

ciplinary offenses, violation of official ethics, etc.

- to approve the composition of typical disciplinary offenses and their corresponding penalties, taking into account public danger of acts, multiplicity, and other aggravating and mitigating circumstances;

- to consolidate an exhaustive list of additional disciplinary measures that can be applied to a civil servant in the event of a major disciplinary penalty being imposed on him;

- to systematize administrative and procedural rules in the field of proceedings on cases of disciplinary misconduct, etc.

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