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## ALTERNATIVE METHODS OF CONFLICTS RESOLUTION IN THE PUBLIC CIVIL SERVICE: PROBLEMS AND NEW APPROACHES<sup>1</sup>

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The author considers a non-judicial method of settling disputes arising in the field of official legal relations, and preventing, suppressing of corruption offenses in the public civil service, which, in author's opinion, is close to the alternative methods of disputes resolution. Studies the possibility of applying meditative technologies in resolving conflicts of interest, including through the participation in a commission for compliance with the requirements of official conduct of public servants and settlement the conflict of interests of members of the public, who have the experience and qualification of mediator.

In the article is argued that the settlement of the conflict of interest is both a conflict resolution procedure and, at the same time, a measure of preventing the commission of corruption offenses in the system of public civil service.

**Keywords:** public civil service, public civil servant, conflict of interests, settlement of a conflict of interests.

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Alternative resolution of disputes and conflicts implies widening of decentralization of public administration in its certain areas and branches. Moreover, such a decentralization will be expressed both in the transfer of powers to deal with certain categories of disputes from bodies of state power to entities with a private-legal element and in strengthening the influence of society on the procedures and actually processes for dispute resolution. Thus, the application of private-legal methods to regulate legal relations that are in the field of traditional influence of public administration demands its understanding and effective legal regulation.

In the future the potential for inclusion methods of alternative dispute resolution in a legal matter of modern legislation will change approaches to the determination of the limits of public administration and forms of activity of public authorities, state apparatus, refresh the issues of implementation the principle of publicity of public civil service. Because modern public administration is penetrated by social interactions that are expressed by the system of interrelations, which occur at different levels of the hierarchical structure of exercising the functions entrusted to public authorities and public servants [8, 4].

Advanced communication services enable citizens to monitor government and its decisions through their indirect contact with it. In this regard, the possibility of indirect participation of citizens and formed by them structures makes it easy to apply to the leadership of the state and require power structures to respect or implement their interests, regardless of the location of the citizens and their status in social or political hierarchy [9, 30]. Openness and transparency of the executive branch activity are the most important indicators of the effectiveness of their operation in the implementation of established powers, as well as a necessary element of a constant and quality communication between citizens and the bodies of executive power [4, 16].

In addition, the interaction of the system of public administration and civil society regarding alternative methods of conflict resolution generates the following issues in law-enforcement: what limits should be set by the legislator for using of private-legal methods at state (municipal) service; and whether possible the application of such legal principles and methods? Let's note that the social interest of society (population) is expressed not only in creating, maintaining and ensuring the well-being of citizens, meeting social needs [7, 29], but also in the need for protection of their rights, ensuring and preservation of the cultural and moral ideals and traditions, interaction with bodies of state and municipal power in directions of government intervention in private life.

State cannot exist without the support of its population, wise use of its intellectual, physical and spiritual resources, as well as the population is not able to provide its own self-organization without effective state influence. It seems that the State and population (people) represent a single socio-cultural and politico-economic phenomenon filled with common processes. For example, provisions of the legislation on public service give impetus to the development of social partnership in its system. Social partnership in public civil service involves the activation of activities of collective entities [1] in a body of state power and the adoption of appropriate local normative legal acts. It is, above all, a collective agreement. Conglomeration of interests of people and the state leads to diverse processes, consisting, for example, in the provision of certain social benefits and advantages in the implementation of judicial and other protection of violated rights.

Directly at public civil service the ways of resolution of disputes and conflicts, which are similar to alternative methods, can be applied in the process of resolution of a service dispute between an employer and employee, as well as for settlement of a conflict of interest.

So, scientists say about several ways for resolution of individual labor disputes:

- negotiations;
- dismissal of an employee (a parties' agreement, staff redundancy, layoff in the event of repeated failure of the employee without good cause to exercise its job duties, layoff in the event of a single gross violation of job duties by the employee);
- mediation;
- wage increase;
- collecting negative information about an employee;
- consideration of the conflict by labor disputes commission;
- consideration of the conflict by the Federal Labour Inspectorate [2, 80-93].

In terms of the actions of employer, the dismissal of an employee as a result of conflict associated with its official activity is quite effective way of resolving the individual labor conflict. However, without the proper conduct and arrangement the dismissal can lead to further conflict, emergence of a judicial dispute and engagement in the dispute other staff, who are on the side of the unwanted employee [2, 87]. On the other hand, an employer can abuse this ground for resolution of conflicts. For example, staff redundancy can be used for "getting rid" of unwanted workers due to the lack of requirement for the employer to motivate the decision on staff redundancy, and eliminate the possibility of appealing the decision as unjustified [10, 94].

Let's consider the concept of mediation. From the point of view of M. A. Avdyev, mediation is a form of non-judicial resolution of disputes through a third impartial neutral party. Currently, mediation is actively used in the countries of Europe, the United States, and Australia. The world experience has shown that mediation is one of the most effective ways to resolve labor disputes [3, 44]. However, in respect of workers in Russia, there is a slightly modified form of mediation: when employers at their own expense invite lawyers, which specialize in labor law, to get some expert's "opinions" on a current dispute [2, 87].

In view of the restrictions on the application of mediation, it seems extremely difficult and uncertain to apply it in practice, especially with regard to conflicts affecting public interest. Federal Law No. 193-FL from July 27, 2010 "On Alternative Dispute Settlement Procedure with a Mediator (Mediation Procedure)" in part 5 article 1 envisages that the mediation procedure shall not apply:

- to collective labor disputes;
- to disputes arising from labor legal relations, if such disputes affect or may affect the rights and legitimate interests of a third party not involved in the procedure of mediation or *public interests*. Thus, there is excluded the possibility of involvement of mediators in consideration of conflicts arising in passage of public service [6, 50]. This is a clear limitation in choosing the means of protection the rights and interests of a public civil servant in the settlement of service disputes and conflicts. Such limitation is especially not backed by appropriate additional guarantees in the current legislation on public civil service. For example, the procedure for consideration of a service dispute by a commission on service disputes, as well as the procedure for taking decision by a commission on service disputes and its implementation is still not regulated by federal legislation (article 69-70 of the Federal Law "On the Public Civil Service of the Russian Federation"). There is a procedure for the formation of a commission on consideration of individual service disputes, but there is no procedure for resolving them. While in foreign countries similar structures in public service are fairly efficient.

Resolution of a conflict of interest in public civil service implies the existence of a commission for compliance with requirements to official conduct and settlement of conflicts of interest, as well as independent procedure of consideration of the current situation. This non-judicial way of settling contradictions arising in the field of service legal relations and preventing, combating corruption offenses in public civil service, in fact, is close to alternative methods of dispute resolution.

This method has its own features:

- consideration of conflict occurs in the presence of a body of state power, but with the participation of private individuals;
- public interest is exercised with help of civil society representatives in the course of settlement of a conflict of interest;
- procedure for conflict resolution is of mixed nature (private-public), from the point of view of subjective membership.

This conclusion relates to the essence of all disputes and conflicts arising in public civil service, if the rights and legitimate interests of civil servants are affected

According to the decree of the President of the Russian Federation No. 821 from July 01, 2010 "On Commissions for Compliance with Requirements to Official Conduct of Federal Public Servants and Settlement of Conflicts of Interests", for a more objective and transparent review of conflicts of interests in the commissions include members of the public, namely, "representative (representatives) of scientific organizations and educational institutions of secondary, higher and further professional education, the activities of which are related to public service".

The importance of activity of such commissions is great. Representatives of scientific organizations and educational institutions, representatives of public council, representatives of social organization of veterans, representatives of trade union organization has to express an independent opinion on the issues addressed by commission. They become "independent evaluators" of situations that have arisen and the decisions taken by the commission. Exactly they, first of all, should not have direct or indirect interest in consideration of an issue.

Independent representatives of scientific and educational institutions act as a kind of independent experts that evaluate the objectivity of a taken decision, objectivity and impartiality of consideration the issues of agenda, may disagree with its decision. Like any member of the commission, they shall have the right to express their views in writing, which shall be compulsorily annexed to a protocol. Bigger number of members of the public should evidence about the significance of the commission status, about the possibility of excluding an adoption of decisions that include subjective or conjunctural nature. But, in any case, members of the public should not bring pressure on the taking of decision. Moreover, according to paragraph 12 of the Decree, members of the commission are formed in such a way as to avoid the possibility of appearance of conflict of interest that could affect the decisions taken by the commission. Both members of the commission and individuals, who participate in its meeting, are forbidden to divulge information that has become known to them in the course of the work of the commission (paragraph 21).

This is a specific feature of the procedure for consideration of conflicts of interests in public civil service.

Consequently, the possibility of application of mediation techniques in resolving a conflict of interest can be expressed in inviting of members of the public that have the experience and qualification of a mediator for participation in the commission for compliance with requirements to official conduct of public servants and settlement of conflicts of interests. Of course, this is possible if appropriate amendments are made to existing normative legal acts. In addition, it would be useful to get some skills and abilities of professional reviewing of conflicts for public servants themselves that enter the commission for compliance with requirements to official conduct of public servants and settlement of conflicts of interests.

Paragraphs 3.1-3.2 part 3 article 19 of the Federal law "On the Public Civil Service of the Russian Federation" provide for the consequences of the prevention or settlement of a conflict of interest. They include:

- 1) change of official position or employment status of a civil servant, who is a party of a conflict of interest, up to its removal from the performance of official (service) duties in a prescribed manner;
- 2) refusal of a public civil servant from the benefits that have caused the appearance of a conflict of interest;
- 3) dismissal of a public civil servant, provided that it has not taken steps to prevent or settle a conflict of interests, if this is an offence.

The above can be considered as options for ending of a conflict of interest provided for by law. Prevention of conflicts of interests is related to the mandatory application of penalties to public civil servants whose personal interests have begun to prevail over the interests of the state and society, where has been a situation that reveals commission of corruption offenses and serious corruption manifestations by public servants.

But there may be other consequences of consideration of a conflict of interest, which are not necessarily reduced to the penalties of public servants and to forcing them to actions that have an irreversible character for them. An important role in this process should be played by measures of prevention the appearance of a conflict of interest at public civil service. In this case, mediation technologies and techniques will allow implementation of a more effective procedure for the settlement of a conflict of interests. Exactly, *settlement* rather than prevention of a conflict of interest. Settlement of a conflict of interests seems to us both the procedure of conflict resolution and, at the same time, the measure of prevention of corruption offences at public civil service.

The Federal Law “On the Public Civil Service of the Russian Federation” does not delimitate in detail the term of “prevention of a conflict of interests” and the term of “settlement of a conflict of interests”, including also the options to resolution of a conflict. Specified state of the legislation contributes to reducing the resolution of a conflict of interests to its “prevention”. At that, meditative techniques of conflict resolution suggest to implement this procedure most rationally and effectively through diagnosis of the conflict (analysis of the essence of the conflict), impact on the conflict (estimation of the positions of conflicting parties, consecution of the conflict) and technique of its resolution (creating an objective and supportive environment, search for the best options for conflict resolution) [5]. Algorithm of resolution a conflict in public service must lie in strict compliance with the requirements of normative legal acts and, at the same time, in maximum, *objective* protection of the rights and interests of civil servants. Application of such methods of conflict resolution will prove to be effective also in consideration of individual service disputes. However, as in consideration of any conflict situation in the system of public civil service.

Thus, there are quasi-alternative methods of resolution of disputes and conflicts in the system of public civil service. All of them are pre-trial forms of dispute resolution, with a specific procedure for consideration in appropriate commissions. We think that certain elements of mediation (meditative techniques) with adaptation to the mixed nature of the above mentioned disputes will help to strengthen the effectiveness of collegial decisions.

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