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## TOWARDS THE ISSUE OF SERVICE DISPUTES<sup>1</sup>

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The author notes the existence of a legal conflict arising from the content of the norms of the Labor Code and the Law "On Public Civil Service" on the application of these laws to public civil service.

The author admits the possibility of collective service disputes in the field of public service, with the exception of specific legal relations, which contain explicit prohibition.

Here is risen a question about the need to develop a general concept of "service dispute" and its legislative consolidation in the Federal Law "On Public Civil Service", for the purpose of subsequent differentiation of the concept of the dispute and procedures for its consideration depending on the kind of official activity.

**Keywords:** controversy, service disputes, service legal relations, public service, individual service dispute.

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Strengthening theoretical positions on service law [10, 21], service legal relations, has become justified after the development of legislation on civil service. Questions related to the protection of violated rights raise a lot of discussions.

In accordance with article 10 of the Federal Law "On the Public Service of the Russian Federation", the procedure for resolving conflicts of interest and service disputes is established by an appropriate federal law on the form of public service [4]. The same law defines public service system, which includes the following forms: public civil service, military service, law enforcement service [4, page 2].

In all cases, the legislator operates with a special concept of "service", emphasizing the specificity of exercising the constitutional rights of Russian citizens to freely dispose of their abilities to the choice of occupation and profession (see article 37 of the RF Constitution [1]). Legislative prerequisites are implemented through entry of citizens into special legal relations associated with their specific subject and object of legal regulation (see articles 4-6 of the Federal Law "On the Public Service of the Russian Federation" [4]).

There is no a single comprehensive list of areas of public service [8, 262], what complicates insightful analysis of the specificity of all service relations on the matters relating to disputes concerning application of labor.

Individual service dispute is given a normatively enshrined definition, which is subjected to scientific analysis. However, most often analyzed service disputes concerning the application of labor of public civil servants. Category "individual service disputes" really raises scientific interest, because everywhere the debates are focused on sectorial affiliation of relations regarding public civil service. Legal collision arising from the provisions of the Labor Code and the law "On Public Civil Service" still has not been abolished. So, article 11 of the Labor Code of the Russian Federation states that "operation of the labor legislation and other acts containing norms of labor law applies to public civil servants and municipal employees with the peculiarities provided for by federal laws and other normative legal acts of the Russian Federation, laws and other normative legal acts on civil service and municipal service of the subjects of the Russian Federation", while article 5 of the Federal Law "On Public Civil Service" determines that "Regulation of relations associated with civil service shall be exercised by: the Constitution of the Russian Federation, the Federal Law "On the Public Service of the Russian Federation", this Federal Law" (i.e., excludes the regulatory impact of the Labor Code).

However, touching upon the issue of "service disputes" we have no right, in our view, to limit ourselves only by the abovementioned laws, because service disputes can occur not only at public civil service.

We note that not all legislative acts, which are designed to regulate service relations, contain the term of “service disputes”. Analyzing some of them, we have found a special indication only in some [5, article 69; 6, article 72]. Unfortunately, for example, in the Federal Law “On Military Duty and Military Service” and “On the Status of Servicemen” such legal category as “individual service dispute” does not exist at all. It cannot be assumed that there are no disputes concerning the application of their abilities to labor in the sphere of military service. Disputes and disagreements may occur in all areas of professional activity. However, the specifics of disputes consideration is not affected by a number of normative acts designed to regulate service relations. Let’s suppose that the laws “On Military Duty and Military Service” and “On the Status of Servicemen” do not contain reference to individual service disputes, because initially the relations of military service have never related to the subject of labor law, and that is why there is no place for disputes on the application of labor in the legislation on military service. In this case, by analogy, we should talk about employees of the Interior Ministry, since service activity of police, has never been related to the subject matter of labor law. However, reference to the notion and procedure for consideration of service disputes takes place in the Federal Law “On Service in the Internal Affairs of the Russian Federation and on Amendments to Certain Legislative Acts of the Russian Federation” [6]. The abovementioned indicates the insolvency of assumption on interrelation of service disputes and the subject of labor law. So, it is possible to assume the omission of the legislator in the field of protection of service rights.

While supporting the concept of unity of service relations [11], in our view, attention should be given to the need for developing a general concept of “service dispute” and its legislative enshrining in the Federal Law “On Public Civil Service, allowing subsequently in special definitions to differentiate the concept of dispute and the procedure for its consideration depending on the type of service activity. The centralization of basic theoretical concepts, including service dispute and individual service dispute, will allow, in our view, to take into account basic theoretical approaches in elaboration a special legislation designed to regulate particular type of service activity.

Next thing, to which we would like to pay attention, is kinds of disputes on the application of labor. Since the essence of service disputes, as referred to above, boils down to implementation their abilities to labor, issues related to conflictology in applying their abilities to professional activity today are very urgent. There are various theories that imply delimitation of conflict and dispute under various grounds. Also, in theory delimit the concept and content of labor disputes and

disputes relating to public civil service. Much of the reasonings of theorists appear to be quite interesting and debatable. However, given the above, we note that the theoretical concept of “individual service dispute” is not limited and should not be limited to the Federal Law “On Public Civil Service”. In addition, in analyzing the concept of individual service dispute in the two laws [5; 6], we find it not quite tenable. More precisely, in accordance with the legislation, under individual service dispute commonly understand unsettled disputes between the representative of employer and.... citizen claiming to “hold a post” or earlier was on service, which are filed to the body for consideration of individual disputes [5, 6].

Having analyzed the content of legal norms, we conclude on the presence of special service relations of citizens **applying for** holding post, and who **were previously** on duty. How justifiably this normative provision is applied to state-service legal relations as special (status) legal relations that establish the **status** of public servants [10, 23]? On the occurrence of the legal status of servants we can talk only after the conclusion of a service contract. In other cases we can talk only about citizens applying for holding a certain service position. Legal regulation of prerequisites for realization of professional abilities is outside of service legal relations. That is, presentation of the content of article 69 of the Federal Law “On Public Civil Servants” and article 72 “On Service in the Internal Affairs...” confronts the content of service legal relation and requires serious remaking. We assume that as the prerequisite for such an exposition of legal norms has served the labor-legal concept of labor and closely related with them legal relations. This issue is theoretically correct designed in labor legislation, and relations prior to and arising out of labor ones are included in the subject of labor law (and the institute of labor disputes is included in relations that are not labor ones). Still there is no clear classification of legal relations that are closely related to service ones in service law, although the prerequisites certainly take place. Yu. N. Starilov highlights the second group of service relations, which include public relations on formation of public-service ones [10, 34]. The seventh group includes relations concerning termination of public service [10, 35], if the author would allow to add the term “as well as concerning the restoration and protection of violated rights and legally protected interests”, then, in our view, it would be fully possible also to include in the seventh group relationships concerning service disputes.

Touching upon the concept of “individual service dispute”, we note that there is a theoretical discussion about the possibility of merging the concepts of “individual labor” and “individual service dispute”. The combined result is referred to as “individual dispute” [9], where the subject of individual dispute is unsettled

controversies between special subjects of labor and service relations. In our opinion, we should not agree with this on the following reasons: first, the term of “individual dispute” is much broader than dispute associated with application of their abilities to labor or another kind of professional activity. The subject of individual dispute may become compensation for the harm caused to a citizen by damage to property (e.g., in car accident), division of property between spouses, and much more. Once a dispute is based on the expression of will of an individual personality, it can entirely be named individual. The personality, in accordance with the legislation, has the right to insist on protection of all, and not only of labor and service rights, so it is true to name labor and service disputes “individual”, and the term of “individual” should be applied only when denoting the subject-matter affiliation of dispute. Otherwise word combination “individual dispute” is pointless and does not reflect the essence of service and labor dispute.

Next, we would like to draw attention to the need for classification of service disputes. If you adhere to the classical approach to the classification of labor disputes according to disputable subject [7, 6], they are subdivided into individual and collective.

Correlation of collective disputes and service relations conceals a problem that requires deep theoretical study. In accordance with the legislation, there is a specific reference to the inadmissibility of strikes in strictly designated cases [2, page 3]. From the analysis of normatively-enshrined provisions follows a specific list of prohibitions applicable to the RF Armed Forces that are responsible for national defense, national security, etc. However, there are no indications of a direct ban on strikes of public civil servants (as in the old law “On Fundamentals of Public Service of the Russian Federation”) [3]. Following the logic that everything what is not prohibited is acceptable, we can make a conclusion on the possibility of strike in order to settle a legal conflict of collective nature in the sphere of public civil service.

Considering the fact that strike is an **extreme** form of expression disagreement of workers with violation of their rights or legally protected interests, which does not cover the whole spectrum of collective labor dispute, we come to the conclusion on the possibility to allow collective service disputes in the sphere of public service. Specific legal relations, which contain direct prohibition, will be an exception, for example, in internal affairs bodies [6, page 79].

Conclusion is based on the absence of direct prohibition on the participation of public servants in a collective service dispute. This suggestion, in our view, requires further substantial theoretical elaboration.

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