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Legal Aspects of Municipal Service in Territory Development Programs

Aspectos legales del Servicio municipal en programas de desarrollo territorial

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ABSTRACT

Municipal service in the Russian Federation has twenty years of existence. At the current stage of development of the Institute of municipal service, municipal employees are subjects of labor law, and the municipal service is one of the types of labor activity. However, the essence of the legal status of a municipal employee remains insufficiently studied. The proposed conclusions can contribute to the deepening of scientific developments in the field of labor law. The practical significance of the work is due to the relevance of the issues under consideration, the possibility of applying the proposed conclusions in practice.

Keywords: Legislation; modernization; regulation; technology.

RESUMEN

El Servicio municipal en la Federación de Rusia tiene veinte años de existencia. En la etapa actual de desarrollo del Instituto de servicios municipales, los empleados municipales son sujetos de derecho laboral, y el Servicio municipal es uno de los tipos de actividad laboral. Sin embargo, la esencia del estatuto jurídico de un empleado municipal se estudia insuficientemente. Las conclusiones propuestas pueden contribuir a la profundización de los avances científicos en el ámbito del derecho laboral. La importancia práctica del trabajo se debe a la pertinencia de las cuestiones que se examinan, la posibilidad de aplicar las conclusiones propuestas en la práctica.

Palabras Clave: Legislación; modernización; regulación; tecnología.

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INTRODUCTION

Article 23 of the law on municipal service defines the list of guarantees provided to municipal employees. This list is open, as evidenced by part 3 of this article, providing that the laws of the subject of the Russian Federation and the Charter of the municipality municipal employees may be provided with additional guarantees (Gane, 1982).

Among the researchers of the municipal service, the idea of the appointment and functions of guarantees provided to municipal employees is the same: according to most scientists, they are compensations for the restrictions that a municipal employee has to comply with in the performance of his / her work. So, S.Yu. Kabashov notes that "guarantees, compensating for certain infringements of the constitutional rights of municipal employees, are designed not only to ensure the stability of the financial position of the municipal employee, but also to protect it from external subjective influence, thereby facilitating the exercise of their official duties." L.V. Kurevina believes that guarantees are provided for municipal employees "in order to compensate for some restrictions related to the status of a municipal employee, and the need to ensure the interests of local government". L.T. Chikhladze and D.O. Jerzewski as the primary task of providing guarantees to municipal employees, considers ensuring the implementation of the principle of legal and social protection of municipal employees. According to S.Yu. Fabrichny, guarantees "... are a compensation mechanism in relation to the restrictions imposed by the conditions of service" (Walby *et al.*, 2014). Finally, according to O.A. Borzunova's point of view, guarantees of the rights of municipal employees are "... practical provision and protection of the position of a municipal employee" (Visas..., 2006).

In contrast to the concept of the purpose of guarantees in the municipal service, the views on the content of the concept and the classification of guarantees vary considerably. S.Yu. Kabashov considers guarantees in the municipal service "established in the legislation by means of indirect administrative and legal impact on the behavior of the municipal employee". S.V. Mikhnevo makes the following point (Ibanga and Archibong, 2018): "Guarantee municipal employees arise from the principle of municipal service – principle of legal and social protection of municipal employees, which ensures the sustainability of the municipal service... the Principle of social protection of municipal employees involves the provision of opportunities for successful service, meeting the needs of the municipal service and their interests, stimulating the effective solution of official tasks and consolidation of the municipal service" (Kunda and Mutabžija, 2017). The most complete, in our opinion, the definition of guarantees in the municipal service offers I.A. Smagina: "Guarantees of the state and municipal employee – these are the means of indirect administrative and legal influence on the behavior of the state and municipal employee established in the legislation, which are intended, on the one hand, to ensure the material well-being of the state (municipal) employee, and on the other hand, to protect him from external attacks and arbitrariness of the leadership of the state (municipal) body, thereby facilitating the implementation of state (municipal) employees of their official rights and duties, as well as his rights and duties as a person and a citizen" (Wehlander, 2016a).

Guarantees are classified according to a variety of different features, with from 2 to 3 groups of guarantees (Lioe, 2011). For example, E. Kireeva divides all guarantees in the municipal service into three groups: 1) social guarantees, including: a) the monetary maintenance of employees; b) the provision of leave; c) pension; d) medical care; e) social insurance; 2) material guarantees: a) ensuring the conditions of work for the performance of their duties in accordance with the job description; b) compensation in case of death (death); 3) organizational guarantees providing protection of the employee and his family members from illegal actions of third parties in connection with the performance of their duties.

According to O.A. Borzunova, traditionally guarantees are divided into legal and organizational ones. At the same time, the guarantees listed in the law on municipal service "... are legal guarantees, since they have a legal basis and legal mechanisms for their implementation. But at the same time, these guarantees are

organizational guarantees, since they do not arise by themselves, but require special organizational actions of authorized persons and bodies" (Kunda and Mutabzija, 2017).

Common among researchers of the municipal service is the division of guarantees for basic and additional. For example, V.V. Danilov points out that the main guarantees for municipal employees are provided in article 23 of the law on municipal service, while additional guarantees are established by the laws of the Russian Federation and the statutes of municipal entities. This approach criticizes L.V. Kulikova, drawing attention to the fact that "the division of guarantees provided to municipal employees into two groups is made by analogy with the norms of the Federal law of July 27, 2004 No. 79-FZ" on the state civil service of the Russian Federation", where articles 52 and 53 are fixed respectively the basic and additional state guarantees of civil servants" (Reif, 2004).

Let us not agree with the opinion of L.V. Kulikova. It seems that the authors who divide the guarantees into basic and additional ones are primarily guided by the wording used by the legislator directly in the text of article 23 of the law on municipal service, in accordance with which the laws of the subjects of the Russian Federation and the Charter of the municipality may provide additional guarantees to municipal employees. In addition, in our opinion, the analogy with the rules of the Law on public civil service is not surprising, moreover – organically, given the historical relationship of municipal and state civil services (Wehlander, 2016b).

In addition to the basic and additional guarantees provided to municipal employees, V. V. Danilov classifies them into social, economic and legal ones. The same division offers and A. O. Makarov (Humes, 1959).

S.V. Mikhneva substantiates the 177th point of view, according to which the guarantees of the legal status of a municipal employee can be divided into three groups: 1) socio-economic and political guarantees of the legal status of a municipal employee; 2) ideological guarantees of the effective implementation of the rights and duties of a municipal employee; 3) legal guarantees of the rights and obligations of a municipal employee. While socio-economic safeguards, according to S.V. Mikhnevo are the guarantees listed in the Law on municipal service. This type of guarantee, in turn, can be combined into two groups. The first group of guarantees is aimed at providing the employee with appropriate conditions for the performance of official powers on the post, and the second – at ensuring social conditions.

LITERATURE REVIEW

The authors of the comment to the Law on municipal service, edited by S.E. Channov, in contrast, noted that "...not all of the guarantee named in this article have practical content. Some of them have a declarative nature and require for their practical implementation the adoption of special normative legal acts" (Doeker, 1966).

Indeed, article 23 of the law on municipal service provides nine guarantees (eight guarantees in part 1 of article 23 and one guarantee in part 2 of article 23). In accordance with this article, the municipal employee is guaranteed:

- 1) working conditions ensuring the performance of their duties in accordance with the job description;
- 2) the right to receive timely and in full monies;
- 3) rest provided by the establishment of normal working (service) time, the provision of weekends and non-working holidays, as well as annual paid leave;
- 4) medical care of the municipal employee and his family members, including after the retirement of the municipal employee;

- 5) pension provision for the service of years and in connection with disability, as well as pension provision of family members of a municipal employee in the event of his death, which occurred in connection with the performance of his official duties;
- 6) compulsory state insurance in case of damage to health and property of a municipal employee in connection with the performance of his duties;
- 7) compulsory state social insurance in case of illness or disability during the period of municipal employees of the municipal service or after its termination, but occurred in connection with the performance of their duties;
- 8) protection of the municipal employee and his family members from violence, threats and other illegal actions in connection with execution of official duties by him in cases, the order and on the conditions established by Federal laws (Suleiman, 2016).

In accordance with part 2 of article 23 of the Law on municipal service, upon termination of the labor contract with municipal employees in connection with the liquidation of local self-government body, election Commission of municipal formation, or a reduction in staff of the local government, the office of the election Commission of municipal formation municipal clerk provided the guarantees established by labour legislation for workers in case of dismissal in connection with liquidation of the organization or reduction in staff of the organization (Weber, 2018).

DATA AND METHODOLOGY

The legal framework of the thesis, first of all, was the Constitution of the Russian Federation, Labour code of the Russian Federation, Federal law of 02.03.2007 No. 25-FZ "On municipal service in the Russian Federation", Federal law of 27 May 2003 No. 58FZ "About system of state service of the Russian Federation", Federal law of 6 October 2003 No. 131-FZ "On General principles of organization of local self-government in the Russian Federation", Federal law dated 27 July 2004 No. 79-FZ "On state civil service of the Russian Federation" (Suleiman, 2016).

The complexity of the subject of research has necessitated the use of General scientific methods (analysis, synthesis, analogy, generalization), and special – legal (legal-technical, dogmatic methods).

RESULTS AND DISCUSSION

In our opinion, the existence in the scientific literature of the variety of classifications of guarantees provided to municipal employees, indicates the imperfection of article 23 Of the law on municipal service (Individual, 1972). On the one hand, the article contains a fairly wide range of social and labor guarantees. In this connection, the question arises: if the legislator implemented a broad approach to the content of guarantees in the municipal service, why is the list of guarantees is not complete and it is similar to, for example, the right to rest are not included and other rights? On the other hand, are certain guarantees declarative and limited in practice (e.g. protection against violence or compulsory state health and property insurance), and what is the reason for their inclusion in the list? (Deener, 1957).

The answer to these questions, we believe, is one: given the complex legal status of a municipal employee (which is the subject of administrative, municipal, labor law, as well as social security law), the legislator showed inconsistency in the formulation of the list of guarantees contained in article 23 Of the law on municipal service, including guarantees from various branches of law, without distinguishing them (Bachilo, 2018).

There is one more point that needs to be addressed. All the above points of view regarding the content of the concept of "guarantee" differ significantly from the definition used by the legislator in the TC. In

accordance with part 1 of article 164 of the labor code, guarantees-means, methods and conditions by which the implementation of the rights granted to employees in the field of social and labor relations. The difference between the definitions put forward by the researchers of the municipal service from the legal definition presented in the TC of the Russian Federation is to give "municipal" guarantees a special compensation role, a "counterbalance" of restrictions on the municipal service, the existence of which is due to the specific nature of the service relationship.

However, having analyzed the list of guarantees established in the law on municipal service, we cannot agree with these arguments. In fact, the guarantees provided to municipal employees do not have features that significantly distinguish the latter from ordinary employees (guarantees of proper working conditions, receiving cash, rest, etc.). It can be argued that the legislator has given the subjects and municipalities the right to expand the Federal list of guarantees established in the law on municipal service. This is true. However, it is obvious that not all subjects and municipalities have used this right, and if they did, in most cases it concerned social issues (pensions, medical care) outside the scope of labor law (Sterns and Tennen, 2010).

In connection with the above, we propose the following classification of guarantees provided to municipal employees in article 23 of the law on municipal service:

- 1) special guarantees that do not establish the features of legal regulation of the work of municipal employees in comparison with General (labor) guarantees:
 - a) conditions of work, ensuring the performance of municipal employees' duties in accordance with the job description; the right to timely and fully receive cash;
 - b) rest provided by the establishment of normal working (working) time, the provision of weekends and non-working holidays, as well as annual paid leave; the guarantees established by labour legislation for workers in case of dismissal in connection with liquidation of the organization or reduction in staff of the organization, upon termination of the labor contract with municipal employees in connection with the liquidation of local self-government body, election Commission of municipal formation, or a reduction in staff of the local government, the office of the election Commission of municipal formation municipal employee guarantees;
- 2) social guarantees: medical care of the municipal employee and his family members, including after the municipal employee's retirement:
 - a) pension for the service of years and in connection with disability, as well as pension provision of the family members of the municipal employee in the event of his death, which occurred in connection with the performance of his duties; mandatory state insurance in case of damage to health and property of the municipal employee in connection with the performance of his official duties;
 - b) compulsory state social insurance in case of illness or disability during the period of municipal employees of the municipal service or after its termination, but occurred in connection with the performance of their duties;
- 3) unique special guarantees due to the specifics of the professional activities of municipal employees: protection of a municipal employee and his family members from violence, threats and other illegal actions in connection with the performance of his duties in the cases, procedure and under the conditions established by Federal laws (Wei, 2014a).

Taking into account the subject matter of the presented dissertation, devoted to the peculiarities of the work legal status of municipal employees, we are interested in the first and third group of guarantees. Social guarantees beyond the boundaries of our study.

By analogy with the previous paragraphs of this dissertation, to justify the conclusion about the work-legal nature of the first group of guarantees, we need to analyze their content and identify the features that distinguish the special work-legal status of municipal employees from the General work-legal status of other categories of workers.

CONCLUSIONS

The content of these rights and their comparison with similar rights enshrined in the TC of the Russian Federation, we have analyzed in detail in the previous Chapter of this study. This guarantee is essentially declarative, duplicating the provisions of the law on municipal service, and the labor code.

Guarantee the right to timely and full receipt of salaries directly tied to eligible municipal employees (clause 3 part 1 article 11 of the Law on municipal service), qualified by us as the special law, establishing the minor peculiarities of legal regulation of work of municipal employees compared to the total (labor) rights. In addition, this guarantee corresponds to the right to timely and full payment of wages in accordance with their qualifications, complexity of labor, the number and quality of work performed (article 21 of the labor code).

At the same time, municipal employees, as well as other categories of workers, are subject to the General rules of the labor code on wages (section VI of the labor code). In particular, in accordance with article 142 of the labor code, the employer and (or) his authorized representatives of the employer, who allowed the delay in payment of wages and other violations of wages, are responsible in accordance with the labor code and other Federal laws.

In this regard, it is necessary to pay attention to the possibility of applying part 2 of article 142 of the customs code in the municipal service. In accordance with this rule, in case of delay in payment of wages for a period of more than 15 days, the employee has the right, notifying the employer in writing, to suspend work for the entire period until the payment of the delayed amount. At the same time, the TC of the Russian Federation clarified that in certain cases the suspension of work is not allowed (part 2 of article 142 of the LC RF).

The possibility of suspension of work by municipal employees is widely discussed in the literature. S.Yu. Kabashov notes that the suspension of work in the municipal service is not allowed, given p. 14, part 1 of article 14 of the law on municipal service, which establishes a ban on the termination of the municipal employee's performance of duties in order to resolve the labor dispute. In this case, the employer is criminally liable in accordance with article 145.1 of the criminal code for non-payment of wages. The authors of the Commentary to the law on municipal service disagree with this opinion, rightly specifying that the said case (suspension of work due to non-payment of wages) does not apply to labor disputes (Wei, 2014b).

S.N. Bratanovsky, A.E. Epifanov and V.A. Saneev consider this situation as "shortcomings of the legislator", because "the Suspension of the functioning of local governments in connection with the termination of the performance of municipal employees of their duties can paralyze the normal functioning of the municipality and its consequences is quite comparable with the suspension of the activities of public administration" (Wei, 2014c).

In our opinion, given the legislative ban on strikes in the municipal service, part 2 of article 142 of the labor code can and should be applied by municipal employees, moreover, the possibility of its application is the main condition for the successful implementation in practice of the guarantee of municipal employees timely and in full receiving cash. We believe that there are no legal obstacles to the suspension of the performance of their duties by municipal employees, because, firstly, this case does not really apply to labor disputes, and, secondly, municipal employees, unlike civil servants, are not specified in part 2 of article 142 of the labor code as a category of employees, the suspension of work is not allowed.

The content of the third guarantee—a guarantee of rest, provided by the establishment of normal working hours (office) time, the provision of weekends and public holidays, as well as annual paid leave, duplicates the content of the right of a municipal employee to rest (article 21 of the labor code, article 11 of the law on municipal service), analyzed in the previous Chapter of the dissertation research (Council of Europe Staff, 1972).

Finally, owing to direct instructions of the Law on municipal service, municipal employees are subject to articles 178 and 180 of the LC RF. Thus, after analyzing the content of the four guarantees from the list of article 23 of the law on municipal service, it can be stated that these guarantees are a duplication of the relevant municipal employee rights (enshrined in the law on municipal service and (or) the labour code) and do not establish a special, "official" features compared to the general labour protection enshrined in the labour code.

BIBLIOGRAPHY REFERENCES

Bachilo, I. (2018). Right to information and access to information in the Russian Federation, in: H.-J. Blanke, R. Perlingeiro, eds. *The right of access to public information: an international comparative legal survey*, pp. 393-418, Springer Berlin Heidelberg, Berlin, Heidelberg. DOI: 10.1007/978-3-662-55554-5_10.

Council of Europe Staff. (1972). *Individual Applications / Requetes Individuelles*. Retrieved July 10, 2018, from https://link.springer.com/chapter/10.1007%2F978-94-015-1221-3_6.

Deener, D.R. (1957). Relation to municipal law, in: *The United States attorneys general and international law*, pp. 155-74, Springer Netherlands, Dordrecht. DOI: 10.1007/978-94-011-9570-6_8.

Doeker, G. (1966). Treaty implementation and constitutional limitations, in: *The treaty-making power in the commonwealth of Australia*, pp. 161-210, Springer Netherlands, Dordrecht. DOI: 10.1007/978-94-011-9560-7_7.

Gane, C. (1982). The European convention of human rights and municipal law – a Scottish view, *The Liverpool Law Review*. 4(2): pp. 169-74. DOI: 10.1007/BF03185321.

Humes, S. (1959). The units of local government, in: *The structure of local governments throughout the world: a comparative introduction*, pp. 12-30, Springer Netherlands, Dordrecht. DOI: 10.1007/978-94-015-1051-6_2.

Ibanga, M., Archibong, J. (2018). The Boko Haram insurgency: characterisation and implications under municipal and international laws, in: J.-M. Iyi, H. Strydom, eds. *Boko Haram and international law*, pp. 137-53, Springer International Publishing, Cham. DOI: 10.1007/978-3-319-74957-0_7.

Kunda, I., Mutabžija, J. (2017). Secondary liability of internet intermediaries and safe harbours under Croatian law, in: G.B. Dinwoodie, ed. *Secondary liability of internet service providers*, pp. 229-53, Springer International Publishing, Cham. DOI: 10.1007/978-3-319-55030-5_10.

Lioe, K.E. (2011). A comparative law, in: *Armed forces in law enforcement operations? – The German and European perspective*, pp. 1-188, Springer Berlin Heidelberg, Berlin, Heidelberg. DOI: 10.1007/978-3-642-15434-8_1.

Reif, L.C. (2004). Variations on the ombudsman concept, in: *The ombudsman, good governance and the international human rights system*, pp. 25-54, Springer Netherlands, Dordrecht. DOI: 10.1007/978-94-017-5932-8_2.

Sterns, P.M., Tennen, L.I. (2010). State and municipal regulation of the aerospace industry in the United States, in: S.R. Jakhu, ed. *National regulation of space activities*, pp. 467-83, Springer Netherlands, Dordrecht. DOI: 10.1007/978-90-481-9008-9_21.

Suleiman, L. (2016). A rights-based policy framework for governing municipal water services, in: N. Singh, ed. *The human right to water: from concept to reality*, pp. 185-203, Springer International Publishing, Cham. DOI: 10.1007/978-3-319-40286-4_11.

Visas in International and Municipal Laws. (2006). Retrieved July 10, 2018, from https://link.springer.com/chapter/10.1007%2F3-540-28971-2_2.

Walby, K., Luscombe, A., Lippert, R.K. (2014). Expertise and the professionalization of municipal corporate security in Canadian cities, in: K. Walby, R.K. Lippert, eds. *Corporate security in the 21st century: theory and practice in international perspective*, pp. 116-33, Palgrave Macmillan UK, London. DOI: 10.1057/9781137346070_7.

Weber, S. (2018). Long-term care benefits and services in Sweden, in: U. Becker, H.-J. Reinhard, eds. *Long-term care in Europe: a juridical approach*, pp. 495-530, Springer International Publishing, Cham. DOI: 10.1007/978-3-319-70081-6_13.

Wehlander, C. (2016a). Compatibility between EU secondary law on SGEIs and systems of choice in Swedish law: The cases of elderly care and school education, in: *Services of general economic interest as a constitutional concept of EU law*, pp. 297-339, T.M.C. Asser Press, The Hague. DOI: 10.1007/978-94-6265-117-3_9.

Wehlander, C. (2016b). Social services under the competence of Swedish local and regional authorities: SGEI? in: *Services of general economic interest as a constitutional concept of EU law*, pp. 273-96, T.M.C. Asser Press, The Hague. DOI: 10.1007/978-94-6265-117-3_8.

Wei, Ya. (2014a). Regulatory agencies and structures under concessions, in: *Regulating municipal water supply concessions: accountability in transitional China*, pp. 125-42, Springer Berlin Heidelberg, Berlin, Heidelberg. DOI: 10.1007/978-3-662-43683-7_6.

Wei, Ya. (2014b). Restricted competition in concessions and concessionaire selections, in: *Regulating municipal water supply concessions: accountability in transitional China*, pp. 43-70, Springer Berlin Heidelberg, Berlin, Heidelberg. DOI: 10.1007/978-3-662-43683-7_3.

Wei, Ya. (2014c). Water pricing regulations in the context of concessions, in: *Regulating municipal water supply concessions: accountability in transitional China*, pp. 71-97, Springer Berlin Heidelberg, Berlin, Heidelberg. DOI: 1007/978-3-662-43683-7_4.