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**ISSUES OF LEGAL REGULATION OF DISCIPLINARY RESPONSIBILITY
AND MORAL DENOUNCEMENT OF MUNICIPAL OFFICERS FOR
VIOLATION OF DUTIES CONCERNING CORRUPTION LEGISLATION**

SUMMARY. This article gives an account of the challenges of legal regulation of disciplinary liability and moral condemnation of municipal officials for corruption offences; the challenges of making the Corruption Counteraction Federal Act comply with the Municipal Service Federal Act. It would be efficient to unify for state and municipal officials the basis of dismissal due to loss of confidence. It is necessary to define the legal status of moral condemnation, its removal, limits and validity period and to detail the legal consequences of a moral condemnation in the Model Code of Ethics and Official Conduct for State and Municipal Officials in Russia.

KEY WORDS. Legal regulation, disciplinary liability and moral condemnation of municipal employees for corruption offences, obligations of municipal officials, corruption counteraction.

On December 23 2010, the Presidium of the Presidential Council on Anti-Corruption in its Protocol 21 approved the Model Code of Ethics and Official Conduct for State and Municipal Officials in Russia (hereinafter “the Code”) – the basis for the development of codes of ethics and conduct for government officials of different levels [1].

On the request of the Deputy Prosecutor General Yury Ponomarev, prosecutors, in cooperation with all law enforcement agencies of the Ural Federal District, continue to implement an array of measures to comply with the requirements of the National Plan and the National Anti-Corruption Strategy.

In 2012, Sverdlovsk Oblast had a steady practice of bringing officials and legal entities to administrative liability for engaging in illegal employment, performing the work or providing the services of a state or municipal official or a former state or municipal official. Also there were cases of affiliation of senior government officials with commercial organizations.

According to the official website of the Prosecutor’s Office of Khanty-Mansiisk Autonomous Okrug, there was a briefing on the topic of implementation by the Prosecutor’s Office of the National Anti-Corruption Plan and the National Anti-Corruption Strategy in 2012.

The results of inspection revealed more than two and a half thousand violations of law. Disciplinary charges were brought against 603 officials, administrative charges against 221 officials, 69 criminal cases were filed.

One of the priority areas was control over public procurement.

Prosecutors found 966 violations of public procurement legislation; disciplinary and administrative charges were brought against 270 officials.

Other areas in focus were housing and land use. There were numerous violations by housing organizations using budget funds of various levels, their own financial resources, including payments received from citizens for services provided [3].

The proceedings of the press conference on the implementation of the National Anti-Corruption Plan and the National Anti-Corruption Strategy by the Tyumen Oblast Prosecutor's Office in 2011 contain details on activities in this locality [4].

Problems arising from bringing charges against municipal officials for non-compliance with anti-corruption legislation show a need for further legal regulation. In this respect, special emphasis is placed on coordination of the anti-corruption obligations of municipal officials contained in the Corruption Counteraction Federal Act and in the Municipal Service Federal Act, and on the problem of the application of moral condemnation for violation of provisions of the Model Code by municipal officials.

According to Article 3 of the Municipal Service Federal Act, municipal officials are covered by labor legislation with the features provided by the abovementioned Federal Act [5].

In accordance with Article 192 of the Russian Labor Code, a disciplinary charge is considered legitimate if it is imposed reasonably and in compliance with the order of disciplinary liability [6].

Article 27 of the Municipal Service Federal Act states that an employer has a right to impose disciplinary sanctions for a disciplinary offense which is failure to perform or improper performance by a municipal official through his own fault.

The imperfection of legal regulation of the obligations assigned creates problems in the legal enforcement of disciplinary liability.

The Corruption Counteraction Federal Act contains the following basic obligations to comply with anti-corruption legislation: in Article 8 of the Act, the obligation for an official to provide information to his (her) employer about his (her) income, assets and material liabilities, as well as his (her) spouse and dependant children; in Article 9, the obligation to notify the employer, the prosecutor's office or other public bodies in all cases when anyone induces him (her) to commit corruption activities; in Article 11, the obligation to take measures to avoid any potential conflict of interest [7].

If an obligation to submit information about themselves and their family members, to notify in writing their immediate superior of personal interest in the performance of official duties which could lead to conflicts of interest, and to take measures to prevent such conflicts, is provided by Article 12 of the Municipal Service Federal Act, the duty to notify not only the representative of the employer, but also, as Art. 9 of the Corruption Counteraction Federal Act obliges, the prosecuting authorities or other public bodies of all cases referred, is not mentioned in the Municipal Service Federal Act.

Article 23 of the Model Code contains an additional obligation: a state (municipal) official endowed with organizational and administrative power in relation to other

state (municipal) officials must take steps to ensure that the subordinate state (municipal) officials do not engage in corrupt, dangerous behavior. Their personal behavior should set an example of honesty, fairness and justice [1].

Broadening the scope of anti-corruption obligations directly relates to the liability for non-compliance with them. Paragraph 24 of the Model Code notes that a state (municipal) official endowed with organizational and administrative powers in relation to other state (municipal) officials shall be liable for the acts or omissions of subordinate officials violating the principles of ethics and rules of conduct if he has not taken measures to prevent such acts or omissions.

Paragraph 29 also states that violation of the provisions of the Model Code by municipal officials leads to a moral condemnation pronounced at the meeting of the commission in charge of the compliance with the requirements of conduct of state (municipal) officials and resolving conflicts of interest. Such a commission is formed in accordance with the Decree of the Russian President dated July 1, 2010 (№ 821) on Committees on the Compliance with the Official Conduct of Federal Officials and on Resolving Conflicts of Interest. In some cases provided for by federal law, violation of the provisions of the Model Code entails the use of official state (municipal) measures of legal liability. [1]

This raises the question: what is the legal status of a moral condemnation?

Section 4 of Article 6 and Section 3 of Article 9 of the Corruption Counteraction Federal Act contain a provision for alternative liability in the form of dismissal or other measures of legal liability for state or municipal officials guilty of not submitting information or submitting knowingly inaccurate or incomplete information about their income, assets and material liabilities, spouse and dependant children [7]. But is it possible to pronounce a moral condemnation for other measures of legal liability, or is it a special mode of action for violation of the provisions of the Model Code?

Particular attention should be paid to the fact that moral condemnation leads to negative legal consequences, as Section 29 of the Model Code states that compliance with the provisions of the Model Code is considered when conducting appraisals, forming a personnel reserve for promotion to higher posts, as well as the imposition of disciplinary sanctions [1].

Thus, moral condemnation as a special mode of action for violation of provisions of the Model Code raises many questions. Firstly, the legal status of moral condemnation and of the legal act introducing it – the Model Code. Secondly, what is the form of a moral condemnation (oral or written), and can it be opposed? Thirdly, what is the evaluative nature of a moral condemnation, what are its nature, scope, duration and so on.

Excepting the innovations noted above (which could also be called “old news”, as such sanctions were applied in Soviet times), it should be noted that by Federal Act № 329 of November 21 2011 on Amendments to Certain Legislative Acts of Russia in connection with the improvement of public administration in the field of anti-corruption [8], the Municipal Service Act was amended with the provision for dismissal due to lack of confidence [5].

Under Part 2 of Article 27.1 of the Municipal Service Federal Act, a municipal official shall be dismissed from municipal service for loss of confidence related to offenses established by Articles 14.1 (the settlement of conflicts of interests in the municipal service) and Article 15 (information on the income, property and obligations of a municipal official) [8].

The State Civil Service Federal Act extends the foundations for dismissal due to loss of confidence. According to Art. 59.2, a civil servant shall be dismissed for lack of confidence in the event of:

- 1) failure to prevent and (or) to settle a conflict of interest to which he (she) is party;
- 2) failure to provide information about his (her) income, assets and material liabilities, as well as his (her) spouse and dependant children, or deliberate submission of false or incomplete information;
- 3) assuming a paid position in management of a commercial organization, except for cases established by federal law;
- 4) entrepreneurial activities;
- 5) assuming a position in the administration, trustee or supervisory boards and other bodies of foreign non-profit organizations and their offices in Russia, unless otherwise stipulated by an international treaty of Russia or a legislative act of Russia.

A representative of an employer who becomes aware of a subordinate civil servant's personal interest which results or may result in a conflict of interest shall be dismissed due to lack of confidence in the case of his (her) failure to prevent and (or) settle the conflict of interests [9].

The existence of different motives for dismissal due to lack of confidence is quite debatable, as Article 6 of the Corruption Counteraction Federal Act as a measure of corruption prevention indicates the introduction of anti-corruption standards, i.e. a unified system of prohibitions, restrictions and permissions for the corresponding sphere for ensuring prevention of corruption in this area, as well as the unification of the rights, restrictions, prohibitions and obligations of state and municipal officials [7].

Therefore, it is advisable to unify the motives of dismissal for state and municipal officials due to loss of confidence. Article 12 of the Municipal Service Federal Act should be amended with an obligation to notify not only a representative of the employer, but also the prosecutor's office or other public authorities of all cases when any person induces an official to corruption offenses. The Model Code needs to define the legal status of moral condemnation, its form (oral or written), limits, expiration date, as well as specify the legal consequences of moral condemnation, which will contribute to the goals and objectives of the National Anti-Corruption Plan [10].

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