

FEATURES OF ADMINISTRATIVE PROCEEDINGS IN THE APPLICATION OF INCENTIVE MEASURES TO CIVIL SERVANTS

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Abstract:

This article reveals the relations that arise in the civil service system when applying incentive measures to a civil servant, public-private features of the legal regulation of incentive measures for a civil servant, the circle of subjects in work related to the study of the application of incentive measures to a civil servant, the legal order promotion of a civil servant, the procedure for starting work related to promotion, at the initiative of a civil servant.

Keywords: State civil service, incentives, procedures, public and private characteristics, business management, subjects, attitude, representatives, employer, employee.

INTRODUCTION

Promotion of the civil servant is carried out within the framework of certain works. In order to prevent various violations in the field, it is important to regulate these relations within certain procedures.

As S. E. Chanov pointed out, it is of particular importance today to ensure the correct implementation of relations regarding incentives within the framework of the reform of the public service institution. In addition, the essence of the professional activity of a state civil servant is manifested in serving the entire society, not a particular authority or official, therefore, the regulation of these legal relations plays a general social role¹.

Relations that arise in the civil service system during the application of incentive measures to civil servants are a type of public-service legal relations. The problems of their legal regulation have been the subject of scientific discussion for a long time. That is, the question of whether the legal regulation of relations regarding the promotion of civil servants should be within the framework of "public service" and "labour law" is becoming more and more important.

Taking into account the well-known concepts of combining the public and private features of the legal regulation of the state civil servant's incentive measures, by Yu.N. Starilov "... at the moment it is difficult to talk about the public-legal nature of these legal relations. it is emphasized that even in countries with developed systems, experts recognize the difficulty of

¹ Чаннов С. Е. Служебное правоотношение : понятие, структура, обеспечение / под ред. В. В. Володина. М. : Ось-89, 2009. С. 8.

distinguishing between the principles of public and private law in the organization and operation of the public service.

It should be noted that determining the scope of subjects in the process of applying incentive measures to civil servants is quite controversial. L.A. Chikanova divides subjects in incentive relations into three groups: the employer, his representative and the state civil servant. The researcher focuses on the fact that the employer side of the subject is two. Two subjects can act simultaneously as the state employer and the employer's representative - the state - in civil service relations. Thus, three subjects participate in the legal relations of the state civil service - the employer, his representative and the civil servant. According to the scientist, the relationship between the civil servant of the state and the employer is the parties of the civil service relationship, and the relationship between the civil servant and the employer's representative is the party of the labor relations. We do not agree with this opinion. The relationship regarding the promotion of the public civil servant is an element of the public civil service relationship.

In this regard, S. E. Channov, the state actually performs the functions of the employer, because it determines the conditions of the incentive activity through legal regulation. At the same time, the scientist notes the tendency to give too much discretion to the representative of the employer, giving rise to the idea of his independence as a subject of this legal relationship. According to the scientist, the representative of the state and the employer are in one position and they are a single subject. Currently, there are no serious grounds for recognizing the employer's representative as an independent subject of this legal relationship. Thus, the parties are always the employee and the employer. It emphasizes that the structure of incentive relations can be defined as a set of interrelated elements, including subjects (participants), the object and its structure (rights and obligations of participants)².

A.B. Agapov defines the relationship of applying incentive measures to state civil servants as a type of social relationship arising in connection with the provision of powers of the state body. Taking into account the structure of this legal relationship, the scientist divides its participants into mandatory and voluntary types. In the first group, the researcher includes the employer (state body) or his representative, as well as the state civil servant. Voluntary participants of legal relations of promotion are subjects of public or private law, depending on its type, who enter into these relations in connection with the exercise of rights or performance of duties to a state body. In this case, the obligations of the state as an employer are connected with the corresponding rights of the state civil servant, compliance with which is ensured by the relevant state body. Incentive legal relationships may include expert or award commissions to voluntary participants. The participation of these entities in the implementation of legal relations is related to the specific features of the specific procedure within the framework of incentive proceedings in the civil service system.

It is important to establish certain legal relations in the promotion of the civil servant of the state. A. V. Polyakov stated that such a legal relationship occurs in the form of existing rights

² Чаннов С. Е. Службное правоотношение... С. 27–28.

and obligations of subjects. That is, on the basis of a legal fact, mutual rights and obligations arise between certain subjects and are formed within the framework of their legal interaction. Legal relations, which exist in parallel with legal relations, help to determine the legal possibilities of certain actions.

As N.A. Gushchina noted, the opportunity to reward for good behavior can be implemented in accordance with the law. But legal relations as an interdependence of certain rights and obligations may not arise due to the absence of a subject with the ability to perform conscious actions and actions. Legal relations by themselves do not create stimulating legal relations without identifying a social person capable of responding to external stimuli, as well as without a legal fact³.

Legal relations related to the use of privileges in the state civil service system should be defined as incentive legal relations in the state civil service system.

If there are grounds for promoting a civil servant, the employer's representative has the right to initiate a motion to apply appropriate measures to him, which is given as a submission containing a description of the grounds for the promotion.

The power to demand the exercise of promotion rights can in theory be exercised by initiating an individual service dispute. Individual service disputes in the field of promotion of civil servants are a special type of civil service disputes. An individual service dispute is an unresolved dispute between an employer's representative and a civil servant or a person entering or previously serving in the civil service, including disputes regarding the application of laws, other normative legal documents, civil service and service contracts.

As E.V. Trofimov noted, there is no side of the work in the award process, because the award work is focused only on consent, and conflict of interests is not allowed in the award process. The author notes that the determination of such a contradiction is an unconditional basis for the termination of proceedings in the case of incentives. The scientist emphasizes the important criterion of the difference in the status of its participants, their role in forming and expressing the public assessment of the actions of the person who is presented for encouragement.

In the scientific literature, different opinions are expressed about the legal structure of the state civil servant promotion. Motivating entities include the motivating entity and its agents who perform the final decision-making and execution functions. The authority of the incentive person includes making decisions of material and legal importance (incentive, its cancellation, succession, deprivation of the incentive, restoration of the right to incentive). In the process of promotion, his main legal tasks are to consider issues related to the promotion of a certain person or team, as well as to bring to the attention of the promoted person or to transfer such promotion to his legal successors. The heads of state authorities, the representative of the employer of the civil servant, his direct supervisor, the employees of the civil service department and the territorial division of the state authority, the heads of organizations, the reward commission can be the agents of the incentive person.

³ Гущина Н. А. Поощрительные нормы российского права : теория и законодательная практика. СПб. : Юридический центр «Пресс», 2003. С. 9.

Based on the above, it is important to determine the business entities and its legal content in the legal regulation of business relations related to the promotion of civil servants. From this point of view, in our opinion, business entities can be divided into encouraging, encouraged and other participants of business.

Encouraging subjects can include the head of the state body and special commissions established for this purpose.

Encouraging entities may include state civil servants and their legal successors.

Other participants of the promotion process may include the following depending on the type of process:

- incentive initiator;
- persons who do not recommend that approval authorities, their representatives support the request for incentives or, on the contrary, apply appropriate measures against a specific person;
- presenting body, bodies making submissions on presentation for award, its cancellation, as well as restoration of rights for award;
- experts, persons providing professional opinion if there is a relevant request by the promoting entity.

The appropriate obligation of the incentive entity to provide tangible or intangible benefits is the subject of a long academic debate, in which various options are proposed to eliminate such a gap in the legislation. The current state civil service legislation allows us to talk only about the right of the representative of the employer of the civil servant to consider the possibility of promoting the employee if there are sufficient grounds.

It is known that legal relations are relations between persons who have mutual subjective rights and obligations arising on the basis of legal norms and as a result of the occurrence of certain legal facts. In the state civil service system, the discretion of the employer's representative is exercised only at the initiative of the leader, according to his inner confidence, by taking actions and making decisions based on a subjective analysis of situations, events, and the personality of the subordinate subject without external influence, but within the framework of the legal regulation of the state. The head of the employee has the right to apply within the powers of incentives of any type and form.

V. M. Manokhin rightly points out that there is a serious issue related to service promotion: does a civil servant of the state have the right to be promoted on his own initiative?⁴. The answer to this question is "no" based on national legislation. There is no practice of initiating the promotion of a civil servant at his initiative. In the legislation, the application of measures to encourage the state civil servant is opened at the discretion of the leader.

Representatives of legal science tried to justify the specific features of the legal nature of the motivational subject's discretion and to suggest ways to ensure the employee's subjective right to motivation. However, this shows that there are problems in strengthening the framework of the legislation.

⁴ Манохин В. М. Служба и служащий в Российской Федерации : правовое регулирование. М. : Юрист, 1997. С. 47–49.

According to Article 45 of the Law of the Republic of Uzbekistan "On State Civil Service", the application of incentive measures to state civil servants is carried out by the head of the state body or according to his recommendation⁵. Therefore, the process of promoting a civil servant of the state begins directly with the initiative of the motivating entity.

There is a lot of debate about this in the scientific literature. In particular, V. Vinokurov and S. Karinsky state that when a state civil servant performs actions suitable for encouragement, he should express the initiative of encouragement⁶.

Ts.A. Yampolskaya said that in order to start the work on incentives at the initiative of the state civil servant, it is necessary to develop clear standards and indicators for the implementation of this right⁷. Of course, you can agree with this opinion. Because there are no specific standards and regulations, there may be cases of taking this initiative by a state civil servant who has not achieved a positive result.

By V.M. Baranov, taking into account the origin of the above problems, he considers the possibility of using the right to incentives depending on the conditions and results specified in the incentive norms, and according to the criterion of legal consequences, he distinguished the norms that create the right to incentives and the norms that do not create such a right⁸.

One of the other issues that prevent the introduction of the procedure for initiating the promotion of a civil servant at his initiative is related to the resolution of disputes in this regard. Jurisprudence stipulates that the promotion of a state civil servant is at the discretion of the administrative body. According to the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan "On judicial practice regarding the consideration of cases of appeals against the decisions, actions (inaction) of administrative bodies and their officials", taking or not taking a decision according to the law or other regulatory legal document, the implementation or non-implementation of an action is at the discretion of an administrative body or an official, the court has no right to assess the expediency of taking such a decision or not, the implementation or non-implementation of an action. For example, when complaining about the inaction expressed in the failure to receive a document on awarding a specific person, he does not have the right to assess its appropriateness⁹.

⁵ Қонунчилик маълумотлари миллий базаси, 09.08.2022 й., 03/22/788/0723-сон

⁶ Бару М. И. Охрана трудовой чести по советскому законодательству. М. : Юрид. лит., 1966. С. 15–16 ; Винокуров В. А. Юридическая обязанность государства пожаловать награду // Юрист. 2010. № 7. С. 10 ; Гушина Н. А. Поощрительные нормы российского права : теория и законодательная практика. СПб. : Юридический центр «Пресс», 2003. С. 54–56 ; Российское административное право : учебник / Манохин В. М., Адушкин Ю. С., Багишаев З. А. М. : Юрист, 1996. С. 127–128 ; Каринский С. С. Поощрения за успешный труд по советскому праву. М. : Госюриздат, 1961. С. 34–36.

⁷ Ямпольская Ц. А. О субъективных правах советских граждан и их гарантиях // Вопросы советского государственного права. М. : Изд-во АН СССР, 1959. С. 183 ; Её же. Административно-правовые вопросы укрепления государственной дисциплины. М. : Изд-во АН СССР, 1955. С. 133.

⁸ Баранов В. М. Правовые формы поощрения в развитом социалистическом государстве : сущность, назначение, эффективность. Саратов : Изд-во Саратов. ун-та, 1975. С. 42 ; Его же. Поощрительные нормы советского социалистического права. Саратов : Изд-во Саратов. ун-та, 1978. С. 62–64.

⁹ <https://lex.uz/docs/4711311>

It is important to clarify terms such as "effective state civil service" and "special services" in the introduction of the procedure for starting promotion work at the initiative of a state civil servant.

REFERENCES:

1. Чаннов С. Е. Служебное правоотношение : понятие, структура, обеспечение / под ред. В. В. Володина. М. : Ось-89, 2009. С. 8.
2. Старилов Ю. Н. Служебное право России : уже реальность или пока научная гипотеза? // Правовая наука и реформа юридического образования. 2013. № 3 (26). С. 102.
3. Чиканова Л. А. Применение трудового законодательства к служебным отношениям на государственной гражданской службе : теория и практика : дис. ... д-ра юрид. наук. М., 2005. С. 16–17.
4. Чаннов С. Е. Служебное правоотношение... С. 27–28.
5. Агапов А. Б. Административное право. В 2 т. Т. 1. Общая часть : учебник для бакалавриата и магистратуры. 10-е изд., перераб. и доп. М. : Юрайт, 2016. С. 242.
6. Поляков А. В. Общая теория права : курс лекций. СПб. : Юридический центр «Пресс», 2001. С. 542– 543.
7. Гуцина Н. А. Поощрительные нормы российского права : теория и законодательная практика. СПб. : Юридический центр «Пресс», 2003. С. 9.
8. Чаннов С. Е. Служебное правоотношение... С. 54.
9. Жураев, А. (2022). Правовая основа применения мер поощрения на государственной службе. Общество и инновации, 3(8/S), 326–335. <https://doi.org/10.47689/2181-1415-vol3-iss8/S-pp326-335>
10. Alisher Nasirdinovich Juraev. (2022). NATIONAL AND FOREIGN EXPERIENCE OF STIMULATING CIVIL SERVANTS. World Bulletin of Management and Law, 14, 84-87. Retrieved from <https://www.scholarexpress.net/index.php/wbml/article/view/1390>
11. Жураев, А. . . (2022). ДАВЛАТ ФУҚАРОЛИК ХИЗМАТИДА РАВБАТЛАНТИРИШНИНГ ҲУҚУҚИЙ ТАҲЛИЛИ. Theoretical Aspects in the Formation of Pedagogical Sciences, 1(7), 220–226. извлечено от <http://www.econferences.ru/index.php/tafps/article/view/2824>
12. Juraev, A. (2022). THE CONCEPT OF ENCOURAGING CIVIL SERVANTS: THEORETICAL AND LEGAL ANALYSIS. Eurasian Journal of Academic Research, 2(13), 669–676. извлечено от <https://www.in-academy.uz/index.php/ejar/article/view/7491>
13. Трофимов Е. В. Наградное право (процессуальная часть) : электрон. учеб. пособие. СПб. : Северо-Запад. филиал Российской прав. акад. Мин-ва юстиции Российской Федерации, 2014. С. 42.
14. Манохин В. М. Служба и служащий в Российской Федерации : правовое регулирование. М. : Юрист, 1997. С. 47–49.
15. Конунчилик маълумотлари миллий базаси, 09.08.2022 й., 03/22/788/0723-сон
16. Бару М. И. Охрана трудовой чести по советскому законодательству. М. : Юрид. лит., 1966. С. 15–16

17. Винокуров В. А. Юридическая обязанность государства пожаловать награду // Юрист. 2010. № 7. С. 10
18. Ямпольская Ц. А. О субъективных правах советских граждан и их гарантиях // Вопросы советского государственного права. М. : Изд-во АН СССР, 1959. С. 183 ; Её же. Административно-правовые вопросы укрепления государственной дисциплины. М. : Изд-во АН СССР, 1955. С. 133.
19. Alisher Nasirdinovich Juraev. (2022). Specific Characteristics of Types of Incentives in the State Civil Service. Eurasian Journal of Humanities and Social Sciences, 10, 4–8. Retrieved from <https://geniusjournals.org/index.php/ejhss/article/view/1869>
20. Жураев, А. . (2022). Понятие поощрения на государственной службе и её особенности. Общество и инновации, 3(6/S), 105–112. <https://doi.org/10.47689/2181-1415-vol3-iss6/S-pp105-112>
21. Гущина Н. А. Поощрительные нормы российского права : теория и законодательная практика. Спб. : Юридический центр «Пресс», 2003. С. 54–56
22. Российское административное право : учебник / Манохин В. М., Адушкин Ю. С., Багишаев З. А. М. : Юрист, 1996. С. 127–128
23. Каринский С. С. Поощрения за успешный труд по советскому праву. М. : Госюриздат, 1961. С. 34–36.
24. Баранов В. М. Правовые формы поощрения в развитом социалистическом государстве : сущность, назначение, эффективность. Саратов : Изд-во Саратов. ун-та, 1975. С. 42 ; Его же. Поощрительные нормы советского социалистического права. Саратов : Изд-во Саратов. ун-та, 1978. С. 62–64.
25. <https://lex.uz/docs/4711311>