

ПРОБЛЕМЫ ПУБЛИЧНОГО ПРАВА

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S.V. Vedyashkin, R.V. Nagornikh

NEW CONCEPT OF PUBLIC SERVICE OF THE RUSSIAN FEDERATION IN LAW ENFORCEMENT: THE TIME HAS COME

The article gives proof of the conclusion about the necessity of further improving administrative and legal institution of state service in law enforcement. In author's opinion, the main concept trends are: forming the uniform system of public service in Russian law enforcement as a holistic administrative and legal institution, improving the public service management system in Russian law enforcement; implementing some effective techniques and modern methods of personnel policy in public service of law enforcement and the effectiveness of professional activity of law enforcement officers, implementing the effective anti-corrupt practices and deciding other associated issues.

Keywords: public service, law enforcement, personnel, management system, public service concept.

The state law enforcement as a complex social and legal category is a set of social relations connected with the maintenance of law-and-order, the consolidation of legitimacy, ensuring of personal, public and state security as well as law and organization means regulating them. The central place is taken by specialized law enforcement agencies of executive power and their officials – the law enforcement state employees permitted with authority to perform the law enforcement duty. Law enforcement, in turn, must be carried out by qualified and professionally trained law enforcement officers, and the legal regulation of public service in them must meet modern requirements for the formation and development of a democratic state.

In Russia's law enforcement the public service management system has a complex structure and functional-target content. There are a lot of public authorities used for the purposes of management that make up a system of management. Consistency is the basic and the most important feature of public management and it is that makes the management a purposeful, coordinated and effective process.

The purpose of public management system in law enforcement is defined by its functions – methods and kinds of its assignment. As it is noted in some publications, the essence of public management system is that it must always achieve a certain goal. The elements of public management are sure to be interconnected and interdependent and directed towards achieving the necessary result, and the

integrative degree is an indicator of its unity [1. P. 10–11]. At the same time the management system is sure to have its own structure – an internal form of system organization.

The modern theory of management and administrative law proceeds from the fact that public management includes two systems: a managing system (a subject of management) and a managed system (an object of management) [2. P. 23–29]. Thereupon in general the objective of public service in law enforcement is to have a regulating and organizing influence on the law enforcement agencies, on one hand, and on their officials, on the other hand, – on public relations that come into service during officers' professional activity in law enforcement.

A special position in the structure of public management is taken by legal regulation, that in V.E. Chirkin's opinion, «penetrates into every stage of state management procedure as it is impossible to provide necessary subordination and coordination in the interrelations between numerous subjects of management activity without legal mediation» [3. P. 99–100]. At the same time it is administrative and legal regulation that is a base of public management. In B.M. Lazarev's opinion, its main point is «public authorities' organizing, executive and administrative activity conducted on the basis of laws and in the performance of laws and including daily practical functions of government» [4. P. 7], that gives us a possibility to consider an administrative system of public law enforcement service as public and management activity conducted by special administrative and legal means and connected with realization of law enforcement functions of state.

Besides it is necessary to underline that in modern Russian law there is a certain idea about the state administration as an organizing, executive and administrative activity of public and local authorities, social and other private organizations authorized with state power. It is conducted based on laws and other standard acts [5. P. 21–23]. All branches of state power perform such activity: legislative, executive and judicial power. They reach state's common objectives using some certain strategy of domestic and international policy including law enforcement. Public management is one of forms of such activity and it has state power character [6. P. 4], it is an organizing and direct activity in social, political, cultural, intersectional and economic spheres and other areas and it is conducted by special authorized agents of management [7. P. 7–12]. By-turn some foreign sources mention that public management becomes more socially oriented and it is based on the complex interaction social strategies which «serve common well-being and common interests and provide some social services using the results of public actions» [8. P. 622]. All I have said above is sure to concern the management system of public law enforcement service that also has the features mentioned above: state power character, power and subjection relations, subordination and coordination, special legal status of parties to the legal relationship, application of special methods to regulate the legal relationship, socially determined character and direction to reach the effectiveness of public actions.

The management system of public law enforcement service is characterized by available independent parties. Their list is rather big because of the difficult

character of state and service legal relationship itself and the differences in administrative and legal status of their participants.

The parties of law enforcement management are state bodies of general and branch competence as well as specialized law enforcement executive authorities and lower organizations, i.e. some special bodies of state law enforcement management¹.

The special law enforcement bodies are federal bodies of executive, legislative and judicial powers. Within their competence they are authorized to form and to realize state service powers in law enforcement. They include branch departments, federal services and federal agencies established in accordance with the decree of the President of the Russian Federation dated March, 9, 2004 № 341 (version dated May, 12, 2016) «On the system and structure of federal bodies of executive power», one of their basic functions is law enforcement.

The management of public law enforcement service has some general features of any kind of social management (they are a set of elements making up management process and available main and additional functions) is also characterized by some specific features connected with administrative (including administration and management, administration and prevention, administration and jurisdiction), operational search, criminal procedure and other procedural activities.

The public administration of law enforcement service has a certain object of administration that in general covers the organization and functioning of this kind of professional activity including the matters of officials' legal status, guarantees of their rights and administrative and legal procedures of admitting the law enforcement service, servicing and retiring.

As an object of management the public law enforcement service is a set of service and organizational legal relationship connected with the law enforcement staff's service. This legal relationship has a complicated and inhomogeneous structure. It differs by content, subjects and grounds for their origin.

The peculiarities of organizational legal relationship in the public law enforcement service are determined by 4 groups of factors and conditions:

- 1) the social, economic and demographic state of society;
- 2) the state of functional environment of public law enforcement that is the crime level and administrative tort, available threats of personal, social and state safety;
- 3) the qualitative state of public law enforcement system, the degree of effective task solving in law enforcement;
- 4) the state of law enforcement personnel, the level of officers' service training, their ethical, moral and business qualities.

¹ The author's note: The special bodies of Russian public service management in law enforcement are bodies and agencies of the Ministry of the Russian Federation Interior, the Ministry of the Russian Federation for Civil Defence, Emergencies and Elimination of Consequences of Natural Disasters, the Federal Service of the National Guard of the Russian Federation, the State Courier Service of the Russian Federation, the Federal Customs Service, the Federal Penal Service and the Federal Bailiff Service.

Generally, the improvement of public administration of law enforcement service should be considered through the prism of the most appropriate decision-making in the sphere of maintenance of law and order and crime-fighting. The effectiveness of the public law enforcement service in turn can be assessed only through the effectiveness of the whole law enforcement activity of the State.

One of the most important direction for improving the system of public law enforcement service is anti-corruption. Some special foreign researches mention that in Russian law enforcement agencies corruption is a kind of system. Corruption appears when a group, gang or clan of people is losing their moral sense and overestimating their personalities, role and place in their lives. The corruption as a system is evident in forming the interdependence between officials at the different levels of management, various departments and bodies organized by corruptive net groups [9. P. XVII]. Under such conditions the development of service legislation in law enforcement area should provide for administrative control, criminal and legal prohibition, a wide set of prevention and education measures directed to increasing the level of legal awareness and legal culture of law enforcement officers.

In this regard, a new democratic concept of public service in law enforcement must comply with the basic constitutional values within the framework of the established doctrine of administrative constitutionalism in the world community [10. P. 110] and should focus on protecting the rights and legitimate interests of citizens, creating collaborative mechanisms for institutions of civil society and public service, countering corruption in state service, raising its prestige and strengthening the authority of public service employees. The State should take active steps toward the improvement of the control system in law enforcement sphere.

As noted the main goals and objectives of reforming the general public service system in the Russian Federation were formulated within the Concept for the state service reform. It was pointed out in the Concept 2001 that the public service system is an integrated common, social, legal, organizational institution for performing the State's functions by public service employees as well as for conducting the activities of governmental authorities, their apparatus, other governmental bodies formed in accordance with the Constitution of the Russian Federation, separate state facilities and organizations or powers of persons who hold both public office (in compliance with the Constitution of the Russian Federation and Federal Constitutional Laws) and constitutional (statutory) posts in the regions of the Russian Federation (accordingly to the constitutions (codes) of entities of the Russian Federation) [11].

In the 2000-s the state service reform was carried out through the administrative reform and in close connection with the reorganization of the federal executive authorities and their territorial bodies. The effectiveness of public service was attended by optimization and stabilization of the structure of authority bodies and their apparatus, by differentiation of tasks, functions, powers and responsibilities of state agencies and their units.

The Concept 2001 noted that there was established a correspondence between the nature of functions fulfilled by a public organ, its subdivision, and the peculiarities of planning and funding of its activity. In particular, a clear dis-

inction between the functions to define public policy and regulatory principles in a specified field and the functions to implement public policy and provision of public services was made.

Thus in order to determine an area of responsibility of federal executive authorities, optimize their structure and improve the mechanism of their functioning four types of federal executive bodies were established on the base of their main functions and tasks: federal ministries, federal services, federal supervisory authorities, Russian agencies. This provision became the basis for the Decree of the President of the Russian Federation dated 9 March 2004 № 314 «On the system and structure of federal executive authorities», defining line ministries, federal services and federal agencies, which carry out their law enforcement activity that is the activity aimed at the maintenance of law and order, protection of personal, social and state security from unlawful encroachments as their main functions.

Differentiation of functions of the federal executive authorities was accompanied by improving the mechanism for monitoring the administration performance of the bodies, by increasing their responsibility for the results of this activity. These measures were guaranteed by the introduction of uniform provisions on federal bodies of executive power and their territorial entities, as well as on subdivisions of central apparatus of federal agencies of executive authority with a view of regulating the work of the bodies (which in turn excludes duplication), determining the procedure and time-frames of implementation of management decisions. The contents of the provisions on federal executive bodies was public and became the basis for resolving disputes between citizens and organizations, on the one hand, and federal bodies of executive power, on the other hand.

The procedure for the formation of units of federal executive bodies was elaborated and the transition to the flexible (modular) construction principle of central apparatus of federal ministries and their territorial bodies was developed. The main subdivisions of the federal ministry were the department in the central apparatus and the territorial body in the region, both empowered by certain authorities. Changing the structure of the federal executive bodies contributed to the transfer of some tasks and functions of the organs through the resubordination of one federal ministry's departments and local agencies with their staff and funding to another one.

Measures taken during the implementation of the Concept 2001 and aimed at improving public service administration in law enforcement helped raise the level of requirements in matters of access to public service in the sphere, doing service, its termination, training, refreshment courses for law enforcement officials, created conditions for establishing the system of public service management in law enforcement.

In order to develop the Concept 2001 the Federal Program «Public service reform in the Russian Federation (2003–2005)» [12] was adopted, which has been expanded to 2006–2007 [13]. A number of provisions of the document was devoted to the formation of the state service administration system which according to legislators is necessary for the unity of public service of the Russian Federation, cooperation of public authorities with civil society structures, coor-

dination of the activities of state bodies on issues relating to recruitment to the public service, its doing and termination, as well as professional development of law enforcement officials.

It was supposed to attain the objective: by means of the unity of the system of public service administration in the Russian Federation and its division into two levels – the federal one and the level of constituent entities of the Russian Federation; the coordination of the activities of units of state organs on issues of public service and staff; the cooperation with local authorities; the openness of the public service administration system for citizens and society.

On 10 March, 2009 the Decree of the President of the Russian Federation № 261 “On the Federal Program “Reform and Development of the Public Service in the Russian Federation (2009–2013)” was adopted [14]. It established that in order to improve the state service system in the Russian Federation, enhance the performance of public service employees’ professional activity in accordance with the law “On the system of public service of the Russian Federation” in 2009–2013, it was required to implement activities aimed at further reforming and development of the described system. In general the activities outlined in the Program were carried out, but for the subsequent period such a policy document was not adopted. Thus, currently the main directions of improvement and elaboration of the system of public law enforcement service conceptually are not defined, which causes fundamental difficulties in defining the basic vector of development of public administration in the sphere.

In that regard, we believe that there is a need to elaborate a new development vision of state law-enforcement service of the Russian Federation, where the following general directions should be reflected:

- the formation of a unified public service system in law enforcement sphere of the Russian Federation as a coherent administrative and legal institution;
- the development of the public service administration system in law enforcement;
- the implementation of effective technologies and modern methods of personnel work in the public law enforcement service;
- increasing the efficiency of the state law enforcement service and the performance of law enforcement officers’ professional activity;
- the introduction of effective anti-corruption procedures and resolving other concomitant tasks.

The purpose of the new Concept of public law-enforcement service in the Russian Federation is in creation of a unified and integrated system of state law-enforcement service of the executive branch by means of accomplishing the definition of public law-enforcement service varieties at the legislative level, establishing a uniform centralized public service administration system in the sphere, recruiting highly qualified employees ensuring the efficiency of public administration and development of civil society and innovative economy.

To reach the goal it will be necessary to pursue the following objectives:

- ensure the standardization of law-enforcement, municipal and other forms of state service;

- form a modern legal framework for public service in law enforcement sphere on the basis of humanistic principles regarding the primacy of individual rights and freedoms over the interests of the State and society;
- establish a unified centralized administration system of public law enforcement service;
- improve institutional and legal mechanisms for professional activities of law-enforcement employees with the aim of enhancing the quality of public services provided to citizens and organizations by law-enforcement agencies;
- develop and elaborate anti-corruption mechanisms of state law-enforcement service;
- build a system for public opinion monitoring in terms of the efficiency of public law-enforcement service and the performance of employees' professional activity in the sphere;
- implement effective technologies and modern personnel practices aimed at enhancing professional competence of public officials in law-enforcement, establishing conditions for their efficient professional activities.

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Vedyashkin Sergey V., Tomsk State University (Tomsk, Russian Federation), Nagornikh Roman V., Vologda Institute of Law and Economics of the Federal Penal Service of Russia (Vologda, Russian Federation)

C.B. Ведяшкин, Р.В. Нагорных

НОВАЯ КОНЦЕПЦИЯ ГОСУДАРСТВЕННОЙ СЛУЖБЫ РОССИЙСКОЙ ФЕДЕРАЦИИ В ПРАВООХРАНИТЕЛЬНОЙ СФЕРЕ: ВРЕМЯ ПРИШЛО

Ключевые слова: государственная служба, правоохранительная сфера, кадровое обеспечение, система управления, концепция государственной службы.

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В Российской Федерации система управления государственной службой в правоохранительной сфере имеет сложную структуру и функционально-целевое содержание. Для целей управления используется большое количество государственных органов, которые в совокупности составляют систему управления. Системность – основной и важнейший признак государственного управления, и именно она придает управлению целенаправленность, согласованность и эффективность.

Система управления государственной службой в правоохранительной сфере характеризуется наличием самостоятельных субъектов. Их перечень достаточно широк. Это объясняется сложным характером самих государственно-служебных правоотношений, различиями в административно-правовом статусе их участников.

В настоящее время основные направления совершенствования и развития системы государственной службы в правоохранительной сфере концептуально не определены, что создает принципиальные трудности в определении основного вектора развития государственного управления в данной сфере.

В этой связи необходима разработка новой государственной концепции развития государственной службы в правоохранительной сфере, в которой должны быть отражены следующие основные направления ее развития:

- формирование единой системы государственной службы в правоохранительной сфере Российской Федерации как целостного административно-правового института;

- создание системы управления государственной службой в правоохранительной сфере;

- внедрение на государственной службе в правоохранительной сфере эффективных технологий и современных методов кадровой работы;

- повышение эффективности государственной службы в правоохранительной сфере и результативности профессиональной служебной деятельности служащих правоохранительных органов;

- внедрение эффективных антикоррупционных процедур и решение иных сопутствующих вопросов.

Цель новой Концепции государственной службы в правоохранительной сфере Российской Федерации – создание единой и целостной системы государственной службы

в правоохранительной сфере органов исполнительной власти посредством завершения определения на законодательном уровне подвидов государственной службы в правоохранительной сфере, создания единой централизованной системы управления государственной службой в правоохранительной сфере, формирования высококвалифицированного кадрового состава служащих государственной службы, обеспечивающего эффективность государственного управления, развитие гражданского общества и инновационной экономики.