



Disciplinary Liability and Irresponsibility in Legal Security

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ABSTRACT This study aimed at determining gaps in legal regulation in the field of special disciplinary liability, which contributes to the legal irresponsibility and creation of threats to legal and national security. Therefore, as a novel strategy the researchers investigated all the existed and known types of disciplinary liability. Then, the regulatory legal acts fixing special disciplinary liability, which are currently contrary to the Constitution of the Russian Federation and the Labor Code of the Russian Federation, were identified and analyzed. According to the results, these contradictions are one of the manifestations of irresponsibility and pose a threat to both legal security and national security in general. Finally, some proposals will be made to improve legislation.

INTRODUCTION

This study analyzed all types of disciplinary liability and execution of which is most closely associated with the sources of higher dangers, which pose a threat to national security when the violation of the regulations causes a danger to the life and health of not only the workers. Thus, legal gaps, conflicts, contradictions or the contrary, excessive regulation in their management will be emphasized, which is one of the manifestations of legal irresponsibility.

Moreover, study of the gaps and conflicts in the field of disciplinary responsibility causes problems in legal security in the relevant areas of public relations because the latter is an integrative form of national security, providing legal ways to protect the basic vital interests of a state, society, and an individual.

Therefore, the study addressed the emerging trend of the expansion of the concept “national security: expansion, which is conditioned by the emergence of new types of threats, as well as the real social, economic, demographic, political, and other situations (Rohr 2017; Goold and Lazarus 2019).

In cases of administrative liability, a monetary penalty is imposed by agencies to which the violator is not occupationally subordinate, for example, the militia and the technical inspectorates of the trade unions (Dycus et al. 2011; Goldman and Maret 2016).

Labor discipline coexist in close correlation with the rights and duties of employees, and is a complex obligation of any employee, regarding

all their duties as a person employed under a legal labor contract that was completed and registered at the Territorial Labor Inspectorate. Only the legal duties arising from the legal relationship of employment, based on the employment contract, are part of labor discipline (Micle 2015; Vasilachi and Vasilachi 2018).

Objectives

Determining gaps in legal regulation in the field of special disciplinary liability, which contributes to the legal irresponsibility and creation of threats to legal and national security.

METHODOLOGY

The study is largely based on the formal legal method and induction, deduction, analysis, and synthesis methods. However, dialectical method and other general scientific methods of scientific knowledge of the social reality facts have found their application (Terziev et al. 2017; Chapchikov et al. 2018).

In this study, researchers will investigate all the existed and known types of disciplinary liability. Then, the regulatory legal acts fixing special disciplinary liability, which are currently contrary to the Constitution of the Russian Federation and the Labor Code of the Russian Federation, will be identified and analyzed.

The concept of “legal irresponsibility” is relatively new and is just beginning to “conquer” its place in the system of legal categories. As mentioned earlier, “legal irresponsibility at the

institutional level is the state of absence of the standard declaration of legal responsibility or other imperfections of legislation, which excludes the possibility of bringing to legal responsibility and its implementation, and at the level of implementation of legal norms - the state of public relations characterized by the commission of offenses, offender's withdrawal from responsibility, imposition of a legal punishment that does not correspond to the nature, degree of the immense danger of the offense, and the identity of the perpetrator" (Golder and Williams 2008; Ortmeier 2017; Lipinsky 2019).

There are various manifestations and signs of legal irresponsibility. Therefore, they can be attributed to the absence of the norms themselves, in which measures of legal liability are recorded that include declarative nature of norms and illegality of the normative legal act establishing legal liability, because its contestation may lead to actual evasion of legal liability (Segun 2014; Lipinsky 2019). However, avoidance of legal responsibility itself is one of the manifestations of legal irresponsibility of the public relation subjects.

It is notable that there is a direct relationship between legal irresponsibility and legal security, because it is one of the threats to legal security, and if we trace the logical relationship further, it would be also a threat to national security. All researchers of legal security focused on their one or other aspects. Therefore, according to Fomin (2007), "legal security as a special kind of social security can be considered as 1) the combination of measures, means, and methods of legal support (protection and defense) implemented in the legal system and 2) resultant state of legal protection (guarantee) of vital interests (statuses, regimes, etc.) of the subjects of law in connection with entry into the sphere of legal relations." However, the researchers considered the concepts "legal security" and "judicial security" as identical because they hide the old discussions about a broad and narrow understanding of law. In addition, the researchers noted that it "involves the protection of the legal system, legislation, and legal system as a whole from dangers and threats. ... By virtue of this, it occupies a central place in the national security system" (Sadler 2018).

In other words, legal security means institutional aspect of legal security and law enforcement. In fact, institutional aspect of legal security involves lawmaking that meets certain criteria.

Currently, a number of Decrees of the Russian Federation Government are in force, which regulate various types of special discipline of subjects of labor relations, including: the Decree of the Russian Federation Government of August 25, 1992 No. 621 "On approval of the Regulation of the railway workers discipline of the Russian Federation", the Decree of the Government of the Russian Federation of September 22, 2000 "On approval of the Charter on the support vessel crews discipline in the Navy", and the Decree of the Russian Federation Government of October 11, 1993 No. 621 "On the extension of the Regulation concerning the discipline of railway workers of the Russian Federation, approved by the Decree of the Russian Federation Government on August 25, 1992 No. 621 for subway workers".

Upon the determination of the list of these regulatory legal acts, it is necessary to establish how much they are currently legal and comply with the Labor Code of the Russian Federation provisions because all of them were adopted during the period of the Labor Code of the RSFSR on January 9, 1971. Therefore, the Part 1 of Art. 192 of the Labor Code of the Russian Federation secures the list of disciplinary sanctions and suitable grounds for their application. In fact, by making the list of disciplinary sanctions closed in Part 2 of Article 192, the legislator determines that "federal laws, charters, and regulations on the discipline (Part 5 of the Article 189 of this Code) may also provide for other disciplinary sanctions for certain categories of employees." Thus, according to the Article 192 of the Labor Code of the Russian Federation, three types of regulatory legal acts can establish the disciplinary sanctions: federal laws, statutes on discipline, and discipline provisions. However, provisions on the types of the regulatory legal acts, expressed in Art. 192 of the Labor Code of the Russian Federation must be understood considering the Article 189 of the Labor Code of the Russian Federation (labor discipline and work schedule) as a result of its referral nature. Hence, the Part 5 of the Art. 189 of the Labor Code of the Russian Federation determined that "there are

charters and provisions on discipline set down by federal laws for specific categories of employees.” Therefore, the charters and regulations on the labor discipline cannot be fixed at the level of a subordinate normative legal act.

RESULTS AND DISCUSSION

With regard to the analyses, the above-mentioned decisions of the Government of the Russian Federation currently do not meet the legality criteria, and if to be more categorical, they are not legal and directly contradict both the Labor Code of the Russian Federation and the Constitution of the Russian Federation, which establish that restrictions on the rights and freedoms of man and citizen can only be fixed at the federal law level. However, this is the researchers’ conclusion, which is confirmed by a separate court decision. Particularly, the Decree of the Government of the Russian Federation of August 25, 1992 “On the approval of the Regulation regarding the railway workers discipline of the Russian Federation” was considered in the highest judicial instance of the Russian Federation. Consequently, the Decree of the Supreme Court of the Russian Federation on February 6, 2003 declares that “since applying the disciplinary measures to an employee means to restrict the human right to work, the types of disciplinary sanctions and the grounds for their application can be established only by the federal law ... the Federal Law “On the Federal Railway transport” does not contain further disciplinary sanctions as compared to the labor legislation.”

This determination of the Supreme Court was made with regard to the complaint of the Russian Federation Government. However, this position of the highest executive body of our country is confusing. Thus, it was necessary to develop and submit the corresponding federal law to the State Duma of the Russian Federation. In addition, a sufficient amount of time has passed since the adoption of the Labor Code of the Russian Federation (more than 17 years). Currently, there is only one law that regulates the special discipline and disciplinary liability of the entities, which are not state or municipal employees: the Federal Law of March 8, 2011 No. 35-FZ “Charter on the discipline of employees of organizations operating at specifically dan-

gerous nuclear production and facilities in the field of atomic energy”.

It is notable that the Government of the Russian Federation limited itself just to the development and adoption of the Decree of October 28, 2018 “On the recognition of certain acts of the Government of the Russian Federation as invalid and recognition of certain acts of the Council of Ministers of the USSR as invalid on the territory of the Russian Federation” on the basis of which the Resolution of the Government of the Russian Federation of May 23, 2000 No. 395 “On approval of the Charter on the discipline of maritime transport workers”, the Decree of the Government of the Russian Federation of September 21, 2000 No. 708 “On the approval of the Charter on the workers discipline of the fishing fleet of the Russian Federation” became invalid.

However, recognition of the above cases as no longer in force is a half-hearted decision. In addition, it was necessary to introduce relevant laws to be considered by the State Duma of the Russian Federation. In addition, the following cases are actually not valid, but not canceled: “The Charter on the workers discipline at enterprises and organizations involved in the development of the gas and oil fields with a high content of hydrogen sulfide”, approved by the Decree of the Council of Ministers of the MTSP No. 1216 dated on October 30, 1987, “The Charter No. 749 on the discipline of workers and office workers engaged in the development of oil and gas resources on the USSR continental shelf and in the oceans”, approved by Decree of the Council of Ministers of the USSR on August 6, 1985, “The Charter on the discipline of communications workers of the USSR”, approved by the Decree of the Council of Ministers of the USSR on April 20, 1972 No. 284, and finally “The Charter on the discipline of civil aviation workers”, approved by the Order of the USSR Ministry of Civil Aviation No. 100 on May 28, 1975. Notably, both decisions adopted by the executive bodies of the USSR and the Government of the Russian Federation on special discipline labor were not the subject of investigation in the Constitutional Court of the Russian Federation. Nevertheless, the executive bodies’ decisions of the USSR were considered by the body at one time, which was the prototype of the Con-

stitutional Court; that is, the Committee of the Constitutional Supervision of the USSR and a suitable conclusion was adopted for them.

In the researchers' opinion, regulating the disciplinary responsibility and labor discipline relations at the level of the Government Decisions and normative acts of other executive bodies of the state power contradicts the interests of the legal security and national security and thus it is a manifestation of legal irresponsibility.

Most importantly, different types of special discipline guarantee the stable and safe functioning during works related to the people's life and health, protection and preservation of the natural environment, preservation of property, and prevention of technological and environmental disasters.

Secondly, there is a direct relationship between some types of special disciplines, particularly, communication workers, and the country defense capability provision, with the aim of the normal functioning of vital infrastructure. Moreover, they guarantee the normal functioning of different special services and departments in the event of some emergency responses.

Thirdly, establishing different types of special disciplines not at the level of federal law is the violation of the citizens' right to work, which is expressed in the Constitution of the Russian Federation, which does not strengthen the rule of law in the field of labor relations, and also creates legal threats and hazards for citizens.

Fourthly, inaction of the executive and legislative authorities regarding the restoration of legality in the area of special types of discipline is the manifestation of their irresponsibility. In other words, irresponsibility of some entities causes legal irresponsibility at the institutional level, which in turn can give rise subject irresponsibility considering the special disciplinary liability.

It should be noted that inaction of legislative and executive bodies in the field of the normal functioning of special disciplinary responsibility do not have consistency with the National Security Strategy.

However, the lack of the laws governing special types of disciplines contradicts the "Concept of Public Safety in the Russian Federation" No. Pr-2685, which has been approved by the President of the Russian Federation on November

14, 2013 (Reference legal system "Consultant +". The above laws are available at http://www.consultant.ru/document/cons_doc_LAW_154602/ Reference legal system "Consultant +" and http://www.consultant.ru/document/cons_doc_LAW_154602/). According to the laws, a threat to the public safety would be understood as a direct or indirect possible dangers to the rights and freedoms of a man and a citizen and material and spiritual values of society. In this regard, the "Concept of public security in the Russian Federation" views the "achievement and maintenance of the necessary level of protection of human and civil rights and freedoms, the rights and legitimate interests of the organizations and public associations, and material and spiritual values of society from criminal threats" as one of the objectives of the national security provision.

However, the issue of legal security of the subjects of both disciplinary and other relations is complicated by the fact that National Security Strategy of the Russian Federation and the Public Safety Concept of the Russian Federation do not enjoy transparent enforcement mechanisms, and most importantly they are not supported by real measures of legal responsibility with the aim of its requirement provision.

Thus, investigation of special disciplinary responsibility and legal security problems in this field brought the researchers' to the related issues, namely responsibility of the state authorities for national security provision in general and legal, in particular, which, itself is the subject of independent research in the framework of another academic work.

Finally, for ensuring the national and legal security, it is necessary:

1. To develop and adopt federal laws: The Charter on the crews discipline of the support vessels in the Navy, the Charter on the railway workers discipline of the Russian Federation, the Charter on the maritime transport workers discipline, the Charter on the fishing fleet workers discipline of the Russian Federation, the Charter on the civil aviation workers discipline,

2. To audit normative acts adopted by the executive authorities of the USSR, which establishes special types of disciplinary responsibility, and officially recognizes the following documents as invalid: "The Charter on the discipline

of communications workers of the USSR”, “The Charter on the discipline of workers and office workers employed in the development of oil and gas resources on the USSR continental shelf and in the oceans”, “The Charter on the employees discipline of the enterprises and organizations involved in the development of gas and oil fields with a high content of hydrogen sulfide.” Therefore, it is necessary to settle the discipline of labor of communication workers, workers engaged in the development of gas fields at the level of special federal laws.

3. Regulation of different types of special disciplines not at the level of federal law is the violation of the citizens’ right to work, which is enshrined in the Constitution of the Russian Federation, which does not strengthen the rule of law in the field of labor relations. Moreover, it causes legal threats and risks for citizens.

CONCLUSION

Thus, for ensuring the national and legal security, it is necessary to develop and adopt federal laws, audit normative acts adopted by the executive authorities of the USSR, and regulate different types of special disciplines. The present study demonstrated and analyzed the regulatory legal acts, which establish special disciplinary liability that currently contradicts the Constitution of the Russian Federation and the Labor Code of the Russian Federation. Consequently, it is crucial to deal with the above contradictions. Finally, it should be noted that the study makes suggestions on the improvement of legislation, implementation of which will be used as one of the additional guarantees of the stable and safe functioning in the performance of the work associated with the people’s life and health, protection and preservation of the natural environment, property, and prevention of technological and environmental disasters.

RECOMMENDATIONS

Investigation of special disciplinary responsibility and legal security problems brought the researchers’ to the related issues, namely responsibility of the state authorities for national security provision in general and legal, in particular, which, itself can be the subject of independent

researches in the future. Further suggestions on the improvement of legislations and their implementation can also be the topic of future studies.

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