ANNOTATION

on the dissertation of Dmitrii Vladimirovich Maron, presented for the degree of candidate of legal sciences in specialty 5.1.2. "Public law (state law) sciences" on the topic "Terms in civil service relations".

There are no temporally neutral phenomena in law. The content of any legal relationship is the rights and obligations of its participants, which inevitably have a moment of beginning (arising) and end (termination). Formal certainty is one of the constitutive features of a legal norm and law in general. This quality, or feature, of a legal norm is usually understood as the substantive certainty of the very rule of conduct that it contains. However, the temporal aspect of such certainty is no less important, since almost all legal actions are tied to time in one way or another. From this point of view, the establishment of terms by law and in law has the main and ultimate goal of ensuring the certainty of the effect of law in time, or temporal certainty.

In different branches of law, terms may have different functional purposes and, in this regard, may imply different procedures for establishing and calculating them. In domestic doctrine, problems of calculating terms have traditionally been developed in the science of civil law (only the Civil Code of the Russian Federation contains a separate chapter devoted to calculating terms). In other branches, the rules for establishing, running and terminating terms were established by analogy with the provisions of the Civil Code of the Russian Federation, which often conflicts with the specifics of legal relations that develop in these areas (for example, calculating terms by calendar periods of time is not relevant for all branches of law). All this actualizes the task of developing branch institutions for establishing and calculating terms.

The development of rules for calculating terms in service legal relations has significant specifics. Service law, as a sub-branch of administrative law, is still only being formed in doctrine and practice.

On the one hand, it is based on the provisions of administrative law regulating state-authority relations, and on the other hand, before the administrative reform,

service relations were mostly regulated by labor legislation. The labor law model for regulating state-service relations largely retains a number of positions even today. Meanwhile, the nature and purpose of legal terms in labor and service legal relations do not always coincide.

In particular, in labor relations, the terms mostly perform a guarantee function in relation to the economically weaker party - the employee (various types of notice periods, preclusive periods for the performance of any organizational and administrative actions, etc.). Whereas in service legal relations, a significant part of the terms is intended to regulate various types of management actions and performs "disciplinary" functions for the law enforcement officer.

At the same time, regulatory legal acts determining the procedure for the implementation of certain types of civil service do not contain instructions on the rules for calculating terms. In this regard, the provisions of labor law established by the Labor Code of the Russian Federation are applied as acts regulating this issue, and the rules for calculating terms established by the Labor Code of the Russian Federation are used.

Today, the specificity of the civil service is recognized at the highest legislative level. Service law is actively being formed not only in doctrine, but has already received a solid legislative basis and continues to separate from labor law. Individual legal institutions of service law continue to be improved. In this regard, the task of developing a special system of rules for calculating terms in service legislation seems relevant and significant.

Structure of the dissertation includes an introduction, three chapters, combining six paragraphs, a conclusion and a bibliography. The introduction substantiates the relevance of the research topic, formulates its purpose and tasks, object and subject, the degree of elaboration of the scientific problem, theoretical and methodological foundations of the research, its academic novelty, theoretical and practical significance, the results of testing the findings and results. The first chapter contains an analysis of the concepts of terms in various branches of Russian law. The ambivalence of the term as a duration and as a moment is considered. Also,

terms are considered: a) as legal facts with which the law associates the emergence, change or termination of legal relations, b) as time limits for the performance of certain legally significant actions and c) as temporal conditions for the performance of certain legal actions. In addition, arguments are given for considering service law as a sub-branch of administrative law; various institutions of service law are examined. The second chapter considers the issues of the course and calculation of terms in civil service relations; The methods of establishing (defining) terms in service legislation are analyzed. Classifications of terms in various branches of Russian law on various grounds are presented and several types of classifications of terms in service relations based on various grounds are formulated. The third chapter is devoted to the study of various types of terms in civil service relations depending on their establishment, change and application, as well as the analysis of problems of establishing terms depending on their content. The conclusion presents the main findings obtained from the research.

As a result of the study:

– the author's definition of legal terms in service law has been formulated;

– various features of terms in civil service relations have been established;

– the need to form a legal institution of terms in service law at the legislative level is substantiated;

– various types of classifications of terms in civil service relations on various grounds are proposed, which can also be combined into groups;

– it has been proven that the establishment of terms at the initiative of a civil servant should be carried out on the basis of the delineation of powers between him and the representative of the employer (manager) to determine the duration of the term and its distribution over the calendar period;

– a conclusion was made about the need for a fundamental change in the contractual method of determining terms in service law;

– it has been established that the use of relatively specific terms in civil service relations in a number of cases is not determined by objective reasons and creates problems in law enforcement practice;

– a problem has been identified related to the uncertainty in a number of cases as to whether the period established by service legislation is a preclusive one or not;

– practical proposals for improving the current legislation regulating service relations in the Russian Federation have been formulated.

Based on the conducted analysis of terms in various branches of Russian law, a definition of legal terms in service law is formulated. Terms in the civil service can be defined as moments or periods of time established by law, state authorities or authorized officials, which represent a legal representation of physical time and act as a legal means of regulating civil service relations.

As a result of the work it was established that terms in civil service relations can act as: a) legal facts which, together with the legal acts that secure them, entail the emergence, change or termination of rights and obligations, b) as time limits for the performance of certain legally significant actions (performance of duties, exercise of powers, etc.) and c) as temporal conditions for the performance of certain legal actions (positive and negative). This predetermines various approaches to the legal regulation of the use of terms in various situations.

It was also established that terms in service legislation may be established by: a) a calendar date; b) a period of time; c) the occurrence of a certain event; c) the performance of a legally significant action; d) a blanket method, i.e. by referring to other regulatory legal acts; d) an evaluative method.

At the same time, the specificity of service law is that the terms and periods are determined by indicating a legally significant action, which is the beginning ("from the day") or the end of the given term ("before the day").

The question of the place of terms in the system of service law is inextricably linked with the definition of the very essence of the content of service law. It is concluded that, despite the fact that in domestic legal science there are other points of view, it should be assumed that service law of the Russian Federation should be considered as a sub-branch of administrative law. This is evidenced by:

– the total volume of service legislation, which is currently quite comparable with the same labor legislation as a whole and far exceeds the volume of legal regulation of any institution of administrative law;

– the presence in service legislation of special legal mechanisms that are not characteristic of either administrative or labor law;

– the allocation within the framework of service law of individual legal institutions, also quite significant, which indicates that it already has a fairly complex system.

The conclusion is formulated that at this stage of development of domestic service legislation it is still impossible to speak about the existence of a separate institute of terms in service law. This is evidenced by the lack of normative isolation in relation to them, as well as systemicity and completeness. All of them in the current regulatory acts are formulated exclusively ad hoc.

Although the law of terms in Russian service legislation do not currently form a full-fledged institution of service law, their significant number and diversity allow us to raise the question of their classification. The following types of classifications of terms in civil service relations on various grounds are proposed:

I. By methods of establishment:

1. normative;

2. established by the participants:

a) established by one of the parties of relations;

b) established by agreement of the parties of relations (contractual).

II. By forms of fixation:

1. in regulatory acts;

2. in local acts of the government agency;

3. in contracts and agreements.

III. According to the degree of obligatory establishment:

1. mandatory;

2. proactive.

IV. By degree of mandatory application:

1. imperative;

2. dispositive.

V. By possibility of change:

1. changeable:

a) unilaterally changeable;

b) changeable by agreement of the parties;

2. unchangeable.

VI. By levels of action:

1. inter-industry;

2. general service;

3. terms of individual institutions.

VII . According to the range of legal relations covered:

1. general (apply to all similar legal relationships);

2. special (apply to certain legal relations as an exception to the general rule);

3. acting on legal relations, individually established for a specific case.

VIII. By the method of calculation:

1. terms-periods (in years, months, days, etc.);

2. terms-moments (up to a certain moment).

IX. By degree of certainty:

1. absolutely definite;

2. relatively definite.

X. By purpose:

1. regulatory:

b) law-forming;

b) law-changing;

c) law-ending;

2. protective.

XI . By the purpose of establishment:

1. material;

2. nonmaterial:

a) procedural;

b) processual;

c) prescriptive.

XII. On the legal consequences in case of omission:

1. interceptive (preclusive);

2. non- preclusive.

As a result of the study of various types of terms in civil service relations, it was concluded that, due to public-law regulation of service relations in this area, normative terms prevail. The terms that are established by the representative of the employer (head of government agency) within the limits of the exercise of his powers, for the most part, should also be determined by legal acts and have a normative form. At the same time, the terms that are determined by the parties in a non-normative manner should be limited by normative terms.

Deviations from this rule are in the nature of defects in legal regulation: for example, the provisions of laws on service in various law enforcement bodies, which provide that a contract with an employee comes into force on the day determined by the order of the head of the federal agency. In the absence of a normative term within which the date of entry into force of the contract must be determined, this issue is entirely at the discretion of the employer's representative, which violates the principle of legal certainty.

Determination of terms directly by a civil servant is allowed only in cases provided by law. Based on the analysis, it was concluded that such regulation may take place when he takes initiative actions, most often related to the implementation of state guarantees granted to him by law. Most of such guarantees are provided by labor legislation, which also applies to civil servants. For example, a civil servant on maternity leave has the right to work part-time. In accordance with labor legislation, in this case he independently determines the duration of his working time.

The establishment of terms at the initiative of a civil servant is carried out on the basis of the delimitation of powers between him and the representative of the employer (head of government agency) to determine the duration of the term and its

distribution during the calendar period. This method of establishing such terms is used due to the inadmissibility of termination or suspension of service activity. Proposals have been made to correct this situation.

Domestic service legislation currently uses both absolutely definite and relatively definite terms. Often relatively definite terms create difficulties in law enforcement, but in some cases their use is objectively necessary. At the same time, in some situations, the uncertainty of terms is a shortcoming of the legislator. For example, this concerns the term for assigning a class rank of the state civil service based on the results of the test. It seems necessary to use examples of legislative acts on other types of state service, in which the terms for assigning special ranks in connection with successful completion of the test are formulated as absolutely definite.

It has been established that both preclusive and non-preclusive terms are currently used in Russian civil service legislation. However, there are also examples where the wording of legislative norms does not provide a clear answer to the question of whether specific established terms are preclusive or not. Such a question, for example, arises regarding the missed term for dismissal of a civil servant upon expiration of a fixed-term service contract. Thus, there is an objective need to resolve this issue at the legislative level by indicating that missing this term does not prevent the dismissal of the employee due to the expiration of a fixed-term service contract.

Problems in law enforcement practice also sometimes arise in cases where the law clearly defines whether the established period is preclusive or not. As an example, here we can cite the period of official investigation, which is preclusive and the failure to complete which in the state civil service, even for objective reasons, makes it impossible to hold the employee liable. Here it also seems appropriate to use examples from legislative acts on other types of state service, which provide for periods excluded from the period of official investigation.

In connection with all of the above, it is proposed to take steps to form a legal institution of terms in service law by supplementing the Federal Law "On the Civil Service System of the Russian Federation" with Article 14.1 "Calculation of Terms

in the Civil Service". It should regulate such issues as: the concept of terms; methods for establishing or determining terms; determining the moment of the beginning of the running of terms; time units for calculating terms; interruption of the running of terms; grounds and procedure for suspension, interruption, extension and restoration of terms, as well as a number of other issues.

In addition, this same article should establish both general service terms, applicable to all types of civil service, and terms for individual institutions – but also uniform for different types of service activities.