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### THE LEGAL CONCEPT OF SOCIAL (PERSONAL) COMPETITION

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The subject. Social competition is a complex phenomenon, a property of social processes that ensures the sustainable development of society, legitimacy, security and competitiveness of the state. Its most important component is personal competition aimed at a fair and effective distribution of social positions in the process of social selection.

The purpose of the article is to form approaches to the study of the legal concept of social (personal) competition.

The methodological basis of the research consists of the principles and categories of materialistic dialectics, systematic, formal-logical and formal-legal methods.

Main results. The main theoretical provisions of the legal concept of social (personal) competition are described. The key element of the system of relations of social selection are social positions as the object, what these relations arise about. Having received legal consolidation in legislation, a social position acquires the form and content of a legal status. The qualitative and quantitative diversity of social positions determines the entire structure of the system of social selection relations. Depending on the legal conditions of access to a social position, selective and non-selective ones should be distinguished. A legal procedure of competitive (competitive) selection has been established for the occupation of selective social positions, no such procedure has been established for non-selective social positions. Certain conditions may be provided for the occupation of non-selective social positions (reaching a certain age, having a certain education, professional training, etc.).

Conclusions. The legal concept of social (personal) competition is based on a typology of social positions, as well as a number of key factors, including the optimal balance of selective and non-selective social positions. Such factors are an optimal balance of selective and non-selective social positions; a fair system of personal preferences and restrictions when taking up social positions; the ratio of objective and subjective criteria for competitive selection; the possibility and procedure for protecting the rights of subjects participating in competitive selections.

## 1. Introduction

Professor Charles Horton Cooley published his 95-page essay "Personal Competition. Its place in the social order and its impact on a person: with some expectation of success" in *Economic Studies* in 1899 [1]. The concept of "personal competition" was introduced and comprehensively disclosed in this essay firstly. The author defined the essence of this phenomenon as follows: "The function of personal competition, considered as part of a social system, is to determine the place of each individual in this system. If "the whole world is a stage," then this is the process that distributes roles between actors" [1, p.81]. The doctrine of social mobility and stratification was outlined a little later in the works of P.A. Sorokin, where a similar process of filling social positions was designated by the more complex term "social testing, selection and distribution" [2].

## 2. The socio-legal value of personal competition

Regardless of the terminology used in social science, it should be recognized that a system of relations is being formed regarding the distribution of social positions in society, which is a special subject of legal regulation. As a rule (with certain exceptions), these relations are indeed based on competition, on certain principles of selection, and at least two important, key conditions for the viability, sustainability and security of any state depend on the quality of their regulatory regulation: its legitimacy and effectiveness. In the first case, the idea of the fairness of a social structure is very important for society, in which success, well-being, and the possibility of self-realization of a person depend crucially not on origin, not on "connections", not on property status, but on moral qualities, hard work, abilities, and achievements of a person. In the second case, the attraction of the most worthy, strong personalities to social positions ensures a high quality of performance of their assigned role and, ultimately, the strength and competitiveness of society and the state as a whole. Legitimate government in the eyes of society, through the establishment of legal norms and their application, creates and maintains just such a state of social order. According to A.V. Butakov's precise

definition, "the higher the social competition, the higher the legitimacy of the law recognized by society as socially fair; at the same time, the lower the social competition, the lower the legitimacy of the law, and hence the lower the level of recognition by society as socially fair" [3, p. 9].

## 3. Social (personal) competition as a subject of legal regulation

This state of affairs, which seems obvious, nevertheless requires a well-thought-out, consistent and systematic state and legal policy. Since in the social sphere, as well as in the economic sphere, there will always be a desire to preserve the existing status quo, monopolize the situation, and limit competition. In addition, personal competition is a structurally very complex multidimensional phenomenon. Its management requires deep knowledge in the field of sociology and social psychology, analysis and consideration of a variety of circumstances, including specific historical conditions, cultural and spiritual and moral traditions of society.

In order to try to build a more or less coherent concept of legal regulation in the field under consideration, first of all, it is necessary to identify key concepts and correlate them with existing legal categories. Of course, we should start with the concept of competition.

In the doctrine and legislation of the vast majority of countries, competition is mentioned and defined primarily in an economic context [4-8], which, by and large, indicates a global underestimation of competition as a property of any social processes. Moreover, both in the public consciousness and in science, competition is often perceived as a destructive, divisive force based on individualism, selfishness, violence, suppression of the weak by the strong, and is opposed to collectivism, cooperation, and mutual assistance. The prerequisites for such an interpretation are the emphasis on rivalry, struggle, and confrontation [9, 10] as the essence of competitive behavior in most academic and legal definitions. To what extent is this emphasis justified? Positive, healthy competition is indeed a struggle, but a struggle not against, but for: not against a competitor, but for one's own best achievements. The goal is not to suppress or destroy

an opponent (such behavior should be considered as aimed at restricting competition and illegal), but to increase one's own performance [11, 12]. As such, social competition does not generate social contradictions, but serves as a natural mechanism for their resolution [13]. One of the essential signs of competition is its impersonal nature. Individually defined, personalized relationships between competitors, as a rule, do not arise and should not arise. The content and value of competition lies not in the rivalry of several subjects, but in their multiplicity, equal legal status and the independent nature of their actions, which excludes monopolization of access to social benefits. Such multiplicity serves as a basis for comparing different subjects, makes it possible to choose between them. Monopolization, on the contrary, excludes choice and ultimately deprives the monopolistic subject of its own incentives for development, self-improvement, and improvement of the results of its activities.

It is important to emphasize once again that competition is not a social relationship, not a social process (as a set of social relations) [14], but a property of a social process. This is precisely the relationship between the concepts of "social selection" and "personal competition": the first is a process, the second is its property.

#### 4. Legal typology of social positions

The key element of the system of relations of social selection are social positions – that is, their object, what these relations arise about. Having received legal consolidation in legislation, a social position acquires the form and content of a legal status – a certain set of rights and obligations directly related to the formation and implementation of an active social role of a personality. The qualitative and quantitative diversity of social positions determines the entire structure of the system of social selection relations, therefore their classification is important.

The following classification grounds are essential:

- degree of individualization: unique, individually defined and individually indeterminate social positions. Unique social positions exist in the singular: for example, the head of a particular

medical institution. Individually-defined social positions exist in a certain set, but are limited by the framework of a certain legally formed social collective, usually a legal entity: for example, doctors of a specific medical institution. Individually indeterminate social positions are not associated with any specific organized group: for example, private practitioners.

- quantitative limitations: limited and unlimited. The number of limited social positions is legally limited: for example, by a regulatory legal act that sets a limit on the number of civil servants. Such a formal restriction is not established for unlimited positions.

- the nature of the realized social interests: private and public. Private social positions primarily ensure the interests of either the persons who occupy them (in the case of individually undefined positions), or private-owned organizations in whose structure the corresponding positions have been created. Public social positions are functionally aimed at ensuring the interests of the whole society and are created in the structure of organizations of state (municipal) ownership and in the system of public authority. In making this classification, it is necessary to make a reservation that even private positions are of general social importance, since they serve the interests of the development of society as a whole.;

- legal registration: formalized and non-formalized;

- legal conditions of access to a social position: selective and non-selective. A legal procedure of competitive selection has been established for the occupation of selective social positions, no such procedure has been established for non-selective social positions, although certain conditions may be provided, the person applying for them must meet (reaching a certain age, having a certain education, professional training, etc.)

It is the latter classification that serves as a starting point for further research on the legal regulation of the mechanism of social selection.

#### 5. Competition as a legal mechanism of social selection

The procedural legal form of social selection in the field of personal competition is usually

competitive procedure – competitions.

The Russian Constitution contains only one mention of the competition – in part 3 of article 43, which grants everyone the right to receive higher education on a competitive basis free of charge at a state or municipal educational institution or enterprise. The current legislation provides for a competitive mechanism to replace a number of social positions. Depending on how the legislation connects the occupation of a particular social position with the competitive procedure, these positions can be divided into imperative-competitive and dispositive-competitive: in the first case, the occupation of a social position based on competitive selection is an imperative requirement of the legislation, in the second, the conduct of the competition is the right, not the obligation of the "holder" social position (the organization in which the social position was created, or its owner).

The fundamental key issues of legal regulation of social (personal) competition that require scientific study and subsequent implementation in legislation and law enforcement practice are:

- optimal balance of selective and non-selective social positions;
- a fair system of personal preferences (benefits, advantages), as well as restrictions on taking up social positions;
- the ratio of objective and subjective criteria of competitive selection;
- the possibility and procedure for the protection (including judicial) of the rights of subjects participating in competitive selections.

Let's focus on the last two in detail. The defining moment of the legal structure of the competition as a mechanism of social selection is the ratio of objective and subjective criteria in determining the winner, which is inextricably linked to the possibility. Objective criteria are defined as parameters and indicators that represent factual evidence and exclude various (subjective) interpretations. The subjective criteria depend on the opinion of the evaluator. The idea of the competition itself is aimed at eliminating or minimizing what is called the distribution of social positions "for old time's sake" or "for money." This practice is disastrous not only as a generator of

incompetence, but also as a means of undermining people's faith in the justice of the entire social and state system. Therefore, it is very important to determine to what extent the competition is able to counteract this practice, not to create the appearance or illusion of justice, but to actually solve the problem of choosing the most worthy one. The complexity of this task is due to the fact that, based on objective criteria alone, it is impossible to fully and comprehensively assess the candidate's personal qualities. For example, they can be used to measure knowledge, but the ability to think creatively and outside the box can be evaluated and compared only on the basis of a subjective opinion. In turn, a subjective criterion always carries the risk of biased, unreasonable interpretation and evaluation.

Let's consider the ratio of these criteria in the methods of conducting competitions for individual social positions. Thus, during the competitive selection process for vacant positions in the civil service, both objective (testing) and subjective (individual interview) assessment methods are used. This requirement is established by the Unified Methodology for Conducting Competitions for Filling Vacant Positions of the State Civil Service of the Russian Federation and Inclusion in the Personnel Reserve of State Bodies, approved by Decree of the Government of the Russian Federation dated March 31, 2018 No. 397. The proportion of results (total points) both the testing and the interview are determined directly by the state body that organizes the competition. At the same time, as a rule, significant priority is given to the results of the interview. For example, the Methodology for Conducting a Contests to Fill a Vacant Position of the Federal State Civil Service in the Ministry of Natural Resources and Ecology of the Russian Federation, approved by Order No. 656 of the Ministry of Natural Resources of the Russian Federation dated September 30, 2019, established the following ratio: the amount of points awarded based on test results varies in the range of 1-5 points, based on interview results – up to 10 points. At the same time, other based on a subjective assessment tests can also be conducted – group discussions, writing an abstract and a questionnaire.

The legal consequence of using subjective evaluation criteria during the competition is that the

losing contestant does not have the opportunity to prove that he was actually the best and the decision of the competition organizer to recognize another person as the winner is unjustified and unlawful. Any participant has a formal right to appeal on the results of the competition, but, in fact, it boils down to the possibility of appealing only procedural violations and does not affect the essence of the assessment. Judicial practice in cases where applicants tried to appeal on the results of a competition for a public or municipal service position on the merits, rather than on procedural points, boils down to one, quite understandable and explicable position of the court: the decision of the personnel issue is the exclusive prerogative of the employer [15].

The question of the relationship between the objective and subjective principles of competitive selection for social positions is a matter for serious reflection and discussion. On the one hand, the complete rejection of subjective assessment and methods based on it greatly narrows the range of qualities and virtues of a person that are taken into account and significant in determining the most worthy. On the other hand, a subjective assessment should also not be made absolute, depriving the competition of its true social meaning as a means of fair selection. We must talk about the optimal balance of these principles.

#### **4. Conclusion**

Social competition is a complex phenomenon, a property of social processes that ensures the sustainable development of society, legitimacy, security and competitiveness of the state. Its most important component is personal competition aimed at a fair and effective distribution of social positions in the process of social selection. The relations formed within the framework of this process form a special subject of legal regulation. The formation of a legal doctrine of social (personal) competition should be based on a typology of social positions reflecting their main legal features, as well as on the study of such key factors as: an optimal balance of selective and non-selective social positions; a fair system of personal preferences (benefits, advantages) and restrictions when taking social positions; the ratio of objective

and subjective criteria of competitions; the possibility and procedure for the protection (including judicial) of the rights of subjects participating in competitions.

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