

Monitoring of judicial practice in the field of prevention and settlement of conflicts of interest in the municipal service

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Subject. The article is devoted to enforcement the rules concerning conflicts of interest in the municipal service.

The purpose of the article is to identify approaches to resolution of legal disputes concerning conflict of interest in the municipal service.

Methodology. The author uses theoretical analysis as well as legal methods including formal legal analysis and the method of linguistic interpretation of judicial acts.

Results, scope of application. The courts examine a different range of issues: the concept of conflict of interest, personal interest; features of admission to service; application of measures of responsibility; dismissal from service (termination of employment or service relations) – during the legal consideration of cases related to the presence and absence of a conflict of interest.

The courts apply similar approaches to the conflict of interest in the state and municipal services, despite the fact that state and municipal employees have significant differences in legal status and different legislative acts are applied to each type of service.

The Constitutional Court of the Russian Federation has repeatedly resolved the disputes concerning the issues of conflict of interest.

Courts of general jurisdiction resolve such cases mostly in the order of action proceedings. However, the courts are also ought to investigate issues related to the conflict of interest when considering disputes arising from public legal relations when challenging normative legal acts. The attempts of local authorities to change the wording, to go beyond the norms established in Federal legislation are the most common violation.

Conclusions. Although the legal positions of the Supreme Court concerning conflict of interest are generally quite consistent, courts at other territorial levels may have different positions on such situations. Therefore, we should welcome the preparation by the Supreme Court of the Russian Federation of A review of court practice in 2014-2016 concerning enforcement legislation of the Russian Federation in disputes related to the imposition of disciplinary sanctions for non - compliance with the requirements of anti-corruption legislation.

Keywords: conflict of interest, personal interest, municipal service, local self-government bodies, judicial practice, law enforcement, Constitutional Court.

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1. Introduction.

Judicial practice is a kind of "mirror" of legislation, reflecting all its defects. The current legislation should meet the criterion of clarity, clarity, certainty; the uncertainty of the norm, the illegibility and conflict of laws leads to the violation of rights and legitimate interests, the emergence of litigation.

The problem of legal certainty of legislation is one of the central problems of jurisprudence, of both scientific and practical character. Stable and clear legislation, without ambiguities, is the guarantee of the orderly harmonious activity of the authorities and the restriction of their arbitrariness, as well as the legal security of a person, his confidence in security [1, p. 9; 2]. For the legislator, the requirement of certainty of legal norms is an important goal and at the same time an indicator of the quality, effectiveness of lawmaking activity [3, p. 4-10; 4, p. 4]. In one of the cases, the Constitutional Court indicated that defects in the law, including gaps, may lead to violations of constitutional rights and freedoms in the process of law enforcement, and therefore the practice of applying such a law may be declared unconstitutional.

At the same time, there are certain principles for law enforcement activities, ignoring which can also lead to violation of rights and legitimate interests, the emergence of litigation. As rightly pointed out, the principles of true law enforcement are well known: they are lawfulness, efficiency, objectivity, uniformity, justice, efficiency and expediency [5, p. 170; 6, p. 469-471; 7-9].

2. Disputes related to the conflict of interest, in judicial practice.

The introduction into the current legislation of a new legal design "conflict of interest", generated and litigation. The ambiguity of the positions and approaches of the lower levels of courts of general jurisdiction led to the adoption by the Supreme Court of the Russian Federation of the practice of applying by the courts in the years 2014 - 2016 of the legislation of the Russian Federation in the consideration of disputes related to the imposition of disciplinary penalties for non-compliance with the requirements of anti-corruption legislation.

When considering cases related to the presence and absence of a conflict of interest, the courts examine a different range of issues: the concept of conflict of interest, personal interest; features of admission to the service; application of liability measures; dismissal from service (termination of employment or service relations) .

It is important to emphasize that issues of conflict of interest are considered both in relation to state and municipal employees. Despite the fact that the state and municipal employees have significant differences in their legal status, and in respect of each type of service, their own legislation operates, the approaches developed with respect to public civil servants are also applied by the courts to municipal ones. This is based on the principle of unity of the system of public authorities , the relationship of state civil and municipal service. Let us consider specific features of law enforcement practice on specific examples.

2. 1. Decisions of the Constitutional Court of the Russian Federation.

In its practice, the Constitutional Court of the Russian Federation has repeatedly addressed the issue of conflict of interest. Initially, the doctrine of "conflict of interest" was used in cases involving the verification of the constitutionality of civil law. In particular, for the first time the Constitutional Court used the relevant concept in Resolution No. 5-P of 10.04.2003 "On the case on verification of constitutionality of clause 1 of Article 84 of the Federal Law" On Joint Stock Companies "in connection with the complaint of Open Joint Stock Company" Priargunskoye" [10]. However, as the development of the Russian anti-corruption legislation, in the practice of the Constitutional Court, decisions began to appear in which the institution of "conflict of interests" is already being considered in relation to public-law relations.

One of the first decisions of the Constitutional Court, in which the "conflict of interest" was considered in the field of public law, was Decision No. 34-P of December 27, 2012 "On the case on the verification of the constitutionality of the provisions of clause" in "part one and part five of Article 4 of the Federal Law "On the status of a member of the Federation Council and the status of a deputy of the State Duma of the Federal Assembly of the Russian Federation" in connection with the request of a group of deputies of the State Duma". In this decision the Constitutional Court forms several legal positions that are of great importance for the development of the legal institution of the "conflict of interests".

First, it concludes that the prohibition of participation in the activities of a commercial organization established by deputies of the State Duma by joining the bodies of management that cannot be stayed without the expressed will of the person, or the exercise in a commercial organization of such managerial functions without formal membership in the management body, as well as in any case - to participate in the work of the supreme management body (for example, the general meeting of shareholders), meets the requirements of Article 97 (para 3) of the Constitution of the Russian Federation. This ban is aimed at preventing conflicts of interest and ensuring independence and independence of the deputies of the State Duma acting on the basis of a free mandate in the interests of the state and society as a whole, and thereby ensuring the normal functioning of the Federal Assembly - the Parliament of the Russian Federation. In formulating this position, the Constitutional Court draws attention to the following points:

1. A citizen, voluntarily choosing occupation associated with the administration of public functions, agrees with the conditions and restrictions with which the legal status he acquires is related. In particular, with regard to the deputies of the State Duma, this means that in the event of a decision to engage in activities incompatible with the status of a deputy, the deputy has the opportunity, both in the adoption of the deputy mandate after election and in the future, to make an informed choice between retaining deputy powers and other activities.

2. In cases where a State Duma deputy actually personally participates in or facilitates the conduct of entrepreneurial activities by a commercial organization (whether he is a founder or a member of such an organization or not), he, in fact, acts in the interests of this commercial organization, and, consequently, carries out activities inadmissible for a person who is endowed with the status of a deputy of the State Duma.

3. The prohibition related to the impossibility of combining deputy activity, which parliamentarians carry out on a professional basis, and other paid activities (except for teaching, scientific and other creative activities), implies not only work within the framework of an employment contract (service contract), including on the state or municipal service, or a civil contract related to the performance of work, the provision of services, but also another law, not prohibited by law, to receive income from economic activity, including entrepreneurial activity, the occupation of which can lead to a conflict of the property interests of the deputy and public interests.

4. If the elimination of participation in the work of the general meeting of a business association without prejudice to its activities or the property interests of the shareholder (participant) itself is virtually impossible, the deputy of the State Duma must transfer the securities, shares (shares in the authorized capital of the organization) control.

5. Ownership of shares (participation shares in the authorized capital), which determines the right to participate in the general meeting of the economic company, cannot be considered as a circumstance that violates the requirements of the current legislation and automatically lead to the early termination of the powers of a deputy of the State Duma. However, if the possession of income-bearing securities, shares (interests in the authorized capital of the organization) can lead to a conflict of interest, the parliamentarian is obliged to transfer them to trust management in accordance with the legislation of the Russian Federation.

6. The implementation by a deputy of the State Duma of activities for the management of an economic company or other commercial organization without entering into the management structure of a commercial organization or participation in the work of a general meeting of the company, also violates the balance of constitutionally protected values.

Secondly, a ban on engaging in teaching, scientific and other creative activities in cases when its financing is carried out solely at the expense of the funds of foreign states, international and foreign organizations, foreign citizens and stateless persons, unless otherwise provided by an international treaty or legislation of the Russian Federation. The Federation, legislatively established for a wide range of persons whose activities is related to ensuring the functions of the state, does not contradict the Constitution. It is aimed at preventing real and potential conflicts of interest of a foreign state or other foreign entity that is financing the relevant activity and the

interests of Russia, i.e. pursues a constitutionally justified goal - ensuring the security of the state.

Thirdly, the situation when the deputy, due to objective circumstances, could not know that the financing of the teaching, scientific and other creative activities to which he is engaged is exclusively from foreign sources, the negative consequences in the form of the termination of the deputy powers, contradicts the principles of justice and proportionality, and thereby violates the guarantees of the status of a deputy of the State Duma arising from articles 19 (parts 1 and 2), 32 (parts 1 and 2), 55 (part 3) and 97 (part 3) of the Constitution of the Russian Federation in their interrelation.

The positions formed by the Constitutional Court in Decree No. 34-P of 27.12.2012, first of all, with regard to the deputies of the State Duma, were developed in Resolution No. 26-P of 29 November 2016 "On the case on verification of constitutionality of subparagraph 8 of paragraph 2 of Article 235 Of the Civil Code of the Russian Federation and Article 17 of the Federal Law "On Control over the Correspondence of the Expenses of Persons Replacing Public Positions and Other Persons to Their Incomes" in Connection with the Request of the Supreme Court of the Republic of Bashkortostan". In this decision, the Constitutional Court pointed out that the specifics of the public service predetermines the special legal status of state (municipal) employees and, accordingly, the need for special legal regulation that introduces certain restrictions for state (municipal) employees, bans and duties, the availability of which is compensated by the guarantees and benefits. In this regard, the assignment of state (municipal) employees, along with the obligation to notify appeals for the purpose of inducing corruption offenses, the conflict of interests that have arisen, the obligation to provide relevant information, the non-fulfillment of which entails certain legal consequences, is aimed at ensuring the effective functioning of the machinery of democracy and is one of the main measures to prevent corruption. The Resolution also emphasizes that state control over the property status of state (municipal) employees is called upon to increase the effectiveness of combating corruption based on the principles of priority application of measures to prevent it, the integrated use of political, organizational, information and propaganda, socio-economic, legal, special and other measures to combat this phenomenon and to prevent risks associated with undue influence on state (municipal) employees and thereby - with the possibility of merging public authority and business.

The above legal position is also reflected in the definition of the Constitutional Court of the Russian Federation of May 29, 2014 No. 1002-O "On the refusal to accept the complaint of citizen Alexey Fonov for the violation of his constitutional rights by paragraph 13 of part 1 of Article 33 of the Federal Law" On the Civil Service of the Russian Federation Definition No. 2245-O of 25.10.2016 "On refusal to accept the complaint of citizen Alexander Barkov for violation of his constitutional rights by part 2 of Article 27.1 of the Federal Law" On Municipal "and in the Decree of 26.01.2017 No. 34-O" On refusal to accept the complaint of the citizen Timchuk Nadezhda Nikolaevna for violation of her constitutional rights by clause 7.1 of part one of Article 81 of the Labor Code of the Russian Federation and part 9 of Article 8 of the Federal Law "On Counteracting Corruption".

In the Decree of December 23, 2014 No. 2778-O "On the refusal to accept the complaint of Vlasova Tatyana Vladimirovna for violating her constitutional rights by Part 2 of Article 13.3 of the Irkutsk Region Law" On Certain Issues of Municipal Service in the Irkutsk Region" the Constitutional Court examined the issue of the establishment in the legislation of the subjects of the Russian Federation of the term of application of the penalty in the form of dismissal for corruption offense.

In particular, the complaint in question challenged the constitutionality of Part 2 of Article 13.3 of the Irkutsk Region Law of 15.10.2007 No. 88-OZ "On Certain Issues of the Municipal Service in the Irkutsk Region", which stipulates that penalties for non-compliance of municipal employees with restrictions and prohibitions, requirements for prevention or settlement of a conflict of interests and failure to perform duties established to counter corruption

are imposed no later than one month from the date of receipt of information on the commission of a corruption offense by a municipal employee, not including the period of temporary incapacity for work of a municipal employee, other cases of his absence for valid reasons and the time of the audit and review of its commission to resolve the material conflict of interest; and the penalty must be applied not later than six months from the day of receipt of information on the commission of a corruption offense. In the opinion of the Constitutional Court, having established the procedure and time limits for the enforcement of the penalty for the municipal employee, including by stipulating that the recovery should be applied not later than six months from the date of receipt of information on the commission of a corruption offense, the Irkutsk region legislator acted within the powers provided for in Part 6 Article 27.1 of the Federal Law "On Municipal Service in the Russian Federation". According to this norm, the levy is applied to municipal employees in the manner and within the time limits established by this Federal Law, regulatory legal acts of the subjects of the Russian Federation and (or) municipal regulatory legal acts.

The Constitutional Court also noted that the establishment in legislation of a precautionary nature of the period during which a municipal employee must be levied is intended to limit the period of uncertainty of the legal status of a municipal employee who is threatened with dismissal and thereby is aimed at protecting his rights and legal interests. The establishment of such a term is aimed at creating additional guarantees against arbitrary (illegal) dismissals from the municipal service, does not imply the arbitrary application of the relevant legal norm and cannot be considered as violating the constitutional rights of municipal employees.

In the Decree of 20.12.2016 No. 2700-O "On the refusal to accept the complaint of citizen Sheptyakova Olga Vladimirovna for violation of her constitutional rights by part one of Article 64.1 of the Labor Code of the Russian Federation, part 3.1 of Article 17 of the Federal Law "On the Civil Service of the Russian Federation", Part 1 of Article 12 of the Federal Law "On Combating Corruption" and subparagraph "a" of paragraph 1 of the Decree of the President of the Russian Federation "On Measures to Implement Certain Provisions of the Federal Law" "On Counteracting Corruption" the Constitutional Court once again upheld the constitutionality of the law establishing restrictions for citizens displacing posts of the state or municipal service, if they are aimed at increasing the effectiveness of countering corruption and is based on the principles of the priority application of measures to prevent corruption, is focused on ensuring the security of the state. One of such restrictions is the establishment in regulatory legal acts of the restrictions imposed on a citizen who replaced the post of state or municipal service when entering into a labor or civil law contract.

In particular, in the Decision No. 27-OO-O, the Constitutional Court found that the rule on the need to obtain the preliminary consent of the commission for compliance with the requirements for service conduct and the settlement of a conflict of interests not to violate the rights of citizens to a former state or municipal employee of a labor or civil law contract with organizations functions for public administration which were part of the official (official) duties of a state or municipal employee, established in part 3.1 of Article 17 of the Federal Law "On the Civil Service of the Russian Federation", Part 1 of Article 64.1 of the Labor Code of the Russian Federation and subparagraph "a" of paragraph 1 of the Decree of the President of the Russian Federation "On measures to implement certain provisions of the Federal Law" "On Combating Corruption".

2.2. Decisions of the Supreme Court of the Russian Federation, other courts of general jurisdiction.

Conflict of interest is dangerous because instead of legal tools of making managerial decisions, non-legal ones are used; public interests are replaced by private interests [11]. In the Review of the Practice of the Application by the Courts in 2014-2016 of the Legislation of the Russian Federation in the Consideration of Disputes Related to Imposing Disciplinary Sanctions for Failure to Compliance with the Legislation on Counteracting Corruption approved by the

Presidium of the Supreme Court of the Russian Federation on November 30, it is emphasized that the courts considered cases on claims of state and municipal employees to declare illegal and to repeal the order on disciplinary punishment in the form of dismissal and on reinstatement (in the service), to change the grounds for dismissal, to recognize as unlawful the decision of the commission for the settlement of a conflict of interests or the attestation commission, as well as cases on claims of state and municipal employees on the recognition of an illegal order to impose a disciplinary penalty of a different kind (note, reprimand, warning of incomplete job compliance).

Most often, state and municipal officials disputed the application of disciplinary sanctions against them for non-compliance with restrictions and prohibitions, requirements for prevention or settlement of conflicts of interests, and failure to perform duties established to counter corruption in the following cases:

- failure to take measures to prevent and / or resolve conflicts of interest to which the state or municipal servant is a party;
- failure to provide information about their incomes, expenses, property and liabilities of a property nature, as well as incomes, expenses, property and liabilities of the property nature of their spouse and minor children or submission of knowingly unreliable or incomplete information to the state or municipal employees.

In connection with the application of disciplinary penalties to employees for corruption offenses, the courts considered disputes over the collection of pecuniary maintenance for the period of forced absence, compensation for moral harm, and also cases on applications of the prosecutors to change the grounds for the dismissal of state and municipal employees.

It is interesting to note that of all the court cases about removing resignation of heads of municipalities, the number of cases related to contesting m on this base , as the removal of the violation of anti-corruption legislation , as is the minimum [12].

At the same time, the materials of law enforcement practice give examples of the fact that the issues related to the conflict of interests are also forced by the courts to investigate disputes arising from public legal relations when challenging normative legal acts. The most commonly occurring violation - local governments are trying to modify the wording, to go beyond the standards set by the federal legislation.

For example, in the Regulation "On the Granting Information on Incomes, Property and Obligations of Property" approved by the decision of the Duma of the Dalnegorsky Municipal District of November 26, 2009, on the granting by citizens of candidates for the replacement of municipal service posts and municipal servants in the local government of the Dalnegorsky Municipal District 1132, contained a rule that provides that in the event of failure to submit or submit knowingly false information about income, property and liabilities of property actor ... municipal employee dismissed by the municipal service or subjected to other forms of disciplinary action in accordance with the Federal Law of March 2, 2007 N 25-FZ "On Municipal Service in the Russian Federation". In other words, the possibility of the occurrence of various consequences is established-either dismissal or use of other types of disciplinary responsibility. Recognizing this norm as ineffective, the court stated that this standard provided for a differentiated liability, which contradicts Part 5 of Article 15 and Part 2 of Article 27.1 of the Federal Law of December 25, 2008, No 273-FZ "On Municipal Service in the Russian Federation" (Primorsky Krai of the court of June 29, 2016 , and the ruling of the Supreme Court of the Russian Federation from October 5, 2016 No. 56-APG16-23).

One of the most effective means of preventing conflicts of interest is the system of legal restrictions and prohibitions as an instrument [13, p. 58]. As already mentioned, the courts have to consider a large number of cases of this category.

One of the most difficult for the law enforcer is the restriction associated with the identification of relations of close kinship or property with the head of the municipal formation who heads the local administration if the replacement of the post of the municipal service is connected with direct subordination or control to this official or with the municipal employee if

the replacement of the post by the municipal service is associated with direct subordination or control of one of them to another. The legal definition that there is direct subordination or control is absent. Specialists note that there are a lot of cases of situational or functional subordination, which simply cannot be accounted for and described in normative legal acts (subdivisions of documentation support, personnel services, accounting, etc.) [13, p. 85-86; 14, p. 226-227]. Employees of these units are authorized to give instructions to all employees of the instruction, irrespective of presence of linear communications and direct subordination.

Analysis of the norms of the current legislation shows that the conflict of interests is always connected with personal interest, i.e. the possibility of receiving income by officials or other persons who are with them in the relations specified in the law. This understanding is also pointed out by the Supreme Court of the Russian Federation in the above-mentioned Review of the Practice of Application by the Courts in 2014-2016 of the Legislation of the Russian Federation when considering disputes related to the imposition of disciplinary penalties for non-compliance with the requirements of anti-corruption legislation. At the same time, in practice, far from always improper performance of duties or exercise of powers contains a conflict of interests [15, p. 167]. According to specialists, in practice the notion of "conflict of interests" and "violation of requirements for service conduct without conflict of interest" is not always delimited, which entails a violation of the rights of state or municipal employees [8].

The definition of the Chamber of Civil Cases of the Supreme Court of the Russian Federation of September 29, 2015 N 71-KG15-10 emphasizes that when applying to the court for a statement of the fact that there is a conflict of interest, to which the municipal employee Ch. Is a party, the prosecutor referred that Ch's personal interest may affect the objective performance of her duties by the first deputy head of the municipal district administration. Ch. Did not take measures to prevent the emergence of a conflict of interest, a written notice to the employer about the conflict of interest has not been submitted. These actions are an offense, involving the dismissal of a municipal employee from the municipal service. With this in mind, the Judicial Board for Civil Cases of the Supreme Court of the Russian Federation concluded that the prosecutor's application is connected with the subsequent resolution of the dispute on the right to pass the municipal service of Ch., Which was admitted to the improper, in the opinion of the prosecutor, the performance of official duties entailing the possibility of her dismissal from the replaced position, as well as by contesting the results of the tenders in the form of open auctions and requests for quotations concluded between the administration of the municipal district and the public organization About "Zhilkomservis". Therefore, the Judicial Board for Civil Cases of the Supreme Court of the Russian Federation quashed the judicial decisions in the case and left the prosecutor's application without consideration.

This example shows the importance of good enough differentiation institutions such as "conflict of interest" and adjacent, including related violation in requirements to the service behavior disorders w of ethics.

The Supreme Court of the Russian Federation draws attention to the fact that in order to identify the presence or absence of personal interest, it is important to correctly identify parties to a conflict of interests. And according to the meaning of the law, the conflict of interests can lead not only to real interest, but also potential. Thus, based on the analysis of the practice of the Ivanovo Regional Court, the Supreme Court of the Russian Federation emphasizes in its Notice that even if the relative did not become a winner of the competition, this does not mean that there is no personal interest: the circumstance that the plaintiff's wife was not recognized as the winner of the auction, legal does not matter, since, as follows from part 1 of Article 10. The federal law "On Combating Corruption" means the conflict of interests as a situation, in which the personal interest (direct or indirect) of a municipal employee not only affects, but also can affect the proper, objective and impartial performance of official (official) duties.

It is curious that in the opinion of the Supreme Court of the Russian Federation investigating the practice of the work of the Pskov Regional Court, the existence of friendly

relations also means having a personal interest. Such a conclusion seems to be notorious, since the employee's friends are not named in the list of persons contained in the Law.

The circumstances of this case are as follows. Senior Inspector V. was dismissed from the civil service. Verification of V. was carried out in connection with the receipt in the management of the Ministry of Internal Affairs of Russia for the subject of the Russian Federation, the submission of the prosecutor on the elimination of violations of the legislation on combating corruption and on service in the internal affairs bodies. In this submission, information was provided on the compilation of V., using his official powers at the request of A. and B., who were in friendly relations with him, falsified documents on road accidents with the aim of obtaining insurance compensation for the latter. On the basis of these documents, insurance companies made payments to A. and B. of the corresponding amounts of insurance compensation. In the opinion of the Supreme Court, the Pskov regional court came to the correct conclusion that V., without notifying the immediate supervisor (head) about the proposal he received on the falsification of documents on two road accidents, allowed a conflict of interests, expressed in the creation of the situation, where his personal interest affected the proper, objective and impartial performance of his duties, and upheld the dismissal from service B. on the ground provided by Part 1 of Article 82.1 of the Federal Law "On Service in the Internal Affairs Bodies of the Russian Federation and Amendments to Certain Legislative Acts of the Russian Federation." What this personal interest is expressed in is not indicated in the court decision.

There are examples of the fact that courts state the presence of a conflict of interest because of the relations of a municipal employee with former relatives. Thus, the municipal employee S., who at the same time held the position of chairman of the municipal interdepartmental commission for the selection of land plots on the territory of the urban district of Pervouralsk, was dismissed because, as an official, using his official position, he took actions to adopt a legally significant decision on the basis of which his grandfather his former wife had property rights to the land. Consequently, in the opinion of the court under the circumstances, there was a personal interest of S., which gives grounds for his dismissal under cl. 7.1 part 1 of Art. 81 Of the Labor Code of the Russian Federation is the failure of an employee to take measures to prevent or resolve a conflict of interest to which he is a party (Decision of the Pervouralsk City Court of the Sverdlovsk Region of December 26, 2016, Appeal of the Sverdlovsk Regional Court of March 17, 2017 in case No. 33-4204 / 2017).

The term "conflict of interest" is also used to refer to certain mechanisms and procedures. Thus, scientists from UrGuA pay attention to the fact that this term is used not only to resolve situations of anti-corruption orientation, but also when regulating the stages and stages of the state civil or municipal service. So, in judicial practice there are cases in which it is investigated whether the proper notification of the employer (employer) about the presence of a conflict of interest [\[9\]](#). The Supreme Court found it right that the Kemerovo Regional Court dismissed P.'s argument as unsubstantiated, believing that, having notified the immediate superior of a close relationship with V. and having declared her self-refusal orally, she fulfilled those duties. The court pointed out that P. had to inform the immediate supervisor about a personal interest that could lead to a conflict of interest and to withdraw in writing before the commencement of executive actions against V. and came to the correct conclusion about the legality of the plaintiff's dismissal on the grounds, stipulated by clause 1.1 of part 1 of Article 37 of the Federal Law "On State Civil Service of the Russian Federation".

At the same time, in judicial practice, not only the issue related to the form of notification is investigated, but also the consequences of such non-notification. The point is that, in the opinion of the courts, an analysis of the norm of the current legislation does not allow making an unambiguous conclusion about the application of measures of influence in the form of dismissal. Thus, in the decision of the Petrovsky City Court of the Saratov Region No. 2-397 / 2015 2-397 / 2015 ~ M-396/2015 M-396/2015 of June 24, 2015, it is stated that the employee of U. was offered a monetary reward for issuing a certificate on the availability of farming in use. In

violation of Art. 9 Federal Law No. 273-FZ, U. notification to the representative of the employer (the employer), to the Petrovsky interdistrict prosecutor's office, other state bodies to apply to her for the purpose of inciting to commit corruption offenses within the prescribed time limit did not send. To her, punishment was applied in the form of a remark; in the satisfaction of the statement of the deputy prosecutor about compulsion to dismiss the municipal employee was refused.

In general, the inaction of the head of the municipal formation in connection with the conflict of interests is investigated by the courts in different contexts and fairly regularly [10]. An analysis of law enforcement practices revealed an unexpected problem. Thus, according to Article 14.1 of Federal Law No. 25-FZ of 02.03.2007 (Ed. Of 26.07.2017) "On municipal service in the Russian Federation", the failure of a municipal employee, who is the representative of an employer, who became aware of the occurrence of a municipal employee subordinate to him personal interest that leads or can lead to a conflict of interest, measures to prevent or resolve a conflict of interest is an offense that results in the dismissal of a municipal employee who is a representative of the employer With municipal services. And what if the head of the municipal entity became aware of corruption violations, including those related to the conflict of interests for which he should take response measures, but he does not? Who and how should apply to it the measures of influence, until the termination of authority? Strictly speaking, there are certain mechanisms in articles 36, 40, 74, 74.1 of Federal Law No. 131-FZ, but their implementation is not always carried out in practice (deputies refuse to terminate the powers of the head, the governor does not initiate the procedure for the dismissal of the chapter, etc.). For example, in Appeal and Stavropol Regional Court of February 14, 2017 N 33-223 / 2017 investigated the issue of recognizing the illegal inaction of the governor of the Stavropol Territory and the obligation of the governor to initiate the issue of dismissal of the head of the municipal formation.

At the same time, the Supreme Court of the Russian Federation took a slightly different position. Thus, in the Decree and the Supreme Court of the Russian Federation dated November 11, 2013 № 43-AD 13-2 states that a representative of the employer (the employer's) duty to report an employment contract (service contract) with the former government (municipal) employee representative of the hirer (employer) state or municipal employee for the last place of his service does not arise if the former employee carries out his official (labor) activity in the state (municipal) body. Such an approach is also presented in other decisions of the Supreme Court of the Russian Federation (No. 46-AD 14-13 of May 26, 2014, No. 7-AD 14-2 of March 11, 2014, No. 70-AD14- 2 and others).

3. Conclusions

The analysis of judicial practice shows that if the position of the Supreme Court is generally fairly consistent, the courts of other territorial levels may take different positions on similar situations. Therefore, we should welcome the preparation by the Supreme Court of the Russian Federation of the practice of applying by courts in the years 2014 - 2016 of the legislation of the Russian Federation in the consideration of disputes related to the imposition of disciplinary penalties for non-compliance with the requirements of anti-corruption legislation.

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