

INCREASING RESPONSIBILITY OF EXPLANATION IN DISCIPLINING CIVIL SERVANTS IN ACCORDANCE WITH VIETNAM LAW

AUMENTO DA RESPONSABILIDADE DE EXPLICAÇÃO NA DISCIPLINA DOS FUNCIONÁRIOS PÚBLICOS DE ACORDO COM A LEI VIETNAMITA

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Abstract: Currently, raising the awareness and responsibility of agencies, organizations, and civil servants in law enforcement on the handling of violations, in which accountability in public discipline is one of the measures to strengthen discipline and discipline of the socialist rule of law state. However, to raise the awareness and responsibility of agencies, organizations, and civil servants in performing their official duties, it is necessary to have a legal mechanism for accountability in public discipline. Vietnam's legal system has specific regulations on disciplinary accountability for civil servants, however, when determining accountability, there have been a number of limitations and obstacles. On the basis of a study of Vietnam's legal system on accountability and disciplinary accountability for civil servants; This study further clarifies the theoretical and practical issues of accountability in the discipline of civil servants, thereby proposing some solutions to improve the law and further enhance accountability in the civil service discipline for civil servants in the future.

Keywords: Increasing responsibility of explanation. Disciplining civil servants. Law

system. Law of Vietnam.

Resumo: Atualmente, a conscientização e responsabilidade das agências, organizações e funcionários públicos na aplicação da lei sobre o tratamento de violações, nas quais a responsabilidade na disciplina pública é uma das medidas para fortalecer a disciplina e a disciplina do estado de direito socialista. Entretanto, para aumentar a conscientização e a

responsabilidade das agências, organizações e funcionários públicos no desempenho de suas funções oficiais, é necessário ter um mecanismo legal para a prestação de contas na disciplina pública. O sistema jurídico vietnamita tem regulamentos específicos sobre responsabilidade disciplinar para funcionários públicos, porém, ao determinar a responsabilidade, tem havido uma série de limitações e obstáculos. Com base em um estudo do sistema jurídico vietnamita sobre responsabilidade e responsabilidade disciplinar dos funcionários públicos; este estudo esclarece ainda mais as questões teóricas e práticas de responsabilidade na disciplina dos funcionários públicos, propondo assim algumas soluções para melhorar a lei e aumentar ainda mais a responsabilidade na disciplina do serviço público para os funcionários públicos no futuro.

Palavras-chave: Aumentar a responsabilidade de explicação. Disciplina dos funcionários públicos. Sistema jurídico. Lei do Vietnã.

INTRODUCTION

The 2005 Law on Anti-corruption and the Government's Decree No. 90/2013/ND-CP dated August 8, 2013, were the first legal documents to introduce the concept of accountability, which means that "agency the State provides, explains and clarifies information on the performance of assigned tasks and powers and its responsibilities in the performance of such tasks and powers. According to the 2018 Law on Anti-Corruption, the concept of accountability is understood: "A competent agency, organization, unit or individual clarifying information, promptly and fully explains the decision their decisions and behaviors while performing their assigned tasks or public duties" (NATIONAL ASSEMBLY, 2018).

The Law on Anti-corruption 2018 provides accountability with the meaning and aspiration of being an effective anti-corruption measure (National Assembly, 2018). Accordingly, the Law stipulates the case of explanations at the request of agencies, organizations, units, and individuals and at the request of answers published in the press. The person who performs the explanation is defined as the head of the agency, organization, unit, or the person assigned, who is legally authorized to carry out the accountability. The law also indirectly provides for accountability in monitoring activities and in a number of other activities. The explanations in these cases shall be made in accordance with relevant laws. Decree No. 59/2019/ND-CP dated July 1, 2019 detailing and guiding a number of articles and implementation measures of the Law on Anti-Corruption has devoted a chapter with 12 pieces to detailing This issue including (i)

Contents and conditions for receiving requests for explanations, cases of refusal of requests for explanations, contents that are not within the scope of explanations and the responsibility of the head in performing his/her responsibility. accountability; (ii) Rights and obligations of the person requesting the explanation and the person performing the accountability; (iii) Order and procedures for accountability (GOVERNMENT, 2019).

The provisions of the 2018 Law on Anti-Corruption and Decree No. 59/2019/ND-CP on accountability were inherited and developed on the basis of the provisions on this issue in the Law on Anti-corruption (2005) and Decree No. 90/2013/ND-CP. It clearly identifies the contents that are not within the scope of explanation, including those belonging to state secrets, private life secrets, personal secrets, and business secrets as prescribed by law; contents of direction, administration, and organization of the performance of tasks and official duties within agencies, organizations or units that have not yet been promulgated or implemented, or contents of direction and administration of superior agencies with subordinate agencies (PHONG ET AL., 2019; DOAN & NAM, 2020) These are also content that is not made public or that is restricted from being made public under certain circumstances.

The reality of summarizing the implementation of the 2005 Law on Anti-corruption shows that there are not many requests and explanations over the three years of implementation (from 2013 to 2016). As of 2016, state agencies only received and explained 17/17 requests from the people (HIEP ET AL., 2022). This number is too small compared to other requests such as complaints, denunciations, petitions, and reflections. This is explained by the novelty of this regulation and the familiarity with using the people's right to complain and denounce.

Although it is not regulated into specific and direct contents as in the Law on Anti-corruption and its guiding documents, the implementation of accountability still takes place in public affairs. with diverse forms, on the basis of exercising the right to monitor and request. This spirit has also been codified in Clauses 2 and 3, Article 15 of the 2018 Law on Anti-Corruption.

The explanation, in addition to the performance as required, also includes explanations in the course of performing tasks and official duties of subordinates to superiors, of official duty performers to persons competent to assign tasks (DUCHIEP, ET AL., 2022; HOA & VAN, 2022); give explanations in the process of verifying,

clarifying issues related to complaints, denunciations or verifying the declaration of assets and income of persons with positions and powers; give explanations when the press publishes information about violations of the law and requests answers to issues related to the performance of assigned tasks and public duties (VIET, 2003; VAN, 2022); and explain at the request of the supervisory authority or another competent agency, organization, unit, or individual, etc (LUONGNGOC, ET AL., 2022a & 2022b).

It can be said that if the approach to accountability in discipline for civil servants is wide-ranging, in addition to the specific regulations on accountability in the Law on Anti-Corruption and Decree No. 59/2019/ND-CP The explanation is quite diverse, being carried out in many contents and fields.

LITERATURE REVIEW

The concept of accountability

Accountability is a legal political term, introduced in Vietnam during the integration process. This is a universal institution in the governance of developed countries and is considered one of the pillars for effective anti-corruption (VIET, 2003; TRUNG & VAN, 2020a & 2020b). Accountability itself is not only a legal responsibility, a responsibility in the performance of public duties, but above all, a political responsibility, and a public moral responsibility of the person who exercises state power (Y, 1999; YEN, 2017).

Up to now, academically and legally in Vietnam, there has not been a unified recognition of this concept with its full connotations and meanings. The first legal document that directly regulates this issue, the 2005 Law on Anti-Corruption and the Government's Decree No. 90/2013/ND-CP dated August 8, 2013, did not provide a definition. fully on accountability, but only introduces the concept of accountability, which means that "the state agency provides, explains, and clarifies information about the performance of its assigned duties, powers and responsibilities in the performance of such duties and powers".

The Law on Anti-Corruption (2018) introduced the concept of accountability, according to which: "Accountability is the fact that competent agencies, organizations, units, and individuals clarify information and explain information. promptly and fully about their decisions and acts while performing their assigned tasks or official duties" (NATIONAL ASSEMBLY, 2018). Although the whole concept cluster has been

explained, it still mainly explains the content of the “explanation”. The content of “responsibility” is only mentioned as “work” that competent agencies, organizations, and individuals perform. In a number of studies, the concept of “accountability” has taken a deeper approach, referring to the proactive disclosure of information and the responsibility of the head for the implementation results. his/her duties and those of the subordinates in the agency he/she manages and is in charge of

Classification of explanations

There is an explanation in the political aspect, which is the explanation of politicians to the people about their responsibilities for issues in their fields of management; there is an explanation in the legal aspect which is the explanation of the civil servant when the occurrence of events affecting the correctness in the performance of his or her duties or public duties occurs.

However, in essence, the content of the “explanation” does not change. The same is true of accountability in all other areas of social life, only when the phrase “responsibility” is attached to the state of accountability that is emphasized, favoring the political, legal, and personal ethics of the presenter.

Responsibility of explanation

“Responsibility” here is understood as a must-do, of the subject’s own nature and is also a “responsibility” according to regulations that are required to explain, present and clarify the legal obligations to be performed. and clearly define where it was done, and why (NATIONAL ASSEMBLY, 2008 & 2010). Besides, it also shows legal responsibility, that is, to bear the consequences and the spirit of being ready to bear the consequences for their actions.

When studying the concept, we can easily agree on the content of explanations including (i) Explanation and clarification of information on the performance of assigned tasks and powers; (ii) Responsibilities of the subject in the performance of such tasks and powers. What needs to be clarified here, however, is the accountability of implementing accountability.

According to the above approach, the subject makes the explanation because of their own moral sense which urges, is forced to do, because of the responsibility to the

community, and to society, before the implementation required by the law. the law. This shows the responsibility and self-discipline of the person who carries out the accountability on the basis of the individual culture, civil service culture, and tradition of each country. However, in order to fully implement accountability, it is still necessary to rely on the provisions of the law, which defines the cases that must be explained, the time, the form, and the content of the explanation.

Implementing accountability increases the sense of responsibility in the performance of public duties, thereby improving the quality and efficiency of operations and limiting corruption and negative phenomena. The implementation of explanations helps to make public and transparent activities of state agencies, creating a basis for society and people to access information to monitor and criticize the activities of state agencies and of the State agencies. officials and civil servants.

Accountability and openness and transparency have been identified as the pillars of effective anti-corruption. The United Nations Development Organization gives the formula: $Corruption (C) = \{Autocracy (M) + discretion (D)\} - \{accountability (A) + integrity (I) transparency(I)\}$.

Through the implementation of accountability, people and society have more confidence in the responsibility of cadres, civil servants, and politicians who are leading the country.

Subjects and grounds for performing accountability

Subjects carrying out accountability according to the most common approach include state agencies (legal entities) and cadres, civil servants, and public employees. However, according to the above approach to accountability, it is necessary to establish the subject of accountability as individuals - cadres, civil servants, and public employees. Each individual needs to be accountable for the performance of assigned duties and responsibilities. The responsibility of state agencies (legal entities) is a common responsibility, they are only established for agencies working under a collective mechanism (committees, councils). When performing specific tasks, agencies are only “shadows”, existing as individuals with their actions (actions or inactions) in order to perform their respective responsibilities and tasks. assigned.

The basis for implementing accountability can be seen, including proactive implementation and explanation when requested (in person or in writing). With the above approach, it can be seen that the explanation is completely due to the requirements - external factors affect. Having a written or direct request for accountability is just a different stage of the accountability process. First of all, the person responsible for the accountability makes an explanation because the ethical and legal norms are “required”. The requirements themselves always exist, it is the responsibility of the community and society. If the responsible person does not perform, it will lead to people and society (press, organizations, unions, etc.) requests - in writing, directly, or through the media. This request is like a coercive stage, requiring an explanation. At this point, “implementation of accountability is already a sanction!”.

Accountability content

Accountability includes explaining what and how. In order for accountability to be a tool that contributes to improving the efficiency of public service performance, “explaining what” needs to be widespread, across all areas of operation of state agencies. This is limited to legally protected confidential content. In addition, all activities of state agencies are subject to due diligence. The explanation should provide and clarify information related to the performance of duties and public duties, including information about the basis for making decisions and performing acts, and information about the implementation process. implementation, and information on the rights and responsibilities of the implementer and related people. These explanations and clarifications are based on authentic grounds and the explainers must be responsible for their explanations.

RESULTS AND DISCUSSION

Disciplinary explanations for civil servants in accordance with Vietnamese law

In Clause 1, Article 15 of the Law on Anti-corruption 2018 stipulates accountability as follows: Agencies, organizations, units, and individuals are responsible for explaining their decisions and acts in the perform assigned tasks or official duties at the request of agencies, organizations, units, and individuals directly affected by such decisions or acts. The person carrying out the accountability is the head of an agency, organization, unit, or

person assigned, who is legally authorized to carry out the accountability (National Assembly, 2018).

Accordingly, this content is detailed in Chapter II of Decree No. 59/2019/ND-CP dated July 1, 2019, of the Government (Government, 2019). As follows:

About the content of the explanation: The legal basis for the issuance of the decision and the performance of the act. Authority to issue decisions and perform acts. Order and procedures for issuing decisions and performing acts. Contents of decisions and acts (Article 3).

Regarding the conditions for receiving requests for explanation: The individual requesting explanation has full civil act capacity or has a representative as prescribed by law; The agency, organization, or unit that requests explanation has a lawful representative of its agency, organization, or unit. Decisions and acts of the agency, organization, or unit that are requested to be explained directly affect the lawful rights and interests of the agency, organization, unit, or individual requesting explanation (Article 4.).

Cases in which a request for explanation is refused: Not being eligible to receive an explanation request specified in Article 4 of this Decree. The content of the request for explanation falls into the case specified in Article 6 of this Decree, the content has been explained or has been accepted and handled by a competent agency, organization, unit, or individual, unless the claimant has good cause. The person asking for an explanation is in a state of being unable to control his/her behavior due to the use of stimulants or acts to disrupt order, threaten or offend the honor and dignity of the person receiving the explanation request. The authorized person, the representative does not have legal papers as prescribed by law (Article 5).

Contents that are not within the scope of explanation are Contents of state secrets, private life secrets, personal secrets, and business secrets as prescribed by law. Contents of direction, administration, and organization of the performance of tasks and official duties within agencies, organizations, or units that have not yet been promulgated or implemented, or contents of direction and administration of superior agencies with subordinate agencies (Article 6).

Responsibilities of heads of agencies, organizations, and units in the performance of accountability include: Specifying the implementation of accountability in the internal rules and working regulations of the agency or organization, or unit. Assign individuals or

departments to be responsible for receiving requests for explanations. Organize, direct, urge and inspect the implementation of accountability and handle violations according to its competence (Article 7).

Regarding the rights and obligations of the person requesting an explanation, it is stipulated that: The person requesting an explanation shall have the following rights: By himself or by authorizing another person with full civil act capacity to perform the request for an explanation; Withdraw part or all of the request for accountability; Receive explanations from agencies, organizations, units and individuals responsible for the explanation; Complaints and denunciations according to the provisions of law. The person requesting an explanation has the following obligations: To state his/her full name and address or to present identification documents or power of attorney; To strictly comply with the order and procedures for requesting explanations specified in Section 3, Chapter II of this Decree and other relevant laws; To present clearly, honestly and groundedly on the contents of the request for an explanation; Provide information and documents related to the content of the request for explanation (Article 8).

With respect to the rights and obligations of the person performing the accountability: The person performing the accountability has the following rights: To request the person requesting an explanation to provide information and documents related to the content of the request for an explanation; submit; To guide the requester for explanation to strictly follow the order and procedures specified in Section 3, Chapter II of this Decree and other relevant law provisions; To refuse requests for explanation in the cases specified in Article 5 of this Decree. Persons performing accountability have the following obligations: To receive requests for explanations within their competence; To guide the person requesting explanation to follow the order and procedures specified in Section 3, Chapter II of this Decree and other relevant laws; To settle requests for explanation in accordance with the order, procedures and time limit specified in this Decree and other relevant laws (Article 9).

Regarding the request for an explanation, Article 10 of this Decree stipulates: The request for an explanation shall be made in writing or directly at the agency, organization, or unit responsible for the explanation. Request for explanation in writing: The written request for an explanation must clearly state the content of the request for an explanation; clearly state the full name, address, telephone number, or mailing address of the person

requesting an explanation. The written request for an explanation must be signed or certified by the person requesting the explanation. Direct explanation request: The requester clearly presents the requested content to the person receiving the request for an explanation. In case more than one person requests to explain the same content, a representative must be appointed to present. The appointment of a representative shall be expressed in writing with the signatures or fingerprints of the persons requesting explanations; The person receiving the request for an explanation must truthfully express the content of the request for an explanation in writing; clearly state the full name, address, telephone number or mailing address of the person requesting an explanation; The person requesting an explanation shall sign or point only to the written request for an explanation.

Receipt of requests for explanation: Agencies, organizations, units, and individuals are responsible for receiving explanations when meeting the requirements for receipt and are not in the cases of refusal of requests for explanations. specified in Articles 4 and 5 of this Decree, respectively. In case the request for explanation is not within the responsibility, the receiver shall guide the requester to the competent authority as prescribed by law. If the written request for an explanation does not satisfy the conditions specified in Clause 2, Article 10 of this Decree, the recipient shall guide the requester for additional information and documents. In case the content of the request for explanation has been explained to another person before, a copy of the written explanation must be provided to the person requesting the explanation. Within 05 working days from the date of receipt of the request, the explainer must notify in writing the requester of the settlement or non-settlement, clearly stating the reason (Article 11).

Implementation of explanation Article 12 stipulates: In case of a request for direct explanation with simple content, the explanation can be done in direct form. The direct explanation must be made in writing with the signatures or fingerprints of the parties. In the remaining cases, the explanations are made as follows: Collect and verify relevant information; Work directly with the person requesting an explanation to clarify relevant contents when necessary. The working contents shall be recorded in writing with signatures or fingerprints of the parties; Issue explanatory documents; Send a written explanation to the person requesting the explanation. The written explanation must contain the following contents: Full name and address of the person requesting the explanation; Contents of

request for an explanation; Results of working directly with organizations and individuals (if any); Legal grounds for the explanation; Specific explanatory content.

The time limit for making explanations: The time limit for making explanations shall not exceed 15 days from the date of issuing the notice of receipt of the request for an explanation; in case of complicated contents, the extension may be extended once; the extension shall not exceed 15 days and must be notified in writing to the requester for an explanation. The period of temporary suspension of the explanation specified in Clause 1, Article 14 of this Decree shall not be counted in the time limit for making the explanation (Article 13).

Suspension or suspension of explanation: During the performance of the explanation, the person performing the accountability shall decide to temporarily suspend the explanation in the following cases: dies without identification of an heir to his rights and obligations; agencies or organizations that are split, merged or dissolved without any individual or organization inheriting rights and obligations in the case request explanation; The person requesting an explanation is an individual who has lost his/her civil act capacity but his/her at-law representative has not been identified; The individual requesting the explanation is sick or for other objective reasons that the person performing the accountability cannot make the explanation. The person in charge of accountability continues to make the accountability when the reason for the suspension no longer exists. The person performing the accountability shall decide to suspend the explanation in the following cases: The person requesting the explanation is an individual who has died without an heir to the rights and obligations; agencies or organizations are split, merged, or dissolved without any individual or organization inheriting rights and obligations in the case to request explanation; The person requesting explanation is an individual who has lost his/her civil act capacity without a legal representative; The requester withdraws the entire request for explanation (Article 14)

Some recommendations

Accountability is no longer new to legislators and researchers, but it still seems to be a “luxury” responsibility in public life and seems “foreign” to people when exercising their rights. ask for your explanation. Accountability is not simply explaining and presenting, but it also shows the initiative in publicizing, proactively communicating to the

people and society, and actively taking responsibility for the consequences that occur due to the consequences. I do well in the field I manage and am in charge of. Implementing accountability is showing responsibility to the community and society, thereby creating society's sharing, sympathy, and trust in the state apparatus, in the contingent of cadres and civil servants, and officials. Forming and practicing accountability maturely should be based on a certain development of the civil service and state governance. In other words, "accountability" will be difficult to apply when the conditions of awareness and management have not been met.

Promoting the improvement of the political-legal basis for accountability in the socio-political life of the country is of great significance. Implementing accountability improves the efficiency of state management and the performance of duties and responsibilities of the contingent of cadres and civil servants, helping to prevent and control corruption and negative phenomena. . Some of the directions in this regard include:

Firstly, it is necessary to distinguish political accountability - the explanation of politicians from the explanation in public service activities - the explanation of cadres and civil servants to the people. The accountability of politicians within the apparatus or before the People is political accountability and political accountability is paramount. Here, the explanation is made to establish the reputation of the apparatus, and of the individual explainer in an active way, not by any administrative or legal requirements. The consequences of exercising this accountability are often not defined and applied by the authorities but voluntarily imposed by the explainers. Usually, it is to resign, resign from the position or work that you are in charge of. Accountability in public service activities will be more accessible and regulated, like the current regulations in the Law on Anti-corruption and Decree No. 59/2019/ND-CP. This distinction makes it easier to prescribe and implement accountability in specific areas.

Second, promote the role of society and people in promoting the accountability of state agencies and competent people. Practices in the past time have shown that accountability within the framework of the National Assembly's activities has prospered, been supported, and highly appreciated by voters. However, it also needs to continue to be maintained and improved. The explanation of the People's Council does not have complete and accurate statistics and assessment, but there are still certain limitations. The explanation required within the framework of the Law on Anti-corruption and the Decree guiding the

implementation has not been paid attention to. This is probably the most limited point of this regulation when we want to legislate with strict orders and procedures for requesting and implementing accountability in public affairs. In order to promote accountability in the coming time, it is necessary to further raise awareness of social organizations and people about their right to ask for accountability, about the accountability of state agencies. country, by the authorized person. The people also through voter contact activities request National Assembly deputies and People's Council deputies to make inquiries, requesting the Government, People's Committees, and responsible persons to act. clearly identify issues that voters care about and propose.

Third, continue to improve regulations on accountability in state activities. Clearly define the principles, requirements, and contents of accountability before the National Assembly and People's Councils at all levels and promote the implementation and formation of a culture of accountability in the political life of the country. The explanation of state administrative agencies and judicial agencies before the National Assembly and People's Council is also the explanation to the People and to society. Since these are the elected bodies, representing the will and aspirations of the People, the people exercise state power through these agencies. In addition, improve the provisions on accountability in the Law on Anti-corruption and Decree No. 59/2019/ND-CP on issues such as more specific regulations on accountability. of the subjects, in some cases being the head but in other cases the person directly performing the tasks and public duties that require explanation; more clearly define the rights and obligations of accountable entities; specific regulations on political and legal responsibilities for those who are obliged to explain in case of delay in explanation, improper or inadequate performance of their responsibilities in the explanation such as not considering emulation comments. , do not recommend candidacy, appointment, or administrative discipline, etc.; stipulating responsibility for coordination in the explanation of contents related to many agencies; regulations on supervision over the performance of accountability by state agencies in the performance of their assigned tasks and powers; etc.

CONCLUSION

Accountability is no longer a new concept for legislators and researchers, but it still seems difficult for civil servants. Accountability is not simply explaining and presenting, but it also shows the initiative to publicize, proactively inform the people and society, and actively take responsibility for the consequences caused by I do well in the field I manage and am in charge of. Implementing accountability is showing responsibility to the community and society, thereby creating society's sharing, sympathy, and trust in the state apparatus, in the contingent of cadres and civil servants. Forming and practicing accountability maturely should be based on a certain development of the civil service and state governance. In other words, "accountability" will be difficult to apply when the conditions of awareness and management have not been met.

Promote the improvement of the political and legal basis for the implementation of disciplinary accountability for civil servants in accordance with Vietnamese law, in the meaningful socio-political life of the country. importance. Carrying out disciplinary accountability for civil servants improves the efficiency of state management and the performance of duties and responsibilities of the contingent of cadres and civil servants, helping to prevent and control illegal activities corruption, and negativity.

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