Questions of Fair Justice and Judicial Authority Functioning in Russian Federation

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Abstract: In the present article authors discuss questions of fair justice in Russian Federation and questions of judicial authority functioning in Russian Federation. Authors present statistics of judicial authority functioning in Russian Federation and present opinions of jurists and scientists. Authors analyze organizational and legal bases for the judicial authority work in Russian Federation and it’s place in the modern civil society of Russian Federation. Based on the above information authors provide personal scientifically and practice based opinion. In conclusion authors explain the need of the judge’s work load count, need for special ethical oriented books preparation, need for changes in current laws, regulation judicial authority work and judicial activity in modern Russian Federation. Furthermore authors emphasize that it is absolutely necessary no lessen the load of cases on courts by implementing appropriate instruments such as mandatory mediation pretrial procedures, reinforcement of societies of the rights of consumers protection with broad legal competences and many other instruments.

Key words: Justice · Judge · Judicial authority · System of courts · Law · Order · Practice · Perspective · Russia · Russian Federation

INTRODUCTION

In any country a court may rule such a decision that would not be just of fair. Of course this more often happens to young and incompetent judges. In cases when any side of the case has reasons to reasonable believe that the court ruling is unfair of unjust should have a chance for appeal [1].

Usually the duty of proving existence of circumstances which may be the basis for the review of the court decision lie on the shoulders of the person (side) that makes the appeal. Russian Federation is not different and also has such system. However there are also other instruments of the civil society available for the court decision review [2].

In Russian Federation community of judges has all powers to control themselves. One of the instruments for such control is the system of Qualifying Boards of Judges, which exist on federal level and in every subject of Russian Federation. It’s activity is regulated by the Law of Russian Federation "About the status of judges in Russian Federation” and the Regulations of the Highest Qualifying Boards of Judges of Russian Federation and some other regulatory acts [3].

In last couple of years Russian Federation integrated in full into the globalized world. This lead to the new concept of civil instruments for the fair justice and judicial authority functioning understanding in Russian Federation. Let’s talk in detail about Qualifying Boards of Judges of the Russian Federation.

Research Methodology: In the present article authors formulate the research problem, accumulate a good empirical base, this helps focus on the research process and draw conclusions reflecting the real world in the best possible way using: introduction – hypothesis, deduction – predictions, observation – nest of predictions, etc.

RESULTS AND DISCUSSION

In modern Russia Qualifying Boards of Judges is competent to check information on the inappropriate
conduct of judges and breach of the Code of Ethics and in cases where it finds it necessary to make appropriate decisions.

In years 2001 – 2003 and the first half of 2004 Qualifying Boards of Judges in subjects of Russian Federation conducted hearings of 177 applications for review of judicial activities, 101 of which was dismissed, 50 overturned and 26 changed. As we see not too many judge’s actions are found inappropriate [4].

Let’s take a look into the inappropriate actions more closely, however, before we take a look at that, authors feel necessary to explain that it is critically important for the Qualifying Boards of Judges not only to make sure of judge’s strict accountability for clerical mistakes, misconduct and Code of Ethics violations, but more wisely and firmly safeguard the legitimate rights and interests of judges, including protection from false accusations and revenge, compile disciplinary case materials and prepare initiatives to assist judicial community in negative practice elimination, conduct fair and legitimate judge’s attestation and recommendation for the judicial positions.

In the report of the Highest Qualifying Boards of Judges of Russian Federation to the VI Congress of Judges, which was held from Nov. 30, 2004 till Dec. 02, 2004, it was reported that during the 3 years and 9 months that passed from the V Congress of Judges, Qualifying Boards of Judges in subjects of Russian Federation reviewed 24,325 applications for the positions of judges and recommended 20,070 candidates for positions.

At the same time Highest Qualifying Boards of Judges of Russian Federation certified 1,906 heads of courts and judges. Qualifying Boards of Judges in subjects of Russian Federation certified 20,871 judges. In regard to 196 judges an early termination of power’s decision was made, 513 judges and heads of courts were disciplined with a warning. In cases of 327 judges the decided to close disciplinary attraction was made.

In year 2006, during the Qualifying Boards of Judges qualifying certification of 6,013 judges and heads of courts 5,900 judges were attested and assigned new ranks, 113 judges were left in the previous ranks (including 101 district judge and 12 justice of the peace). Made decision were based on the quality of decisions made by judge. The same year 22 Qualifying Boards of Judges in subjects of Russian Federation received 29 applications for review of decisions. Of them 13 decisions were completely revised, 1 altered, in revision of 15 decisions was denied [5].

In our opinion some bodies judicial community and heads of some courts miss the moment when there is an opportunity to explain to judges of their professional, moral and ethical failures. However, they overestimate the effect of educational influence on the decisions of judges working for the punishment of the other judges. Each person prefers to think that similar and like never happen with him (her). We must remember that judges first of all are regular people that come out of the "ordinary" lawyers [6].

In the first three years of judicial work of a novice judge, one does not usually have time and ability for deep study of professional materials, as well as the place and role in the judicial system. That is why a quarter of the judges involved in the disciplinary proceedings had worked for three years. This should be the focus of judicial community and heads of courts. Young judges require attention, friendly help, a principled assessment of their actions, deeds, professional activities. At the beginning of their professional career young judges should know that limitations and self-restraints that ensure their status, authority, prestige and become a part of their life style [7].

To make it possible in the first three years of young judge work not to apply disciplinary measures in cases of minor violations it appears to be reasonable for commission on ethics to function in every subject of Russian Federation. This work should be done all year round and not on case to case bases. Appropriate books should be written to teach young judges necessary skills on ethical judicial conduct, specific examples should be given. For example, if a young judge is "afraid" of some type of cases, feels insecure and/or a significant number of cases postponed without considering right away in the first trial of as prescribed by law, this situation should be immediately dealt by the head of court and commission of ethics.

The very discussion of such situation would be a manifestation of care and attention to the judge and a teaching moment, a preventive measure without interventions on specific cases and may be reflected in the characteristic when the judge disregarded ethical education measures and has continued to show misconduct in the judicial activities. As for the early termination of powers of chairmen and deputy-chairman, in our opinion, in respect to the category of judges must determine that the procedure of appointment and dismissal of heads of courts should be held in the same organs and same persons.
CONCLUSION

Heads of courts, as a judges and respected citizens should have the ability to "decide what we should do" [8] in respect to appropriate functioning of judges in service at their courts. It appears to be reasonable to impose more moral duties to the heads of courts for the professional wellbeing of judges in their courts and change the order of appointment and dismissal of the heads of courts. It appears to be reasonable to reduce the term of service of heads of the courts to 3 years with the right of re-election for one additional consecutive term of 3 years and apply to them the same requirements, which are set for election of the Head of the Constitutional Court of the Russian. Art. 23 of the Federal Constitutional Law of the Russian Federation "About the Constitutional Court of the Russian Federation" dated July 21, 1994 prescribes that election of Head of Constitutional Court of the Russian Federation is conducted at the plenary session of judges of the Constitutional Court of the Russian Federation by voting in a secret-ballot election.

Load standards should be adjusted to fit modern reality. Load standards are designed to determine the regular number of judges and employees of the above-mentioned courts. Official documents and some legal literature sometimes uses a short term "norm of judge load", but these words are hiding a lot of work of various organizations and agencies. Public independent experts to give their opinion had to thoroughly study the material on 268 pages, which is the starting point for the development of the main criteria that will be the determinant of the work load for all judges and court staff.

Public, independent experts noted a number of positive aspects in the development of this project and pointed out the feasibility of increasing the time allowed for the preparation and writing a court ruling, as a carrier of judicial power – a judge must carefully, wisely and without a hustle analyze any and all materials of the case and make appropriate decision. So the number of time prescribed by legislature should be enough to make sure of the quality of judgment.

It appears to be wise to implement correction coefficients when complex criminal cases and/or cases involving crimes against minors are heard. Obviously in such categories of cases the time and effort required from judges is much higher due to case legal complexity, heightened emotionality level, involvement of experts and usually multiple lawyers, regular is emergence of abnormal situations in the process.

Authors feel especially important to point out that there is almost no reasonable normative of the "norm of judge load" for the justices of the peace. Meanwhile these judges are getting the main load of cases. And even though these cases are minor, they are the most in quantity. Unfair and unjust decisions, when are made in large quantities cause appropriate reactions in the civil society. Growth of impoverishment and lumpenization causes internal animosity directed not only against rich, but also against society as a whole, against the government, officials, politicians, etc. in many people. Usually all of this leads to the growth of illegal moods and actions and of course does not help in the development of senses "justice" and "civil society" at all [9].

Normalization of the working conditions of judges through the definition of standards will improve the load per judge. This would help in making decisions in strict borders of the procedural law and would have a positive impact on the relationship between judges and the state and citizens.

Satisfaction of citizens by the quality of courts work is an important factor for any democratic state. Emergence of citizenship is usually associated with the emergence of the state and as we have already noted is inseparable from the notion of state sovereignty and citizenship, in turn, is one of the signs of state sovereignty [10]. So it is especially important to make sure that satisfaction by work of judicial authorities exist in the civil society.

Also it is critically important to teach citizens to use pre-trial alternative dispute resolution methods and mediation procedures. This would allow to reduce the load of minor cases that do not reasonable require a trial of even a hearing in the magistrates' court. In these processes various interested parties should be involved, including: citizens, representatives of civil society, government, police, judges, public organizations, lawyers, etc.

REFERENCES