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Yakovleva I. V.

CASELOAD OF A JUDGE AS THE FACTOR OF JUSTICE QUALITY

Yakovleva Inna Viktorovna,
Postgraduate student of Tyumen State Academy of World Economics, Management and Law.

In this work the author analyses the statistics of the number of cases heard by the courts of general jurisdiction in the Omsk and Sverdlovsk regions. The causes of a high caseload on the judges of district (city) courts are explored in the article. Here are suggested the ways to optimize caseload on judges. The author highlights one of the reasons for the significant increase in applications to courts – the absence of voluntary compliance with the law.

Keywords: justice, caseload of judges, judicial reform, pre-trial settlement.

The problem of the heavy workload of judges in recent years has become even more acute. Excessive workload on judges is directly related to the quality of considered cases. Any judge who hears cases at the limit of it physical and psychological capabilities is more at risk to make mistakes of procedural or material nature. Currently, society and judicial circles actively discuss the workload of judges. More broadly, this problem is important not only for judges and court staff, but also for those who come to courts to find a rightful judgment. Excessive workload leads to the fact that courts have turned into a sort of machine for continuous operations, whose main task is to consider the largest possible number of cases. This, in turn, has a negative impact on the realization of the main tasks of court proceedings – the correct and timely considering of cases in order to protect violated rights and freedoms of citizens, society and the state.

Having analyzed the statistics of cases considered by courts of general jurisdiction in the Omsk region, you can see the following figures. So, if in 2008 district courts considered 30722 civil cases, then in 2012 already 68769 cases [4].

Although the total number of criminal and administrative cases incoming in the district courts has decreased, the workload on judges continues to be very high. Chairman of the Omsk Regional Court V. A. Yarkovoi at the conference on the results of regional courts' work for 2012 also touched upon the theme of high and uneven workload among the judges of district courts of Omsk City and judges working in rural areas [3].

It's no secret that the performance of judges is based solely on a subjective factor. That will further obviously increase the workload of everyone. Human body gets tired from prolonged overvoltage; its efficiency reduces, as a result a judge, like any other person, is not able to work efficiently.

The Institute for the Rule of Law at the European University in St. Petersburg in 2012 conducted a sociological study on "Russian judges as a professional group: a sociological study". According to the results it became clear that judges, in contrast to many other officials, have to constantly linger at work or take work home. Half of the judges almost every day work overtime. Another third does so several times a week. And it is only less than 20% of the judges are faced with the need to work at home or linger at work once a week and less.

Most often after job judges are involved in the preparation of reasons for judgment and the check of court records (77.4% of judges). At about with the same frequency they study normative acts or work with the materials of cases (43.7% and 43.4% respectively) [5].

And for comparison, it is appropriate to give details of another sociological study. So, 61% of surveyed officials say that never take work home [1]. Compared to other public servants, judges are one of the most work loaded groups. The reason for this is that the amount of load of judges is determined not by departmental instructions, but by federal law. A judge cannot regulate the number of incoming cases, but the duty to consider all cases taken into proceedings is strictly defined by procedural law. It turns out that the judge is in a situation where deadlines can be adhered only by reducing the quality of work over a separate case or working overtime.

The main workload of judges is associated with administration of justice – the study of case materials, conducting proceedings and drafting legal acts. In the second place on the load is activity associated with increasing of professional skills and refinement of legal norms. The third place is taken by various administrative and analytical workloads (meetings, prevention of crimes and offences, generalization of judicial practice). Accordingly, the task of reducing the workload should be solved by optimizing the basic judicial actions.

There are offered a variety of ways to optimize the workload on judges throughout the period of judicial reform. At the VIII Congress of Judges the Chairman of the Supreme Court of the Russian Federation V. M. Lebedev has not only outlined the problem, but called its solution. In particular, it was suggested to disclose in a court session only operative part of verdict, because in accordance with applicable legislation the texts of court decisions are published on the websites of courts. It was suggested to exclude the principle of continuity of a trial from proceedings in civil causes. The Supreme Court has prepared a draft law on reducing the categories of cases on administrative offences that should be considered in court. Its adoption assumes reducing of consideration of administrative offences by courts up to 1 million per year. The widespread introduction of audio and video-recording of court proceedings will not only reduce the workload on judges, but also on court staff.

We would like to reveal our vision of the problem of high workload on judges. One reason for the significant increase in applications to the courts is the lack of voluntary compliance with the law. Approximately one-third of judgments is imposed by the courts for obvious legal situations where plaintiff's claims are clear from the wording of the law. The defendants must satisfy such claims at the pre-trial stage, without court proceedings. However, the plaintiffs go to court, spending their time and nerves, while creating an additional workload on judges. At that, there is no risk for a person who does not comply with the requirements of the law, in the event of transfer a dispute to court. The defendant performs actions prescribed by law, but by a court decision.

Solution of this issue is seen in the broadening for citizens the opportunities of pre-trial settlement of disputes. It is necessary to enter a law norm that would enshrine defendant's obligation to comply with lawful and reasonable demands of plaintiff. If the defendant refuses to do this at the pre-trial stage, the plaintiff basing on the results of court trial may demand compensation for moral damage in the case of complete satisfaction of its claims by court. And also provided that the plaintiff has used its right of pre-trial settlement of dispute and the other party has ignored this stage.

At the meeting of judges in the Sverdlovsk Regional Court on the results of courts' work for 2012 it was noted that most often in the courts considered housing disputes, and in most cases these were cases of recovery of payment for dwelling place and utility payments [4]. Reduction of the workload on judges would be facilitated by the introduction of mandatory procedure of pre-trial settlement for this category of disputes, as well as for the claims of tax authorities to citizens on

exaction of tax arrears. Housing and utility, tax and other bodies should be obliged before filing a claim in court to provide evidence indicating that the plaintiff has made necessary and sufficient measures for pre-trial settlement of the dispute, as well as confirmation of the absence of such settlement through the fault of the defendant. In judicial practice, there are many cases in which a defendant does not know anything about its debt to a housing and utility organization or tax authority. After receiving a warrant to appear, it immediately repays the detected amount of debt or submits a payment receipt. Establishment of mandatory pre-trial settlement of such disputes will relieve courts from frivolous lawsuits.

Amendments to the Code on Administrative Offences of the RF on the rules of jurisdiction of cases to judges might minimize the workload on judges. In the jurisdiction of courts should be retained only those administrative compositions of offences, the sanctions of which provide for such penalties as administrative detention, administrative deportation, denial of a special right and confiscation of instruments and objects of an offense. Other administrative offences could be considered by the relevant state supervisory and control bodies.

Need to pay attention to the fact that in different subject of the Russian Federation, and often in different courts of one subject the workloads on judges are different. The same situation also exists in the judicial districts of justices of peace. The work of a separate justice of peace recalls a "conveyor". In other, often neighboring districts, the load on judges is small. And judicial leadership of a subject is actually deprived of an opportunity to reallocate territories of judicial districts.

The main reason of uneven workload is laid down in the very law "On Justices of Peace", namely the population in one district should be between 15 to 23 thousand people. In practice, the population of a RF subject is divided into approximately 20 thousand people and in such a way the number of judicial districts is determined. At that, the peculiarities of administrative-territorial system are not taken into account. Socio-economic situation in a particular territory is also not taken into account. For example, in the territories where there are large commercial and industrial complexes the number of claims increases dramatically and therefore increases the workload. Judicial practice shows that determination of the number of judicial districts only on the basis of population is not quite correct.

It would be correct to give subjects the opportunity to control the number of justices of peace in judicial districts, taking into account current load. And, also, to allow the subjects in some cases to increase the estimated population for one justice of peace up to 30,000 people.

One of the negative aspects, also affecting the workload of justices of peace, is the question of filling vacant position of a justice of peace. So, if in a judicial district a justice of peace has not been appointed, the doubled workload is automatically falls on the judges of the nearest judicial districts. A judicial district may stay long without a newly appointed justice of peace, until the end of personnel audit procedure.

Therefore, an effective value would have an amendment to the Federal Law "On the Status of Judges", on the obligation of the judicial qualifications board of a subject to declare vacancy for the position of a justice of peace, whose term of office expires, in advance, no later than 9 months. At that, an announcement about the vacancy of a justice of peace would be better to publish not only in the print edition of the subject, but also in the local media in the territory of a judicial district. And, also, on the official court website, which provides information about the judicial district to inform a wider audience.

V. M. Lebedev at the VIII Congress of Judges said "It is still relevant to establish the norms of workload for judges and court personnel on the basis of evidence-based criteria". Undoubtedly, the method of determining the workload on a judge has to improve the quality and timing of administration of justice in the state, as well as help to take care of the health of judges.

In 1996, the Russian Ministry of Labor conducted studies on the load of judges and courts' staff. On the results of research were drawn up standards, in which had been laid down the time spent on each category of cases [2]. On average, a district judge for the consideration of one criminal case with one accused (if there are two or more accused then increasing correction factors are used) is given 14 hours, to consider one civil case – 7 h 40 min. It turns out that with the 8-hour work day it is possible to consider just 2.8 criminal cases or 5 civil cases per week. Obviously, the actual workload as shown above in statistics exceeds standards several times

In 2008, the Research Institute of Labor and Social Security of the Federal Agency for Health and Social Development (Federal State Unitary Enterprise "Research Institute of Labor and Social Security" of Roszdrav, FGUP "NII TSS" Roszdrav *in Russian*) developed standards for workload of judges and standards for the number of employees in the federal courts of general jurisdiction. Currently, the work for the development of the draft law "On the Standards for the Workload of the Judges of Arbitration Courts, Courts of General Jurisdiction and Court Personnel", according to the Decision of the Council of Judges of the RF No. 252 from 27.01.2011, is continuing.

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