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DISCIPLINARY RESPONSIBILITY OF JUDGES FOR JUDICIAL ERRORS IN PROCEEDINGS ON CASES OF ADMINISTRATIVE OFFENCES

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The authors note the presence in judicial practice of judges' deeds which are unacceptable for their high status, as well as the need to determine whether a judge falls under disciplinary or criminal responsibility, including what disciplinary measure must be applied in a this or that case.

The relevance of the issue of judges' responsibility for the results of their activities, in particular disciplinary responsibility of judges, is argued in the article.

Keywords: court procedure, proceedings on cases of administrative offences, judicial errors, responsibility of judges, disciplinary responsibility of judges.

Democratic changes in Russian society in the last decade of the last century could not happen without a radical renewal of judicial system. The Court turns from the tool of repression to the tool of protection of human rights – the most important institute of a constitutional state. New equal relations of the judiciary develop with the legislative and executive power. The courts help to promote economic and political democracy in the country, the integration of Russian law to European legal institutes. Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms reads as follows: "Everyone in the determination of its civil rights and obligations or of any criminal charge against it is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law" [1]. A similar right is enshrined in article 10 of the Universal Declaration of Human Rights, article 14 of the International Covenant on Civil and Political Rights.

But to implement these provisions, we need an effective and high-quality work of the judicial branch of the Russian Federation, which belongs only to the courts in the face of judges and representatives of the people assigned to administration of justice in way prescribed by the law, and which acts independently. The latter is the base for understanding the essence of the judiciary and status of judge as its carrier. The Constitution of the Russian Federation proclaims the fundamental principle of the functioning of the judiciary – the principle of independence of judges, which lies in their subordination only to the Constitution of the Russian Federation and federal legislation [2].

The judge is a person who takes legally relevant decisions on behalf of the State exactly because of its special status, by virtue of a special legal force of judicial act, which is substantially able to alter or revoke the decision of any public authority or official. Currently, there are many laws defining the status and powers of judges: "On the Judicial System of the Russian Federation" [5], "On the Constitutional Court of the Russian Federation" [4], "On Military Courts of the Russian Federation" [6], "On the Status of Judges in the Russian Federation" [7], "On Justices of the Peace in the Russian Federation" [8].

Recent years trends show that the State has embarked on the path of expanding the powers of judges, as well as of their special legal status, according to which the Constitution and Legislation of the Russian Federation provide them such elements of independence as irremovability, immunity, high level of material security and social welfare. All the above factors are designed to increase the level of justice and assume high responsibility of a judge for the qualitative performing of its functions, compliance with the laws of the Russian Federation and the requirements of the Code of Judicial Ethics [14].

But at the same time, official state MEDIA, academic and publicistic literature often consider imperfection of the mechanisms for bringing judges to criminal, administrative, disciplinary and civil-law responsibility for offenses committed by them in the course of administration of justice. Very often MEDIA reports about corrupt judges, serving not the interests of Justice, but the interests of individuals and corporations, and often only their own interests. Corruption has always been, and it seems to us, will forever remain the "cancer" of the public authorities' system of the Russian Federation. But, in our view, the most important problem of today courts is not the corruption in the courts, and it consists in "minds", in the professional training and competence, the compliance of the current judges and candidates with the requirements for this service. We verified this when directly met the proceedings on a case of administrative offense on the signs of an administrative

offense under part 1 article 12.8 of the Code on Administrative Offences of the Russian Federation (hereinafter – CAO RF) [3], namely "Driving a transport vehicle by the driver in a state of alcoholic intoxication". It will not be a discovery for anyone that this category of cases can be considered basic, remaining in proceedings on administrative cases, since accidents with participation of drivers in a state of alcoholic intoxication are regularly consecrated in the mass media. Particularly, the driver (hereinafter – citizen B.) while intoxicated drove a four-wheel ATV (in everyday life named "quad bike") and moved along the road of an inhabited locality, where he was stopped by traffic police officers. On the fact of administrative offence the traffic police officers drew up protocols provided for such offence under CAO RF and transmitted them for consideration by the justice of the peace of the N-th area of the Oktyabrsky district of Novosibirsk city. The justice of the peace, having considered the matter, decided to recognize the citizen B. guilty of an offence under part 1 article 12.8 CAO RF and assign administrative punishment in the form of deprivation of the right to drive vehicles for a period of one year six months. Under all indicators – justice is done and the roads have become safer. But from a legal point of view, in our opinion, there were several significant judicial errors, namely:

First, in the course of the proceedings on this case, the vehicle driven by the citizen B. (as well as its characteristics) was not defined, that is, actually there was not defined the direct instrument of offence, which is a structural element of the objective aspect of offence under part 1 article 12.8 CAO RF (under the tool/instrument of administrative offence shall be understood a movable and immovable property used for the implementation of the objective aspect of offence provided for under specific article of CAO RF). The notion of the instrument of offences provided for in Chapter 12 of CAO RF, namely a vehicle, is given in subparagraph 3 paragraph 1 of the Decision of the Plenary Session of the Supreme Court of the Russian Federation No. 18 from October 24, 2006 "On Some Issues Arising in the Courts in Applying the Special Part of the Code on Administrative Offences of the Russian Federation" [11]. So, from the content of the procedural documents drawn up by the traffic police officers, it follows that the citizen B., being in a state of alcoholic intoxication, was driving a vehicle "quad bike" of a green color, and in none of the documents listed above the mentioned vehicle was identified from a legal point of view giving grounds to subsequent qualification with regard to the norms of CAO RF. If we turn to the interpretation of the notion of "QUAD BIKE" [18] that is available at electronic free encyclopedia "WikipediA", placed in the publicly available information network "Internet", then this is recognized (from Lat. quadrn – "four" and ancient Greek κύκλος – "circle") as a vehicle with four wheels. In the former

Soviet Union the quad bikes are more often understood as four-wheel all-terrain vehicles, and in the United States four-wheel bikes. Quad bikes at the same time include the most cars and any other vehicles with four wheels. Within the meaning of part 2 article 1 CAO RF this Code is based on the Constitution of the Russian Federation, the universally recognized principles and norms of international law and international treaties of the Russian Federation. If an international treaty of the Russian Federation stipulates other rules than those stipulated by the legislation on administrative offences, then the rules of the international treaty shall be applied.

According to the content of the "Vehicle classification" of the Inland Transport Committee of the European Economic Commission of the United Nations (a similar principle is enshrined in the Russian GOST R 52051-2003 "Power-driven vehicles and trailers. Classification and definitions" [13]), and Russia is its member, as a "quad bike" can be recognized a four wheel vehicle, the unloaded mass of which is less than 350 kg, not including the mass of batteries, with a maximum speed not exceeding 50 km/h, in the case of an internal combustion engine with a positive-ignition engine with a cubic capacity of the engine not exceeding 50 cubic centimeters, or in the case of the internal combustion engine of another type – with maximum effective engine power not exceeding 4 kW.

Following this classification, we can positively state that the official international, as well as Russian, interpretation of the notion of "QUAD BIKE", which was used by the traffic police officers, clearly does not correspond to the content of the note to article 12.8 CAO RF, so that this vehicle could not be an instrument of administrative offence under article 12.8 CAO RF.

In accordance with article 24.1 CAO RF, the tasks in proceedings on cases concerning administrative offenses shall be comprehensive, complete, unbiased and with timely clarification of the circumstances of each case, settlement thereof in compliance with law, ensuring execution of a decision rendered, as well as elucidation of the reasons and conditions which led to the committing of administrative offenses.

Secondly, the justice of the peace in adoption for consideration the case of administrative offence committed substantial violations of procedural requirements of articles, such as part 3 article 29.1, part 4 article 29.4 CAO RF [3], according to which, a judge, when preparing for consideration of a case concerning an administrative offence, was obliged to identify the non-compliance of protocols provided by the traffic police officers with the requirements set both by the "Administrative regulations of the Ministry of Internal Affairs of the RF concerning the execution of government function to control and supervise over compliance by road users with

the requirements of the road traffic safety" (paragraph 110: Rules for Drawing up a Protocol on Administrative Offense) [12] and by part 4 article 27.13 CAO RF [3], and, in accordance with part 3 article 29.4, to make a ruling "about return of the protocol of the administrative offence and other materials of the case to the body or officials that drew up the protocol, when the protocol was drawn up and other materials of the case were formalized by incompetent persons, or when the record of the administrative offence was drawn up incorrectly and other materials of the case were formalized in the wrong way, or in the event of incompleteness of submitted materials which cannot be completed during consideration of the case", and the court was not legally entitled to carry out an administrative inquiry, and namely, independently gather evidence of the guilt of the person held liable [3].

And thirdly, there is obvious presence of provided for by part 2 article 24.5 CAO RF [3] circumstance precluding proceedings on a case of administrative offence – the lack of the composition of administrative offence, or more precisely of the objective aspect of the offence under article 12.8 CAO RF. Objective aspect of administrative offence is a specific action (inaction) of a person, which is illegal and entails administrative responsibility established by CAO RF or law of the subject of the Russian Federation. In this case the objective aspect is failed, because there is no instrument of administrative offence under article 12.8 CAO RF.

These grounds have already provided the abolition of taken judicial acts and the termination of proceedings on a case, since they were not based on law, and the judges, in accordance with article 120 of the Constitution of the Russian Federation, shall be subordinated "... only to the Constitution of the Russian Federation and federal law". Imagine my surprise when either the justice of the peace or the higher instances (including the Board on Administrative Cases of the Supreme Court of the RF) **did not see** the grounds for cancellation of taken judicial acts, although the defense was clearly attracting attention of judicial bodies to them. We are disconcerted by the fact that the judicial bodies, whose activities are based on the law and the principles of justice and fairness, could not see a clear violation of law, which is the basis of their activities. And this case is not a single – according to the data presented on the website of the Supreme Court, there are more than **1 million**! sub judice complaints against the decisions of the lower courts. Scary to think that virtually every hundredth inhabitant of our country faced the problem of taking a fair and legal court decision.

In this connection the problem of judges' accountability for the results of their activity, in particular for their decisions, becomes relevant. At that, public morality implies that the judge bears moral responsibility for the correctness of

its decisions to the community, persons participating in proceedings, and, finally, to its conscience. A separate issue, which has become the subject matter of discussions of the many leading lawyers in Russia, is legal responsibility: criminal (for committing crimes against justice) and disciplinary (for violation of legality, committing a vicious deed). The most recognized is the circumstance that a judge has to be subjected to any form of responsibility in case of its guiltiness. Only the question of the limits of it responsibility remains ambiguous. It appears that in this case the legislator should distinguish between the concepts of miscarriage of justice and procedural violation.

In criminal procedure literature an offence is defined as an investigative and judicial error or a violation of legality. However, it should be noted that offense absorbs the content of miscarriage of justice, but goes beyond. The essence of miscarriage of justice is that it, being such a violation of the law, which leads to the illegality, unreasonableness, unfairness and therefore unjust court verdict (or decision), entails certain adverse consequences. The most serious of these deeds – crimes, that is (willful or negligent) violations by a judge of law in the field of court procedure, responsibility for which is provided for by the Criminal Code of the Russian Federation, shall entail, along with the criminal, procedural responsibility. So Shirvanov A. A. offers to define error as committed deed, which should be formally lawful and take place in the absence of guilt, and offence as guilty deed, which is always contrary to the rules established by the law [17, 8-12]. I. M. Zaitsev defines the miscarriage of justice as action of judicial officers that is inconsistent with the purposes of justice or the consequences of such action [15, 5]. And L. V. Trofimov sees miscarriage of justice as the wrong action of judicial officers, which prevents their achievement of certain goals and entails negative consequences, including the cancellation of erroneous decision [16, 130]. However, it should be borne in mind that judicial errors are in most cases unintentional, as a result of good-faith misconception of judge associated with deficiencies in professional training, the level of legal awareness and similar factors. As is known, in such cases a judge cannot be brought to responsibility because there is no its guilt in a committed violation (or it has not been reliably established). However, a committed violation – miscarriage of justice remains such and, like any illegal decision, requires cancellation through applying a restorative sanction, which simultaneously carries a reproach addressed to the person responsible for the error.

The issue of disciplinary responsibility of judges is very important from the point of view of effectiveness and viability of the judicial system of Russia. It lies at the intersection of such complex and diverse aspects of judicial reform as

the independence of judges, protection of the legitimate rights and freedoms of citizens, creation of a unified legal space of the country, creation of a stable legal order and strengthening the controllability in the State.

The State, given the importance of the disciplinary responsibility of judges, pays special attention to its legal regulation.

Disciplinary responsibility of judges, like many other complex public-law relations, is simultaneously an element of several autonomous subsystems. Most practical and theoretical significance is expressed by the fact that disciplinary responsibility of judges acts as a structural element of two systems: firstly, it is one of the components of the system of normative-legal provisions on the status of judges in the Russian Federation; secondly, it is a private form of the unified system of legal responsibility. Through the prism of these two subsystems we should identify the specificity of the disciplinary responsibility of judges.

Disciplinary responsibility of judges in the Russian Federation is governed by such normative acts as article 6.1 (paragraphs 11 and 13), paragraph 1 article 12.1 of the Law of the Russian Federation "On the Status of Judges in the Russian Federation" [6], paragraph 6 article 21, paragraphs 1 and 2 article 22, sub-paragraph 2 paragraph 2 article 26 of the Federal law "On the Bodies of Judicial Community in the Russian Federation" [9] in their interrelation with article 4 of the Provision on the qualification boards of judges [10].

The current Russian legislation does not contain an accurate, clear notion of disciplinary offence committed by a judge and the composition of this deed by analogy with administrative misconduct and crime. However, paragraph 1 article 12.1 of the Law of the Russian Federation "On the Status of Judges in the Russian Federation" and article 11 the Code of Judicial Ethics (approved at VI all-Russia Congress of Judges 02.12.2004) enshrine an indication that the notion of disciplinary offence must always be associated only with the violation of the norms of the Law of the Russian Federation "On the Status of Judges in the Russian Federation" and the provisions of the Code of Judicial Ethics.

Analysis of the Law of the Russian Federation "On the Status of Judges in the Russian Federation", chapters 2 and 3 of the Code of Judicial Ethics, the practice of the Constitutional Court of the Russian Federation suggests that the ground for bringing a judge to disciplinary responsibility may be the activity of the judge on administration of justice, either reflected in judicial acts, in accordance with the requirements of procedural form, or without such registration. At that, the activity of a judge in administration of justice must testify about its incompetence or bad faith (both of these components allow speaking about the competency of a particular

judge) – chapter 2 of the Code of Judicial Ethics. The professionalism, in our view, should be assessed in terms of the legality of application by a judge of the current substantive and procedural legislation within the framework of considered case, since administration of justice is an exclusive activity of anyone with the status of judge; good faith – when a judge exercises other actions related to administration of justice, including organizational and administrative ones.

One of the conditions for bringing judges, in particular, to disciplinary responsibility is laid down in paragraph 2 article 16 of the Law of the Russian Federation "On the Status of Judges in the Russian Federation", which establishes that "a judge, including after the termination of its term of office, cannot be held responsible for an opinion expressed or decision taken in the course of administration of justice, until an entered into legal force court verdict determines the judge's guiltiness of a criminal abuse or taking a knowingly unjust verdict, decision or another judicial act" [7]. This provision clearly shows the legislator's position that links the possibility of application responsibility to a judge in relation to its activity on administration of justice in civil proceedings from the point of view of the results of such activity under the following conditions:

1) if unlawful actions of judge are reflected in the judicial act taken in connection with consideration of a particular civil case, and are presumptive ground for bringing the judge to disciplinary responsibility.

In this case, the unjust nature of court decision or other judicial act shall be proved in civil or criminal proceedings (see part 2 article 118 of the Constitution of the Russian Federation [2]):

- within the framework of criminal proceedings, when there is a court verdict that has entered into legal force, which identifies the judge's guilt of making unjust judicial act;
- within the framework of civil proceedings, when illegal actions of judge to determine the substantive and procedural legal status of parties are confirmed by the judicial acts of higher court instances handed down within the limits of their power provided by procedural law, which cancel or change previous judicial acts of lower court instances.

The systemic nature of taking these unjust decisions, confirmed by higher court instances in their judicial acts, should be the main criterion in here. On the basis of the systemic nature, under which, in this case, we understand the sequence, permanence of negative consequences in the form of making unjust decisions, we can talk about the forms of guilt of this deed. It is suggested to consider two possible forms of guilt – negligence, i.e., an unintentional wrongful action (inaction) of

judges, leading to failure to achieve the goals of administrative court procedure or posing threat of not achieving the goals of administrative court procedure, because of the lack of necessary sufficient professional training and corresponding skills for the due performance of judge's duties, and intent – an objectively wrongful result of judicial activity, expressed in conscious conduct of judges aimed at violation of statutory procedural norms, because of a personal interest and bad faith of judges. For the classifier of judicial errors, we suggest to use the following criteria: 1) systemic nature of miscarriages of justice; 2) content of errors, i.e. administrative-legal and procedural aspects; 3) consequences of errors expressed in occurrence of adverse consequences for the citizen brought to administrative responsibility; 4) eliminability of errors' consequences in the form of a possibility to restore the legal status prior to the commission of errors. From the point of view of the differences among the forms of disciplinary responsibility, it appears appropriate, in the present case, to prematurely terminate the powers of a judge (as one of the most serious forms of disciplinary responsibility) only after the measure of disciplinary responsibility in the form of warning has been applied to the judge.

One of the substantiations of the need to take into account the considered criteria (systemic nature, eliminability of a miscarriage of justice) is the current civil procedural legislation of the Russian Federation, of the countries that are members of the Romano-Germanic law, common law. We are talking about the acceptable by the legislator possibility of a judge to commit judicial errors, their probability in actions of any judge, what under the current Russian civil procedural law is reflected in the existence of appeal, cassation, supervisory proceedings, which are designed to eliminate these judicial errors in way prescribed by procedural law.

The procedure for bringing judges to disciplinary responsibility by qualification boards should not perform the same purposes which the supervisory instance performed under the Code of Civil Procedure of the RSFSR, 1964 (the possibility of interference of administrative bodies, other bodies and officials in the administration of justice), otherwise the guarantees of the independence, immunity and the irremovability of judges and, consequently, the credibility of judicial power will be substantially reduced. In addition, it is necessary to take into account the principle of the free exercise of material and procedural rights by the parties to legal proceedings and adversarial principle, which form the basis of modern civil court procedure and the main difference from criminal court procedure, as well as the guarantees of these principles enshrined in all the levels of the current Russian legislation.

Therefore, it seems reasonable to introduce the ability of qualification board to consider of the issue of bringing judges to disciplinary responsibility, the actions

of which are expressed a judicial act that is subject to appeal, in view of the positions of the civil procedural legislation. In order not to create for the consumers of services of judicial power bodies, public officials and other persons the mechanism for exerting pressure on a judge in taking judicial act and, consequently, in order to respect for the principles of independence, irremovability and immunity of judges, it seems possible to appeal to qualifications board by persons concerned, as well as to consider by qualifications board of the issue on bringing judges to disciplinary responsibility, only if the unjust nature of a judicial act is confirmed by a higher court instance in order established by the procedural legislation (in civil, administrative or criminal proceedings).

The need to substantiate the unjust nature of a judicial act, which is taken by a judge, by a higher court instance as a basis for bringing judges to disciplinary responsibility is also confirmed by the fact that there is no correlational interrelation established in the current legislation (articles 330, 362, 387 of the Code of Civil Procedure of the RF, articles 19, 22 of the Federal Law "On the Bodies of Judicial Community in the Russian Federation", paragraph 1 article 12.1 of the Law of the RF "On the Status of Judges in the Russian Federation"; article 11 of the Code of Judicial Ethics) between the grounds for cancellation of judicial act, enshrined in the Code of Civil Procedure of the RF, and the decisions of qualifications boards of judges. Accordingly, the decision of a higher court instance about unjust nature of a judicial act, which is handed down by a judge and gives rise to bringing it to disciplinary responsibility, will allow us to talk about the absence of parallel procedures for verification the legality and validity of judicial act, which are carried out outside the framework of the procedure for consideration of cases established by the procedural legislation;

2) if unlawful actions of judge are not reflected in judicial acts taken by this judge.

In accordance with paragraph 5 of the Decision of the Constitutional Court of the Russian Federation N 1-P from 25.01.2001, as a ground for compensation by the State for damage to a person, whose right to a fair trial is violated (articles 6, 41 of the European Convention for the Protection of Human Rights and Fundamental Freedoms), as well as, in our view, bringing a judge to disciplinary responsibility may be a unlawful deed of the judge in resolving issues of procedural and legal status of the parties, not expressed in judicial act taken by the judge (violation of reasonable length of proceedings, unlawful seizure of property, undue delay of execution, late delivery of procedural documents resulting in missed deadlines for appeal, another gross violation of the procedure for consideration of a case).

In this case, in our opinion, disciplinary responsibility of a judge again is bound by the Constitutional Court of the Russian Federation with the ascertainment of its guilt in the commission of unlawful act, which should be substantiated either by a court verdict or another court decision. It appears that the term of "court decision" is used by the Constitutional Court of the Russian Federation in its broad sense, which includes any judicial act taken by a judicial body within the limits of its competence as prescribed by law.

In the considered situation, qualifications board of judges should take into account all the components of disciplinary deed: the type of misconduct (chapter 2 of the Code of Judicial Ethics), the degree and the form of guilt of a judge; the size of damage inflicted to the person(s); other specific circumstances.

However, also in this case, it seems appropriate to prematurely terminate the powers of a judge only after imposing a disciplinary sanction in the form of a warning;

3) another activity not related to the administration of justice – responsibility under chapter 3 the Code of Judicial Ethics. Here all the components of disciplinary deed should be taken into account, as like in the case when unlawful actions of a judge are not reflected in taken judicial acts. However, the premature termination of the powers of a judge, in our view, can be carried out without bringing the judge to disciplinary responsibility against judges in the form of a warning;

4) if the actions of a judge contain several violations, as reflected in the subparagraphs 1-3 paragraph 3 of this study, advantage should be given to the order of bringing judges to disciplinary responsibility defined by us in case of taking by it of a unjust act.

The analysis of the above-mentioned legal acts and results of court practice suggests that the consumer of legal services (a citizen, legal person, organization that has applied for the protection of rights and freedoms to the body of judicial power) may ask for the compensation of damage suffered from the actions of court in administration of justice in civil proceedings.

Conclusion

Formation of a strong judiciary, increasing of court's role in society is inextricably linked with the increasing of requirements for its representatives and the quality of court decisions. Achievement of the objectives of justice, protection of the rights and lawful interests of a personality are directly dependent on the professionalism of judges as an essential condition of quality of judicial activity. Responsibility in various forms and varieties is an effective, stimulating method. Court practice highlights the priority of the issue of creation legal institutes for the protection of the rights of a personality in court proceedings, one of which is the responsibility of judges for the quality of their work on administration of justice in criminal and civil cases.

Summarizing the above, it can be argued that in court practice there are various deeds of judges that are incompatible with their high status and which are different in nature: non-performance or improper performance of their duties, gross errors in decision-making, unethical behavior with the participants of proceedings, violation of work discipline, committing an act that defames the honor and dignity of judge, impairs the authority of judiciary, including activity out of office, and in each particular case it is difficult to determine whether a judge falls under disciplinary or criminal responsibility, and what measure – termination of powers or warning should be applied in the case of disciplinary responsibility.

Therefore, there is a need for legislative and clearer establishment of the grounds and mechanism of bringing judges to disciplinary responsibility. The establishment of disciplinary court procedure is necessary not only in view of the special status of judges, but also because there is no clear mechanism for bringing it to responsibility. Also, there are no norms for initiating disciplinary proceedings, the timing for bringing to responsibility and other aspects.

The problems of responsibility of judges for their professional activities are not fully resolved – there is still a need for clearer determination of the boundaries of judicial immunity, delimitation between types of misconduct and errors, determination of their content, improvement of the mechanism of bringing judges to disciplinary, administrative and criminal responsibility. All this, as highlighted by V. A. Terekhin, on the one hand, will allow establishment of the legal and moral order in judicial environment, and on the other, will become a reliable legal guarantees of effective and fair implementation by judges of their functions, ensuring the rights, freedoms and legitimate interests of citizens.

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