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THE EFFICIENCY OF A JUDGE ASSISTANT IN ECONOMIC LEGAL PROCEEDINGS

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The article deals with the role of a judge assistant in the administration of justice in arbitration courts of the Russian Federation. The author makes proposals to increase powers of judge assistants and to give them the right to perform certain procedural actions on behalf of judges (by analogy with the institute of judge assistants in foreign legal systems).

Keywords: arbitration proceedings, judge assistant, functions and powers of a judge assistant, rights and duties of a judge assistant, institute of judge assistants.

Nowadays the issue of optimization the activity of judge assistants, members of the arbitration court system of the Russian Federation, is relevant. Large number of cases in arbitration courts causes the need for a new approach to the organization of their activity.

According to paragraph 3 article 45 of the Federal Constitutional Law No. 1-FCL from 28.04.1995 (as amended on April 30, 2010) "On Arbitration Courts in the Russian Federation", employees of an arbitration court are at the federal public service. The rights, duties, responsibility of employees of an arbitration court and the conditions of their passing public service are set by laws and other normative legal acts on the federal public service:

- Federal Law No. 79-FL from 27.07.2004 "On Public Civil Service of the Russian Federation";
- Decrees of the President of the Russian Federation: No.763 from 25.07.2006 "On the Cash Allowance of Federal Public Civil Servants"; No. 765 from 25.07.2006 "On a Nonrecurrent Promotion of Persons Passing the Federal Public Service";

- Decisions of the Government of the Russian Federation.

The provisions of legislation are specified in:

- Regulations of arbitration courts of the Russian Federation;
- Instruction for paperwork in arbitration courts of the Russian Federation, adopted by the order of the Chairman of the Higher Arbitration Court of the Russian Federation No. 27 from March 25, 2004 [1];
- Model provision on the apparatus of arbitration court, approved by the order of the Chairman of the Higher Arbitration Court of the Russian Federation No. 75 from 18.05.2009.

The model provision provides a definition of the apparatus of arbitration court and functions of structural subdivisions, including judge assistants, determines the directions of their work, which are organized (coordinated) by the chief of the apparatus.

Paragraph 21 of the model provision points out that judge assistants are subordinated to the chief of court apparatus in terms of their compliance with the legislation on public civil service and official regulations of arbitration court, implementation of functions on ensuring the passage of cases in arbitration court and enforcement of judicial acts.

Part 1 article 58 of the Code of Arbitration Procedure of the Russian Federation points out that a judge assistant shall help a judge in the preparation and organization of a trial, but it has no right to perform the functions for the administration of justice.

The Assistant cannot perform actions that give rise to the emergence, change or termination of the rights and obligations of persons involved in a case, and other participants to arbitration process (part 3 article 58 of the Code of Arbitration Procedure of the Russian Federation).

Of course, all legal decisions are taken by a judge independently on the basis of personal exploration of case materials. At the same time, in the conditions of high workload of judges, a qualified assistant is able to significantly facilitate the work of a judge, allowing him to focus on the implementation of the main function – administration of justice [5, 164].

Judge assistants prepare a lot of projects of judicial acts taken by judges (96.5% of the number of district court cases) [3].

The Code of Arbitration Procedure of the Russian Federation of 2002, like the Code of Arbitration Procedure of the Russian Federation of 1995, in detail governs the status of persons assisting in the administration of justice in arbitration process. It seems, however, that exactly the status of such person as judge

assistant is insufficiently regulated in the Code of Arbitration Procedure of the Russian Federation of 2002.

Many scholars and practitioners point to the need for professional development of court staff, extending the powers of a judge assistant and giving the latter the right to conduct individual procedural actions on behalf of judge. "Great help for judges would be extending the powers of a judge assistant at the stage of initiation of proceedings and at the stage of preparation of a case for trial... At the stage of preparation of a case and court proceedings judge assistants may perform procedural actions under the leadership of a judge... A similar practice exists in foreign courts (the United States, the United Kingdom and others)..." [4].

It appears that the role of a judge assistant in the administration of justice should be procedurally extended. For example, the work of each judge will be generally more effective when the powers of judge assistants are extended and they are given the right to perform certain actions on behalf of judge.

In 2002, when the Code of Arbitration Procedure of the Russian Federation was introduced, judge assistants had got quite large powers, but all these powers had not been legislatively enshrined at the stage of passage of the draft law. Deputies considered that such great functions on the administration of justice should not be trusted to assistants.

Legislative consolidation of the rights and duties of judge assistants is proposed in order to improve the legislative regulation of the administration of justice in the system of arbitration courts of the Russian Federation

According to the draft law "On Bankruptcy of Individuals" (second reading of the law in the State Duma) such categories of cases of assume serious role of assistants, because, according to the lawmaker, judges will not be able to cope with such volume of legal, but at the same time bearing largely technical nature, work associated with tracking payments under bankruptcy, various health procedures.

In the United States in bankruptcy courts the institute of judge assistants is used exactly for these purposes. Considered that a judge itself cannot monitor in real time how this or that individual, who has received a deferral in repaying debts or possibility to repay debts in installments, makes such payments. In the United States one bankruptcy judge deals with approximately 200-300 bankruptcy cases simultaneously. Of course, since a judge is obliged to carry out continuous certain control over such cases, these functions are assigned to assistants (in the United States four assistants per judge). Only in this way judges can consider such a number of cases. At that, the number of bankruptcy judges in the United States is considerably lower than in Russia.

It can be concluded that the institute of judge assistants in the United States plays a very significant role and contributes to the rapid, expeditious and legally correct resolution of cases by judges.

Foreign experience in improving the productivity of judge assistants may be used by the Russian legislator in carrying out judicial reforms.

In order to lighten the workload of a judge, to release it from technical work, to reduce the violations of procedural time terms of consideration cases, the Russian judicial system should increase the number of judge assistants.

First of all, the number of judge assistants shall be increased for the judges dealing with particularly complex cases. This can contribute to reducing the workload of all the judges, rapid and correct consideration of particularly complex disputes, using internal capacity, optimize organization of judicial activity.

The salary of assistants in European countries is different from judges' salaries only 20-30%. In Europe, many people work as judge assistants throughout their lives, since not every judge assistant wants to take on a heavy burden of deciding the fate of people (an incredible moral burden).

An analogical to the world experience situation occurs with salaries of judge assistants of the Higher Arbitration Court of the Russian Federation. It is tariffed by the wages of the Government of the Russian Federation, and not by the general grade for payment of labor in arbitration courts. This makes it possible to remain at the post of judge assistant of the Higher Arbitration Court of the Russian Federation until retirement.

Among the main measures for the selection of qualified staff wishing to work in the court system as a judge assistant, it is necessary, in accordance with the high status and responsibility of judge assistants, to significantly increase their salaries and guaranteed decent financial security.

This will create the sprouts of elitism in the legal field, which will allow recruiting on a competitive basis of the most capable and professional staff.

Thus, in order to improve the institute of judge assistants, the legislator should make a proposal to increase the salaries of judge assistants in the arbitration judicial system throughout the Russian Federation.

The results of any labor collective are ensured primarily through the correct organization of work. The use of scientific and technical means, which could improve paperwork in court, brings significant effectiveness in the work of court.

Separation of a judge, its assistant and a specialist has a negative impact on the preparation of a case for trial, slows its. This affects the quality of procedural

actions carried out on a case, making judgments on the case in full, bringing them to the attention of the persons participating in the case.

The author shares the position of the Chairman of the Higher Arbitration Court of the Russian Federation, A. A. Ivanov that “It is a good idea to create in arbitration courts “the offices of a judge”, which would include compactly located offices of a judge, its assistant, specialist that support the activity of the judge” [2, 54].

In addition, it should be noted that for the purpose of self-improvement and the improvement and development of the organization of work of arbitration courts system, its effective functioning, as well as in order to enhance the authority of judicial power, transparency and accessibility of justice, judge assistants should perform not only the main work on the preparation and organization of judicial process, but also particularly important and complex task of judges and the head of court apparatus.

Monitoring over performing by judge assistants of particularly important or complex tasks and evaluation of the results of their work is a responsibility of judges and the head of court apparatus.

This takes into account:

- volume, complexity and importance of a done task;
- rapidness and quality of task performing;
- proactiveness and creative attitude to a case;
- timely and qualitative performance of official duties under the official rules of a civil servant;
- participation in carrying out the activities under the work plans of a court and the work plans of a judicial assembly or a judge.

Judge assistants, who have low performance results (a lot of complaints, missing deadlines, etc.), are not included by a judge or the head of court apparatus in the list of judge assistants that perform particularly important and complex tasks.

Consequently, you can come to conclusions that it is important to:

- increase staff of judge assistants in arbitration courts;
- procedurally extend the role of a judge assistant in the administration of justice;
- legislatively enshrine the rights and duties of a judge assistant;
- increase the salaries of judge assistants in arbitration court system throughout the territory of the Russian Federation;
- create “the offices of judges”, which would include compactly located offices of a judge and its assistant;

- assign judge assistants to perform particularly important and complex tasks;
- develop further ways of improving the productivity of each judge assistant in general.

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