INDEPENDENCE AND RESPONSIBILITY OF JUDGES

The essential basis of the constitutional system established by the Constitution of Russian Federation (RF) is the separation of legislative, executive and judicial powers and the respective autonomy of their bodies of power. Setting forth the specialization of each power, the separation of above-mentioned powers rules out any possibility of substitution of one power by actions and decisions of another.

The balance of powers is assured by the so-called system of «checks and balances» between legislative and executive powers on the federal level where the legitimacy and efficiency control is exercised by the judicial power body, in particular, by the Constitutional Court of RF. Its main task boils down to securing the independent execution of state functions by legislative, executive and judicial bodies within the limits of its jurisdiction in order to provide the equilibrium of privileges and rule out any possibility of concentration of all the powers or its major part by one state body or public officer. At the same time, the state “branches” control and counterbalance each other by having the powers restraining the powers of the state bodies referring to other “branches”. The system of “checks and balances” is an essential and integral part of powers separation system.

On the federal level of state power organization in the Russian Federation the system of checks and balances, in accordance with the Constitution, has the following scheme. Legislative body – Federal assembly – passes the laws, defines the normative base of all state bodies, has a parliament influence on executive bodies and, to one extent or another, takes part in formation of the government.

The government of the Russian Federation exercises the executive power: provides for the execution of laws, influences the legislative process (the right of initiation of bills, the must to consult and have an advisory opinion of the Government in case of the bills require the attraction of additional federal funds). The right of impeachment process towards the Government is balanced by the possibility of dissolution of the legislative body by the head of state.

Constitutional, Supreme and the Supreme Commercial Courts of the Russian Federation have the right of bill initiation within its competence.

These courts examine concrete cases within the scope of their jurisdiction with participation of other bodies of state power. On the federal level the Constitutional Court of RF plays a special role in the separation of powers system according to the powers assigned in the Constitution: adjudication on compatibility of the federal laws with the Constitution, normative acts of President, Chambers of Federal Assembly and the Government of the Russian Federation, decisions on federal bodies competence, interpretation of the Constitution.

Thereby, the Constitutional Court of the Russian Federation performing its role of a judicial body of constitutional control, decides the cases on conformity of the following laws and acts to the Constitution of the Russian Federation: federal laws, normative acts of the President of the Russian Federation, Federation Council, State Duma (Lower house of Parliament), Government of the Russian Federation; laws and other normative acts of constituent entities of the Federation, also decides on the disputes on competence between the federal bodies of state power; between the bodies of state power of the Russian Federation and constituent entities of the Russian Federation; between highest judicial bodies of the constituent entities of the Russian Federation.
Decisions of the Constitutional Court of the Russian Federation are mandatory over the whole territory of the Russian Federation for all representative, executive and judicial bodies of state power, local government bodies, enterprises, organizations, public officers, citizens and their associations.

The Supreme Court of the Russian Federation in accordance with the procedure of abstract normative control examines the claims on contestation of legal acts of the President of the Russian Federation and legal acts of other state federal bodies dealing with rights, freedom and lawful interests of the citizens and organizations; contestation claims on non-normative acts of the President of the Russian Federation, Chambers of the Federal Assembly, the Government of the Russian Federation.

Taking into account the aforesaid, the court examines the cases resulting from public relations on the grounds of claims filed by (i) citizens or organizations stating that their rights and freedom were breached by an act of a state body (ii) the state body claiming that its competence was breached by this act.

The acts of judicial power that have taken legal effect are mandatory for all the state bodies, local government bodies, public associations, public officers, natural and legal entities without any exception and are subject for strict execution over the territory of the Russian Federation.

Stability of institutions providing the superiority of law in the state cannot be secured without independent judicial power; durante absentia (in the absence) of independent and impartial judges any kind of efficient struggle with corruption is impossible. The creation of a fair state with efficient justice as a key goal is possible only when an independent judicial power is guaranteed and secured.

Thus, the independence of the judges nowadays in all legal systems is regarded as an essential and, moreover, major element of guarantee of real justice and process in the proper sense of the word.

At the same time the independence of the judges cannot be considered as their personal privilege due to their status; this principle is at the same time regarded as a very important guarantee of citizens’ right for judicial protection and impartiality of court while awarding its fair judgments.

There are external and internal parameters to secure the independence of justice: independence of other state branches (external independence) and independence of the parties to dispute and other parties of the trial (internal independence).

The reverse side of the power exercised by the judges is the responsibility for its proper and legal exercising.

One of the most important problems is the search for the balance between the independence of judges (which is certainly not an absolute category) and their responsibility.

The problem of the responsibility of judges and definition of the standards for judges’ ethics is discussed in many countries. Nevertheless, there are no unique standards of judges’ ethics and conduct so far. The attempts to formulate these standards were made repeatedly and are being made today on the level of international organizations as well as on the level of professional community. Nevertheless, we can state that by now there is no universal code of judicial independence that could allow to assess its level according to actual parameters rather than formal ones.

In many countries there are codes of judicial ethics establishing the requirements for the conduct of a judge, e.g.: act without prejudice and in good faith, take care of public good, be deliberate in political activities, protect confidentiality of the information received in the course of official duties; abstain from undertaking any other kind of activity except for scientific and academic activities; refrain from accepting gifts; act in accordance with the law and assume any responsibility arising from their activity. At the same time provisions of the codes stipulate that a
judge in time of duty as well as beyond his duty undertakes to conduct himself in a way to raise confidence and respect towards judicial power.

However, the provision of these codes or corresponding laws regulating the status of judge, are rather ambivalent, vague and often give a lot of motives for discretion of disciplinary body that is in charge of examination of responsibility of the judge.

That’s why the elaboration of unique standards with a due account to the particularities of its realization in contexts of the Russian legal system is an important task for the judicial community.

The problem of independence of judges in Russian legal system, notwithstanding the similarity of the same difficult areas in other countries, has its own specific. To a large extent this could be explained by insufficiently long period of development of the real separation of powers and formation of a legal state. Though, provision of judicial independence is a primary, high-priority goal as a part of conception of legal system development.

Declaring the man, his rights and freedom as the highest priority and recognition, observation and protection of the rights and freedom of the man and citizen – obligation of the state, the Constitution of the Russian Federation guarantees for everyone judicial protection of his rights and freedom, justice and establishes that in the Russian Federation the bodies of the judicial power are separate, judges are independent and obey only to the Constitution of the Russian Federation and Federal law. The judges are irremovable and immune. The justice in the Russian Federation is exercised only by court; court exercises the judicial power independently from any will; the judges being the representatives of the judicial power are independent and obey only to the Constitution of the Russian Federation and federal law, they are irremovable and immune.

The independence of a judge in accordance with the law on “The status of judges in the Russian Federation” is provided throughout: the procedure of justice delivery provided by law; the ban, under the threat of responsibility for interference into the process of justice; established order for suspension and termination of judicial powers; the right of a judge to retire; immunity of judge; the system of the bodies of judicial community; financial and social security according to the high position of a judge and provided by the state.

Alongside with the above-said, the irremovability and immunity of a judge being the element of the constitutional status of judge and guarantee of the independence and separation of the judicial power, cannot be regarded as a personal privilege of a citizen, but the way of protection of public interests and, initially, the interests of justice whose aim is protection of the rights and freedom of man and citizen and presumes high responsibility of a judge for execution of his professional obligations, observation of law and rules of judicial ethics.

The law of the Russian Federation on the “Status of judges in the Russian Federation” introduced the institute of disciplinary responsibility of Russian judges. Disciplinary penalty can be imposed on a judge for a disciplinary offence committed by this judge in kind of: warning or early termination of powers of the judge.

The powers of the judge can be terminated only upon the decision of a competent board of judges as a body of judicial community. The functions of the competent boards are exercised on the basis of collegial, open, free, impartial and fair examination of the issues referred to its competence.

The qualification boards of judges do not report to the bodies that elected them and are formed from the judges and public representatives. Inclusion into the composition of the Qualification board of judges of public representatives – persons not empowered with the state power authorization and not exercising the functions of representatives of state power, including legislative, is one of the guarantees of such independence. Qualification boards of judges do not report on their decisions to judicial community bodies that had elected them.

As a result of examining claims on a disciplinary offence committed by a judge the qualification board of judges is empowered to impose a disciplinary penalty on the judge in the
form of early termination of powers or warning. Decision on termination of judicial powers is considered approved in case it is voted by not less than 2/3 of the qualification board members present at the session.

The jurisdiction and order of proceedings on contestation of the decisions on termination of powers of the judges is a guarantee against the initiation of the procedure of early termination of judge’s power for illegal influence that can be exercised against the judge – in order to put this judge in a dependent and obedient position - by any person, including the chairman of corresponding or superior court. The examination of these cases is referred to an exclusive competence of the Supreme Court of the Russian Federation.

In the present time additional guarantees aimed at providing independence of judicial power, irremovability and immunity of judges in cases when the judges are faced with disciplinary claims, are foreseen by the legislation.

Decision of a qualification board of judges on the early termination of judge’s power as a result of disciplinary misconduct or decision on termination of resignation of the judge resulting from his activity not compatible with the position of judge or deeds that bring the judge into disrepute, shall be made by a secret vote of the member of the qualification board.

Decision made by the qualification board of judges can be appealed in judicial order as well as in the Highest qualification board of judges of the Russian Federation. From March 10, 2010 takes effect the Federal Constitutional bill creating new legislative body – disciplinary judicial body that is empowered to examine claims on decisions of qualification boards of judges on early termination of judges’ powers as a result of disciplinary misconduct committed by the judges. Disciplinary judicial body is comprised of 6 judges taken from the list of judges of the Supreme Court of the Russian Federation and the Supreme Commercial Court of the Russian Federation. The judges members of the Disciplinary judicial body are elected at Plenum of the Supreme Court of the Russian Federation and at Plenum of the Supreme Commercial Court of the Russian Federation for three years by a secret vote.

Disciplinary misconduct that can be followed by a disciplinary reprimand is defined as a breach of the Law on “The status of judges” and the provisions of the Code of judicial ethics approved by the All-Russia congress of judges, establishing the rules of conduct for judges at work and non-official activities.

Failure to comply with the following requirements can be followed by an early termination of judge’s powers: a judge undertakes to strictly observe the norms of the Constitution of the Russian Federation and other laws; judge has to avoid any kind of actions during his official or non-official activities which may lead to abuse of the authority of judicial power, dignity of judge or could provoke any doubt in his impartiality, justice or independence.

Thus, not any non-conformity with the law requirements and ethical norms can be regarded as the ground for calling to a disciplinary account, that is to the early termination of judge’s powers, but only the misconduct that is not compatible with high status of the judge and apparently contradicts to the social role of the judicial power carried by judges.

One of the difficulties in the definition of judges’ independence limits at execution of judicial power is the absence of unique precise principles for the definition of the judge’s misconduct as incompatible with his status and activity.

One of the moot points is: the following: if the judge can be called to account for a judicial mistake?

Russian legislation reckons that the judge, even after the expiration of his powers, cannot be called to any account for the opinion expressed by this judge while exercising justice, with the exception if the court by its decision that took effect established his guilt resulting in criminal abuse or that the judge passed a criminal misuse, decision or other judicial act.

That is the reason why the judge cannot be called to disciplinary responsibility in kind of early termination of powers for the miscarriage of justice only if the illegality of judicial act was
not the result of such conduct of the judge that is not compatible by its character with the position occupied by the judge. Otherwise it couldn’t comply with the principles of independence, irremovability and immunity of judges that should be applied at disciplinary persecution of certain representatives of judicial power.

In a proceeding based on the adversary system the judge gives personal interpretation of legal norm, makes decision within the competence granted by law (sometimes the competence is considerable) and evaluates the circumstances without sufficient information (that is sometimes hidden from him). Taking into account a huge dependence of the result of justice from the judge’s discretion the differentiation of illegal decisions made in the result of fault not connected to the guilt of judge, is very complicated.

Unresolved problem of disciplinary responsibility of a judge for low professionalism represents an important practical meaning.

If the major part of sentences passed by the judge is abrogated by the superior bodies, if at close study we discover serious knowledge gaps and, consequently, in application of elementary basis of material and procedural legislation and mean while we cannot see any selfish intent nor pressure court. Can we assess the result of this work of the judge for some certain period of time resulted in large quantity of judicial acts recognized by the superior body as illegal and unfounded and reversed, as a disciplinary misconduct, entailing a disciplinary responsibility?

From another hand it would be natural. Some legal specialists offer to add the list of grounds for termination of judge’s powers with additional one – incompetence. From another hand, there is a legal ban on calling judges to any kind of (including disciplinary) responsibility for expressed opinion and decision made by court with the exception if the guilt of judge in criminal abuse or passing deliberately illegal sentence, decision or other legal act, is not proved by the decision of court that has already taken effect.

The question is to establish the responsibility of judge for commitment of: a) insignificant miscarriage of justice; b) blunder miscarriage of justice followed by serious impact (but without elements of crime); c) series of miscarriage of justice; d) systematic miscarriage of justice at delivery of judgment, etc. This is the issue to be discussed.

In case the judge goes beyond the judicial discretion (in most cases this is a “pure” miscarriage of justice); wrong (due to corrupted understanding) application of norms of material (less frequently formal law) law by judge examining the series of cases with a similar subject (that can be regarded as miscarriage of justice). Clarification of the grounds of miscarriage of justice for some certain case and miscarriage of justice – for serial cases requires a serious analysis by the disciplinary body examining the question on the responsibility of the judge, decision on presence or absence in his actions the signs of disciplinary offence.

According to the principles of judges’ conduct of Bangalor (Appendix to the resolution of Economic and Social Council of the Organization of United Nations 2006/23 from July 27, 2006) the conduct of the judge in course of trial and outside the court shall contribute to support confidence of society, colleagues and parties to trial in impartiality of the judge and the judicial system, be impeccable from the point of view of a bystander; observe ethical norms avoiding the signs of incorrect conduct of justice.

Relying on the above-said we shall answer the following question: whether the deed committed by the judge that was not connected the professional scope of work of the judge can be recognized as a disciplinary offence and entail an early termination of his powers?

The principle of immunity of private life is stipulated in the Constitution of the Russian Federation and is spread for all citizens of the Russian Federation. In addition to the aforesaid, by virtue of exercising by the judges of legal and public functions, the legislator imposes exclusive requests to observation of moral and ethical norms by judges in their private life subject to extraoccupational relations. These limits are imposed by the judge voluntarily at time of his nomination.
The Code of judicial ethics stipulates that in his professional activity the judge undertakes to observe the principles of the Constitution of the Russian Federation, follow the provisions of the Law of the Russian Federation on the “Status of judges in the Russian Federation” and other normative acts, rules of conduct established by the Code, common moral norms, contribute to strengthening of moral and justice in society, impartiality and independence of court.

The general requirements imposed on judges during their off-duty time are the following: judge can participate in public life in case it can make no harm to the authority of court and proper execution of professional duties by judge; judge can cooperate with the bodies of legislative, executive power and local government bodies regarding laws, judicial system, legal procedure, legal system avoiding all the can provoke doubts on his independence and impartiality; judge cannot adhere to political parties and movements, give any material support or give any other support, publicly express his political views, participate in meetings and demonstrations that have political character or in any other meetings; judge undertakes to avoid any personal connection that can harm his reputation, honor and dignity; judge has to abstain from financial or business liaisons that can cast discredit on his impartiality or affect execution of his professional duties.

Nevertheless, legislation lacks some criteria of negative assessment of judge’s moral conduct during the time of the execution of his professional duties as well as at out-work. That fact causes certain difficulties for law enforcement officials.

Discussion and elaboration of basic principles of independence of judges, unique standards of judicial ethics, common approaches to the search of balance between independence and responsibility of judge is a high priority task of for all judicial community.

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