

MSC 2020**International Scientific and Practical Conference «MAN. SOCIETY.
COMMUNICATION»****CONDITIONS AND PROCEDURES FOR IMPOSING
DISCIPLINARY LIABILITY ON A JUDGE**

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Abstract

The article presents socio-legal grounds for the disciplinary liability of judges taking into account their special status established in the system of law in this country, which is consistent with international law. The considered socio-legal grounds for the disciplinary liability of judges correspond to the definition of this notion applied in sociology of law and the national doctrine of positive responsibility. The article reflects the actualization of the current problems in the mechanism of imposing disciplinary liability on judges. It is noted that despite all the transparency of this procedure, the mechanism for imposing disciplinary liability on judges cannot be acknowledged as perfect due to the undifferentiated approach in determining the type of an offence and the possibility of an arbitrary decision by the Qualification Board of Judges. It is suggested to implement the method of extrapolation of the European experience in the domestic legal context, including the possibility of revising the status of Qualification Boards of Judges. Therefore, the purpose of this article is to develop and clarify our own ideas for further improvement of the institute of disciplinary liability of judges and give specific suggestions on this issue. The decision of the Qualification Board of Judges may be arbitrary, so the analyzed institution needs to be further improved by differentiating the grounds for taking disciplinary action against judges and types of sanctions imposed on them.

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Keywords: Appeal of decisions, differentiation of the judge's responsibility, disciplinary liability of judges, the oath of a judge, qualification Board of Judges



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1. Introduction

The Constitution of the Russian Federation establishes a special status of a judge, which implies a special procedure for imposing disciplinary liability. However, the liability of judges in the system of domestic law has a number of imperfections, the essence of which is the lack of differentiation in determining the type and measure of disciplinary liability, which makes it possible to arbitrarily decide the case by the Qualification Board of Judges (hereinafter – QBJ). This circumstance does not correspond to the similar practice in modern European systems, in which the disciplinary liability of judges has clearer criteria.

We adhere to the multifaceted understanding of the judge's discipline: first, it is discipline in court, second, the authority of the court and the judge in their moral principles, third, the judge's compliance with their status, and fourth, a special procedure for imposing disciplinary liability on judges. According to the provisions of the Constitution of the Russian Federation, 1) judges are irremovable (part 1 of article 121), 2) their powers can be "terminated or suspended only in accordance with the procedure and on the grounds established by Federal Law" (hereinafter – FL) (part 2 of article 122). These provisions contain the special status of the judge, his exalted position as a necessary condition for preserving the foundations of the judicial system.

The essence of disciplinary liability of judges comes from the general meaning of the concept of "responsibility" as a social phenomenon.

2. Problem Statement

The judge, as an independent person, should avoid the possibility of an arbitrary decision in assessing the degree of his guilt and determining the measure of disciplinary action. On the one hand, the disciplinary liability of judges is subordinated to the essence of the existence of all social institutions, the ideas of law and the theory of positive responsibility, which takes into account the main aspects of law: justice, freedom and stability of social relations. This function is performed by the QBJ as autonomous and independent body of the judicial community, but the procedure can be arbitrary and ambiguous (Disciplinary proceedings..., 2012).

3. Research Questions

In this paper, the authors set themselves the following research questions:

- to provide socio-theoretical reasoning for the general conditions and procedures for imposing disciplinary liability on a judge and a mechanism for appealing decisions of the QBJ;
- to consider the European experience in this issue and analyze the views of scientists on the analyzed Institute.

4. Purpose of the Study

The purpose of the study is to identify imperfections in the existing mechanism for imposing disciplinary liability on judges from the position of substantive and procedural law in the genesis of social responsibility.

5. Research Methods

The applied methods are classical: formal certainty of law (literal perception of the text of a normative act); theoretical modeling (building a specific legal relationship based on an existing norm); comparative analysis (the comparison of domestic and European legal reality); analysis of specific situations (in terms of considering specific cases).

Social responsibility characterizes the institution of the law-governed state and civil society, in which an individual is able to influence the state structure at his own discretion and under certain conditions, including when organizing the procedure for imposing disciplinary liability on judges. The main issue is the idea of morality, which calls for truth (Selina, 2017). Social responsibility provides an opportunity to control the social organism and is inextricably linked with the law (Vitruk, 2009). All types of responsibility: 1) form of control, 2) state and personal characteristics (Grevtsov, 2008).

Legal responsibility towards a judge implies negative consequences for non-compliance with legal requirements, which is a guarantee of justice in general, based on the subordination of the judge to the norms of the Constitution (Kornakova & Shcherbakova, 2018). In relation to the personality of a judge, it is appropriate to apply the concept of positive legal responsibility arising in the process of exercising powers that do not meet the interests of society (Bondar & Dzhagarian, 2018).

Supporting the concept of positive legal responsibility, noting the permanent nature of legal responsibility, Matuzov (1987) actualizes: 1) its voluntary message for the individual, in our case, for the judge's personality; 2) strengthening of personal control over oneself. Positive legal responsibility in this sense is characterized by the voluntary performance of the subject of their duties, which is inherent in the judge. In the modern view, the disciplinary liability of a judge acts as a branch type of legal responsibility (Mayorov et al., 2018), subject to general laws: normative consolidation and practice of application (Kuzmin, 2017).

The judge since his appointment and taking the oath, being under the scrutiny of the judiciary and the public must elect the only option for his / her conduct, that is strict observance of laws, to preserve his / her authority and judgment in the profession and outside of it, has to remember the provisions of the Code of Judicial Ethics and the oath, restricting his / her freedom. However, the Code of Judicial Ethics, approved by the VIII All-Russian Congress of Judges on 19.12.2012, does not mention the oath of a judge, and accordingly does not even provide for ethical responsibility for its violation, while a different procedure is provided for judges of the constitutional court of the Russian Federation. Accordingly, the judge implements the words of the oath in his professional activity (Kornakova & Shcherbakova, 2019), the meaning of the oath is implemented in the conscientious performance of their functions.

In general, the disciplinary liability of judges corresponds to the basic legal ideas of freedom, justice and stability (Syshchikova & Shatskikh, 2016), which requires the consistency of all legal institutions.

Freedom in our understanding is the independence of a judge in professional terms; justice is a proper and adequate response to a misdemeanor committed by a judge; stability is the sustainability of the judicial system.

It is hardly possible to disagree with the statement of the Chairman of the Constitutional Court of the Russian Federation Zorkin (2020), who noticed in his interview that:

There should be clear criteria for the liability of judges, a clearer procedure for bringing judges to justice ... such measures of disciplinary liability of judges, such as warning and early termination of powers, are not able to fully implement the actual disciplinary function ... termination of powers is clearly punitive, and therefore should be applied only in exceptional cases. (para 22 - 24)

In particular, in European countries, the list of disciplinary measures for judges is much broader than in Russia. For example:

Germany – reprimand, fine, salary reduction, transfer to a lower position, and then - removal from office (Tarbagaev, 2015).

France - reprimand with entry in the personal file; revocation of certain powers; prohibition to consider cases individually for up to five years; demotion; suspension from office for up to one year, with full or partial loss of salary; transfer to a lower-paid position; dismissal, with or without pension; and dismissal. Several penalties cannot be imposed simultaneously, but a transfer to a lower position can be applied with a set of sanctions (with the exception of a reprimand and dismissal or discharge).

Belgium – two types of disciplinary penalties: mild (warning and reprimand) and severe (withholding from wages; termination of the mandate, temporary suspension from office), then possible dismissal and discharge from office (removal from office).

Netherlands - written warning, suspension from office and possible subsequent dismissal.

Estonia - reprimand, fine in the amount of one month's salary, reduction of the official salary (up to 30%) for no more than a year, suspension from office (Disciplinary proceedings..., 2012).

Accordingly, in European legal systems, the disciplinary liability of a judge is multispectral and more differentiated (Status and situation..., 2020) than in a domestic similar institution.

In Russian science, a similar opinion has been formed and still exists. Thus, Ermoshin (2010) suggests: 1) to determine the main criterion that hinders fair justice – the personal interest of the judge; 2) to take into account three factors that determine the responsibility of the judge: professional activity, labor discipline and the authority of the judiciary (Ermoshin, 2010). In continuation of this logic, we should conclude that there is a need to differentiate the disciplinary liability of a judge: to provide for liability for non-compliance with labor discipline (delay, violation of reporting deadlines, unrelated to the implementation of justice, etc.); other disciplinary measures (warning or fine), which can be appointed by the President of the Court. Professional responsibility related to the administration of justice should be assessed by a higher court (Kleandrov, 2014), but there should be a scientific and practical dialogue about the criteria for this responsibility. Liability for misconduct of a judge that discredits the authority of the judiciary should be determined by the QBJ of the appropriate level and status of the court. This situation

may occur when a judge's procedural decision formally violates the law, but does not have the quality of socially harmful (Andreeva & Trubnikova, 2019), or does not cause negative consequences.

Special requirements to the conditions and the procedure of taking disciplinary action against a judge set forth by the legislator in the existing normative-legal acts are: the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", "On Arbitration Courts in the Russian Federation", "On Courts of General Jurisdiction in the Russian Federation", "On the Supreme Court of the Russian Federation", RF Law "On Status of Judges in the Russian Federation»; The Federal law "On Bodies of Judicial Community in the Russian Federation", "On Magistrate Judges in the Russian Federation", the Code of Judicial Ethics, the Rules of the Constitutional Court of the Russian Federation, Regulations on the operation of the Qualification Board of Judges, the Decree of the Plenum of the Supreme Court of the Russian Federation "On Approval of the Regulations on the Disciplinary Board of the Supreme Court of the Russian Federation". These acts define 1) the conditions for imposing disciplinary (and other types of liability) on judges, 2) the obligation to follow special procedures when taking disciplinary action against a judge, and 3) guarantees of his / her independence and inviolability. The listed diversity of the legal framework cannot provide a uniform approach to this issue, however, there are common standards.

European researchers point to the need for such an approach, noting that "in order to ensure the professional responsibility of judges, it is possible to effectively and comprehensively use all legal means ... through the activities of specialized bodies ... Higher Council of magistracy (Judicial Inspection, Disciplinary College, College for Evaluating the Effectiveness of Judges)" (Turcan & Dulghieru, 2018, p. 41-42). Therefore, it is advisable to provide for a single judicial Disciplinary Statute.

A misdemeanor (as a rule) is not only a direct violation or non-compliance with the law by a judge, but also misconduct or misdemeanors that can discredit the judge's title (Kleandrov, 2014). Disciplinary proceedings are carried out by the Higher Qualification Board of Judges and similar boards in the subjects of the Russian Federation.

The procedure for proceedings in the Qualification Boards of Judges is set out in Chapter III of The Law on the Bodies of the Judicial Community, and detailed in the Regulations on the Procedure of the QBJ. Concerning the responsibility of judges, the powers of the HQBJ include: mandatory verification of materials published in the media; suspension, renewal or termination of the powers of judges, if this does not apply to the age limit of the judge's tenure in office. The basis for starting work in the HQBJ and QBJ are complaints, indictments, and appeals that can be received from any government body, official, organization, or citizen. When appeals about a disciplinary offense committed by a judge are received, they are checked independently or sent to the Chairman of the QBJ of the relevant subject of the Russian Federation. The possible grounds for disciplinary liability of judges are: in respect of judges of the Supreme Court of the Russian Federation – the Chairman of the Supreme Court; for other judges – appeals of the presidents of courts in the relevant subjects and administrative-territorial entities - an appeal of the relevant Board of Judges. When complaints are received, the QBJ has the right to do the following: the Chairman of the QBJ or the Presidium of the QBJ of the Russian Federation makes a decision: 1) on the internal investigation, 2) on appeal to the court of higher jurisdiction for further consideration.

Internal investigation of an appeal received in the form of a complaint or reference is carried out under certain procedural conditions: 1) the QBJ creates a commission consisting of members of the board

of judges, a qualified panel of judges and the public; 2) the commission verifies the facts stated in the appeal; 3) the commission makes a report at a meeting of the QBJ with a quorum of at least half of the members; 4) the QBJ decides on the basis of the report whether or not to take disciplinary action against a judge; 5) if the judge is not brought to justice, the QBJ may indicate violations of law or ethics. The refusal must be motivated by all the rules of court proceedings.

The complaint may be left without consideration in the following cases: 1) lack of information about the offense committed by the judge; 2) it does not concern the offense, but solves issues of judicial procedure; 3) it violates ethical and moral standards; 4) unreadable; 5) previously such a complaint has already been considered; 6) confidentiality is violated.

The judge brought to disciplinary liability in the course of the internal investigation, based on the general principles associated with the implementation of the principle of justice (Kachalova & Kachalov, 2019), is vested with powers similar to the procedural status of the suspect or the accused, the essence of which is based on the following rules: the judge is informed in the required time, has the right to review all documents and materials (also make their copies), to request the inclusion of their materials, bring their own arguments and judgments, to apply for membership of the commission. The absence of a judge without a valid reason at a meeting of the Qualification Board of Judges is not an obstacle to the decision of the Qualification Board of Judges. Based on the principle of presumption of innocence, the burden of proving the guilt and innocence of the judge is placed on the person who applied to the QBJ, and the detected doubts are interpreted in favor of the judge. The Statute of limitations for imposing disciplinary liability is not applicable for judges, but can be considered as a mitigating circumstance.

If there are sufficient grounds for imposing disciplinary liability on a judge, the Qualification Board, having considered the relevant report or an appeal, has the right to take any type of disciplinary action against the judge, without relying on the assumptions previously put forward in the appeal. When making a decision, the QBJ are not bound by the initial opinion expressed in the complaint or appeal. The penalty can be either strict or mild. In the practice of the QBJ, there are cases when the disciplinary penalty imposed on a judge was stricter than the one stated in the complaint, which can be understood as an opportunity for the QBJ to interpret arbitrarily in assessing the judge's misconduct, which, in our opinion, is not quite correct, and indicates the need to differentiate the institution of disciplinary liability of a judge. In this regard, the idea of creating a specialized judicial status court seems to be correct (Malyshkin, 2019).

The QBJ decision is adopted by simple majority, on the termination of powers of a judge qualified by at least two thirds, if you cannot abstain from voting. Decisions of the QBJ are announced directly, and the time limit for appeal is 10 days. The QBJ has the right to announce only the operative part of the decision, and the full text is provided within 10 days and sent within 5 days. The measure of disciplinary penalty chosen by the QBJ may be revoked or changed upon appeal and review.

6. Findings

Thus:

1) the special status of a judge in terms of making higher demands on his personality and the existence of a special procedure for imposing disciplinary liability is rationalized from the standpoint of the social essence of justice;

2) the decision of the QBJ may be arbitrary, which, in our opinion, is unacceptable from the point of view of law;

3) the analyzed institution needs to be further improved by differentiating the grounds for taking disciplinary action against judges and, depending on this, further expanding the types of sanctions imposed on judges.

7. Conclusion

The study of the socio-legal conditions and procedures for imposing disciplinary liability on judges is based on a number of factors: 1) the social and legal significance of the judicial power and the special status of the judge; 2) the authority and stability of this power; 3) the established guarantees of the independence of the court; 4) the observance of the high moral, ethical and professional qualities of the judge.

The general legal conditions and procedure are based on the doctrine of positive legal responsibility, as the genesis of social responsibility, but with the autonomy of such institutions, this circumstance can give rise to a legally unjustified order, which nullifies the advantages of the position of the judge and the judicial power.

In order to improve the mechanism of the Institute of disciplinary liability of judges we suggest to:

1) develop and approve a judicial disciplinary statute, containing a system of specific judicial misconduct cases;

2) differentiate types of legal liability (for example, fines);

3) include a wider range of persons and bodies into the mechanism of legal responsibility, depending on the offence committed by a judge;

4) provide for various authorities for taking disciplinary action against a judge: immediate supervisors, a Qualification Board of Judges or a court.

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