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THE COURT PRESIDENT'S ROLE IN IMPLEMENTING THE PRINCIPLE OF JUSTICE OPENNESS

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Abstract

The article is devoted to the study of mechanisms for ensuring the principle of justice openness, the implementation of which contributes to the fair resolution of disputes within a reasonable time, strengthening the independence of judges as the first guarantee of human and civil rights and freedoms and their protection, eliminating corruption in the administration of justice, strengthening the rule of law and order and increasing the level of trust of citizens in the court. The interrelation of the principle of openness of justice with other important principles - publicity, public hearing, transparency and accessibility of court proceedings has been demonstrated. The analysis of the legal framework that determines the legal status of court presidents in the Russian Federation is carried out. The article shows that the figure of the president of the court is endowed with significant powers for the purpose of ensuring the openness of justice in the presided court. The difficulties that are caused by the duplication of provisions on ensuring the informatization of judicial activities presented both in laws and in subordinate legal acts, the "overload" of court presidents with organizational tasks that could be transferred to court administrators, are identified. The article shows that the resolution of the indicated legal problems requires a systematic approach to the grounds for the acquisition and termination of the legal status of the president of the court as a whole, as well as his / her powers.

Keywords: Independence of judges, informatization of the judicial system, openness of justice, powers, president of the court, legal status

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1. Introduction

Significant changes in the state structure of Russia over the past decades have led to a corresponding reform of the judicial system. Ensuring the implementation of the right of citizens to access the court is given great attention throughout the world and in relation to various categories of the population (Gomes, & Cesario, 2020; Lazarova, 2020; Moore, 2020). The most important element of the judicial reform in Russia is ensuring the openness of justice (Maleshin, 2006), which changes the perception of citizens about the functioning of the judicial system (Divin, 2016). The openness of justice contributes to the solution of a number of key issues studied by experts from different countries: fair and reasonable settlement of disputes (Trlin, 2016); strengthening the independence of the legal status of judges (Berggren, & Gutmann, 2020; Gimson, 2020); eliminating any interest and corruption in the administration of justice (Bolkvadze, 2020); implementing the preventive and educational functions of justice (Campeau, & Levi, 2019); strengthening the state of law and order at a specific stage of development of the state and law system (Kozhevnikov et al., 2019); increasing the level of citizens' confidence in the court (Creamer, & Godzimirska, 2019; Denison et al., 2020).

As a rule, the notion of openness of justice is considered in science in relation to such principles as publicity, public hearing, transparency, and accessibility (Alemanno & Stefan, 2014; Polley & Clifton, 2015; Pozdnyakov, 2013). The openness of justice involves raising the level of citizens' awareness about the rules of court proceedings, familiarizing them with the texts of court decisions and their proper understanding, which is associated with the development of legal education and the establishment of additional guarantees for the implementation of the tasks of legal proceedings.

Ensuring the openness of justice is becoming more relevant due to the growing informatization of judicial activities (Costake, 2001; Tokarev et al., 2019). There are three groups of informatization elements: 1) reflecting the openness of justice and the judicial system as a whole; 2) aimed at interaction with individuals involved in legal proceedings in individual cases; 3) ensuring the activities of the court and its interaction with other state bodies (Sharifulin et al., 2018).

The level of openness of justice actually depends on the development of a balanced and scientifically based approach to determining the role of court presidents.

2. Problem Statement

Firstly, in accordance with Federal Law No. 262-FL of 22.12.2008 "On ensuring access to information about the activities of courts in the Russian Federation" (Federal Law…, 2008), the official representative of the court interacting with the media is the President of the court or an official authorized by the President of the court (article 22), the texts of judicial acts are posted on the Internet (article 15), and an open court session can be broadcast on radio, television and the Internet (article 23). This fully corresponds to the opinion of the Consultative Council of European Judges of 10.11.2016. № 19 (Opinion of the Consultative Council of European Judges, 2016) "The role of court presidents", according to which the role of court presidents is to represent the court and other judges, ensuring the effective functioning of the court. The latter refers to organizational support of placing information on the official website of the court, including the determination of persons responsible for the content of information, depersonification

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of judicial decisions, the control over completeness and timeliness of placement and providing the necessary information that is implemented through appropriate organizational and administrative acts of the president of the court.

Conducting and recording open court sessions, including photos, video and audio, are governed by article 9 of the Federal Constitutional Law of 31.12.1996 No. 1-FCL "On judicial system of the Russian Federation" (Federal Constitutional Law…, 1996), the relevant procedural law (article 10 of the Civil Procedure Code of the Russian Federation, article 11 of the Code of Administrative Procedure of the Russian Federation, article 11 of the Arbitration Procedural Code of the Russian Federation, article 241 of the Criminal Procedure Code of the Russian Federation), the procedure is also explained in Resolution No. 35 of the Plenum of the Supreme Court of the Russian Federation of 13.12.2012 "On openness and transparency of legal proceedings and on access to information about the activities of courts" (Arbitration Procedural Code of the Russian Federation, n.d.; Resolution, 2012).

The relevant organizational and administrative documents of court presidents dealing with publishing information about the activities of courts, conducting legal proceedings, including informatization, allow members of the public and the media to exercise their rights for openness of justice. For example, the "Regulation on the procedure for placing texts of judicial acts on the official websites of the Supreme Court of the Russian Federation, courts of General Jurisdiction and Arbitration Courts in the information and telecommunications network "Internet", approved by the Decree of the Presidium of the Supreme Court of the Russian Federation of 27.09.2017 determines that the responsibility for placing judicial acts on the official websites of courts is assigned to employees of the court staff by orders of the respective court presidents (Decree of the Presidium of the Supreme Court of the Russian Federation, 2017).

In addition, it is the president of the court who is obliged to organize a specially equipped room for familiarization with the case materials, as well as with audio recordings of court sessions attached to court cases.

A bright example of fulfillment of compensatory function of the president of the court is the need for assurances they are given by the court copies of judicial acts (sentence, judgement, decision, decree, court order) in the absence of the presiding judge (paragraph 11.10 of the Instruction on the organization of acquisition, storage, accounting and use of documents (electronic documents) in archives of General Jurisdiction Courts approved by the Order of Judicial Department at the Supreme Court of the Russian Federation of 19.03.2019, No. 56 (Order of Judicial Department at the Supreme Court of the Russian Federation, 2019)).

Informatization of the judicial system and the introduction of modern information technologies in the judicial system as key measures provided for by Government Decree No. 1406 of 27.12.2012 "On the Federal Target Program “Development of the Judicial System of Russia for 2013-2020” are aimed at expanding opportunities for citizens and organizations to exercise their right to access to court, as well as optimizing and improving the internal activities of courts (Government Decree, 2012). At the same time, the main disadvantage is the duplication of documents in electronic and documented (on paper) form of transfer to the president of the court to determine the performer and the term of execution of the document, which, for example, is fixed in paragraph 3.4 of the “Regulation on the Procedure for Consideration by Courts of General Jurisdiction of Electronic Appeals of Citizens (Individuals), Organizations (Legal

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Entities), Public Associations, State Authorities and (or) Local Self-government Bodies", approved by the Decree of the Presidium of the Council of Judges of the Russian Federation of 21.06.2010. No. 229 (Decree of the Presidium of the Council of Judges of the Russian Federation, 2010). Besides, the article 474.1 of the Criminal Procedure Code of the Russian Federation, article 15 of the Arbitration Procedure Code of the Russian Federation, and article 13 of the Civil Procedure Code of the Russian Federation (n.d.) provide for additional production of a copy of a court decision on paper when it is made in electronic form.

Another controversial issue to be noted is the regulation of filing documents to the court in electronic form. The relevant provisions of procedural legislation are of a general nature. In order to clarify them, the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 57 of 26.12.2017 "On Certain Issues of Application of Legislation Regulating the Use of Documents in Electronic Form in the Activities of Courts of General Jurisdiction and Arbitration Courts" was adopted, in accordance with paragraph 3 of which the relevant procedures for submitting documents to courts in electronic form were adopted.

The order of filing documents in the Federal Courts of General Jurisdiction in electronic form, including in electronic file, approved by the order of the Judicial Department under the Supreme Court of the Russian Federation of 27.12.2016, No. 251 (Order of the Judicial Department under the Supreme Court of the Russian Federation, 2016a), and the Procedure for Filing in Arbitration Courts of the Russian Federation of Documents in Electronic Form, Including in Electronic File, approved by the order of the Judicial Department under the Supreme Court of the Russian Federation of 28.12.2016, No. 252 (Order of the Judicial Department under the Supreme Court of the Russian Federation, 2016b), are actually a description of how implementation of the procedural rights of citizens and organizations, laid down in the relevant procedural codes. However, it is obvious that not only the terms used in paragraphs 1.4 are the same, but also the numbering of similar provisions is the same. It seems correct to eliminate excessive law-making and develop a unified approach to informatization of the unified judicial system, taking into account the peculiarities of the functioning of specialized courts and magistrates.

In addition, the Judicial Department under the Supreme Court of the Russian Federation imposes the obligation on court presidents to certify copies of court decisions in the absence of the judge who considered the case or an authorized employee of the court staff, as well as in accordance with the above-mentioned Instructions. Among other powers of the president of the court, called Instructions, it is advisable to pay attention to: approval and formation of nomenclature of the court; destruction of documents; examination of the value of documents, transfer of cases to the archives of the court; approval of the regulations defining the tasks and functions of the archives of the court (paragraph 1.3); appointment of employees responsible for the work of the court archive (paragraph 1.4); electronic signature certification of electronic files when accepting for archival storage (paragraph 7.5.2); initiation of work on recording electronic documents on new media (paragraph 10.7); search for missing cases (paragraph 10.8); permission to use documents of the court archive (paragraph 11.1); electronic signature certification of electronic archival certificates (statements) (paragraph 11.3.3).

However, the general rules of application of the provisions on the legal force of documents allow us to doubt the legality of securing any powers of the court president by a body designed to ensure the operation of courts in accordance with part 2 of article 30 of the Federal Constitutional Law of 31.12.1996 No. 1-FCL "On the Judicial System of the Russian Federation" (Federal Constitutional Law, 1996). It seems

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reasonable to eliminate these doubts by giving appropriate organizational and security powers to a person who is subordinate to the Judicial Department in addition to the president of the court, namely, the administrator of the court with the appropriate responsibility, including during inspections of court records. This would allow not only to establish a reasonable balance between the tasks performed by the president and the administrator of the court, but also to increase the level of independence of judges and the independence of the court.

Secondly, the principle of independence of judges is the first guarantee of justice and the guarantee of ensuring the protection of human and civil rights and freedoms (this also applies to organizations) (Zhuykov, 2019), granted to everyone on the basis of articles 18 and 46 of the Constitution of the Russian Federation.

The development of this constitutional principle is contained in paragraph 1 of article 10 of the Law of the Russian Federation of 26.06.1992 No. 3132-I "On the Status of Judges in the Russian Federation" and article 8 of the Code of Judicial Ethics of 19.12.2012 (approved by the VIII All-Russian Congress of Judges on 19.12.2012), according to which a judge is obliged to inform the president of the court and the judicial community of all attempts to influence him, exert direct or indirect pressure in order to influence the decision taken.

Placement of non-procedural appeals to the court president or the judge on the official website of the court in information and telecommunication network "Internet" is considered to be important for the transparency of justice (part 2.1 of article 5 of the Arbitration Procedural Code of the Russian Federation, part 4 of article 8 of the Civil Procedure Code of the Russian Federation (n.d.), article 8.1 of the Criminal Procedure Code of the Russian Federation part 4 of article 7 of the Code of Administrative Procedure of the Russian Federation, article 24.3.1 of the Code of Administrative Offences of the Russian Federation) (Criminal Procedure Code of the Russian Federation, n.d.).

The persons participating in the case are informed about such appeals directly by the judge, and the placement on the official website of the court is not only organizationally provided by the president of the relevant court, but also takes place on the basis of its decision (paragraph 2.2 On the Procedure for Posting Information on Non-procedural Appeals on the Internet, approved by the Order of the Judicial Department under the Supreme Court of the Russian Federation of 11.12.2013 No. 241).

In fact, the president of the court evaluates the received appeal for compliance with the non-procedural criteria set out in paragraph 1 of article 10 of the Law of the Russian Federation of 26.06.1992 No. 3132-1 "On the Status of Judges in the Russian Federation", and then makes a decision on its placement on the official website of the court. In science, the ambiguity of the need to consider it with the provision of an appropriate response is noted. We agree that this is not necessary in view of the abuse of the right to appeal by the person who sent it (Zaykov, 2020).

Thirdly, the openness of justice must be ensured taking into account the principles of reasonableness and admissibility in order to minimize corruption risks in judicial activities (Petukhov, & Ryabtseva, 2018). The president of the court determines the person responsible for the prevention of corruption and other offences among the employees of the court staff (paragraph 2.5 of Regulations on the Procedure for Verifying the Accuracy and Completeness of Information on Income, Expenses, Property and Property Obligations of a Judge of a Court of General Jurisdiction, a Military and Commercial Court, a Magistrate,

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his or her Spouse and Underaged Children, approved by a Resolution of the Presidium of the Supreme Court of the Russian Federation of 14.07.2017). A joint order of the court president of a subject of the Russian Federation or a court equivalent to it and the corresponding Department of the Judicial Department determines the courts where commissions are established to verify the accuracy and completeness of information provided by judges on income, expenses, property and property obligations. Such courts include not only sections of magistrates on a territorial basis, but also district (city) and garrison military courts with a number of less than ten judges (paragraph 3.3 of the Regulations). Following this rule, in the Leningrad region, for example, the Commission can be created only in 37 % of district (city) courts, since the rest of the courts are among the small-component ones. We believe that such inequality of courts in the creation of commissions affects the amount assigned to the presidents of essentially the same level of courts, and may also affect the quality of work of such commissions.

Referring to the application of the institution of special court rulings to judges, under the article 29 of the Criminal Procedure Code of the Russian Federation, article 226 of Civil Procedural Code of the Russian Federation, article 200 of the Code of Administrative Procedure of the Russian Federation, article 188.1 of the Arbitration Procedure Code of the Russian Federation, we see that as a rule, such a resolution in respect of a particular judge is sent to the president of the relevant court for the purpose of taking measures within a month.

In this connection naturally raises two complex terms of the rights issue.

1) does the president of the court have the right to take any measures against a judge who has received a special ruling without violating the principle of independence of the legal status of the judge as a whole and non-interference in his activities?

2) is the judge who received a special ruling entitled to appeal against it, and if so, in what order, and to what authority?

Answering the first question, we will emphasize the strengthening of the role of the judicial community and the tendency to maintain the "neutrality " of the president of the court in relation to the judges of the presided court. It would be appropriate, in our view, to leave this issue to the decision of, for example, the Qualification Board of Judges of the relevant subject of the Russian Federation.

The second question has long been debatable. It is believed that the existence of this gap in the procedural legislation in practice makes it impossible to exercise the right to appeal a special court ruling due to the lack of a clear mechanism for bringing complaints to special court rulings, the procedure for their consideration (Kolokolov, 2017).

The emergence of such issues in practice only confirms the existence of obvious contradictions in the law, which, in turn, when systematically considered, lead to the idea that it is impossible to apply the Institute of special court rulings in relation to judges, taking into account the existing procedure for bringing the court to disciplinary liability (article 12.1 of the Law of the Russian Federation of 26.06.1992 No. 3132-I "On the Status of Judges in the Russian Federation"). Otherwise, the lack of legal regulation may lead to unjustified restrictions on the independence of judges in decision-making, distorting the understanding of their role in the administration of justice (Trofimova, 2017).

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Fourthly, ensuring the openness of justice is impossible without sufficient guarantees of the independence not only of judges in general, but also of court presidents in particular. They require reconsideration of the grounds for acquiring and terminating the legal status of the president of the court.

Thus, it seems reasonable to exclude the possibility of appointing a person who is not a judge to the post of president of the court, as allowed in these terms (Makarova, 2017). The lack of uniformity in the approach to filling the positions of presidents of courts at different levels (term of office, the possibility of repeated replacement of the post, the maximum term of office) (Zhuykov, 2019) requires further scientific development. Thus, the Federal Constitutional Law of 07.02.2011 No. 1-FCL "On Courts of General Jurisdiction in the Russian Federation" for the presidents of appellate courts and courts of constituent entities of the Russian Federation and district courts provides for a single term of 6 years, however, only the last set restriction on the multiplicity of purposes, not more than two consecutive terms. The maximum age of office of the president of the cassation court of general jurisdiction is 76 years, while for other court presidents a special age is not set, therefore, the provisions on the maximum age of office for a judge – 70 years (article 14 of the Federal Constitutional Law, 1996). Since neither the legislators nor the scientists provide any reasonable arguments for these discrepancies, there are doubts about the equal level of guarantees of independence of court presidents in general, and the uniformity of their legal status.

Despite the fact that the transfer authority for the admission of candidates for judges of the judiciary fully conforms to modern standards and expectations of civil society and increases the credibility of the court as a whole (Momotov, 2020), the historically determined importance of the figure of the president of the court remains significant for ensuring a well-coordinated and fully functional activity of the working group, consisting not only of judges, but also of employees of the court staff.

Some authors see a complete rejection of the institution of court presidents as a radical solution to the problems of independence of judges and independence of the court (Kondrashev, 2017), but the study of foreign countries' experience in the functioning of judicial systems confirms the need for court presidents' activities with the establishment of liability measures for improper performance of their duties as heads of the court (for example, such liability is provided for in Kazakhstan, Armenia, Montenegro).

3. Research Questions

Thus, the main research problems are:

- problems of implementing the principle of openness in the activities of courts, including in the administration of justice;
- the role of the court president in evaluating and posting non-procedural appeals on the official websites of the court;
- the institution of special court rulings concerning judges, the role of court presidents in it;
- some problems of legal regulation of the court presidents' powers by subordinated legal acts;
- necessary changes in the grounds for acquiring and terminating the legal status of court presidents and their powers.

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4. Purpose of the Study

The purpose of the study is to determine the role of the president of the court in the implementation of the principle of justice openness, taking into account the specifics of his / her organizational powers, as well as the procedural rights and obligations provided by legislation. Identifying the main problems and making suggestions for improving and developing the role of the president of the court.

In accordance with the purpose of the study the following objectives are set: to reveal the principle of openness of judiciaries; to analyze the corresponding Russian laws and subordinated legal acts; to demonstrate the various functions of president of the court of General Jurisdiction related to the implementation of the principle of justice openness; to identify the most problematic aspects associated with ensuring the openness of justice and to offer ways of problem solution.

5. Research Methods

Research and evaluation of the role of the president of the court in the implementation of the principle of justice openness in connection with the trends in the development of legislation concerning the judicial system and judicial proceedings require the use of a whole set of both general scientific and special methods.

The first group includes the cognition (philosophical) method of obtaining knowledge, which generally determines the worldview position, the method of materialistic dialectics, methods of generalization and abstraction, analysis and synthesis, induction and deduction, idealization, formalization, modeling, analogy, comparison, classification, observation, as well as the system-structural method.

Special methods include formal legal, comparative legal, and legal modeling and forecasting methods.

6. Findings

Modern trends in the implementation of the principle of justice openness are aimed not only at the unimpeded flow of documents, including in electronic form, documentation of the course of the hearing and the timely receipt of the necessary information about the course of the proceedings, necessary documents, but also to the open provision of information about judges, the president of the court, the court's activities in general.

The role of the president of the court in evaluating and posting non-procedural appeals on the official websites of the court. When receiving appeals, the president of the court evaluates them for compliance with the non-procedural criteria, only after which he / she makes a decision on their placement on the official website of the court. Providing a response to non-procedural appeals is not required, since the appeal itself is an abuse of the right.

It seems appropriate to legislate the impossibility of applying the institution of special court rulings to judges, since this is unnecessary and does not meet the requirements of non-interference in the activities of judges, including by the president of the relevant court.

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The assignment of certain powers to court presidents in the field of judicial record-keeping by organizational and administrative documents of the Judicial Department does not fully comply with the provisions of The Law on the Status of Judges and introduces a misunderstanding in the division of competence with the court administrator.

It seems correct to establish the requirement of having the status of a judge for a candidate for the presidency of the court, as well as the need for further scientific development to ensure a unified approach to the terms of filling this position in courts of various levels, the age limit for holding this position. It is also proposed to form a balance for the purpose of ensuring the independence of the judiciary, including the establishment of a particular liability of the court president for improper fulfillment of his / her duties.

7. Conclusion

At the present stage of development of the state and law, it seems impossible to implement the principle of justice openness without the participation of the president of the court. Taking into account the breadth of issues to be resolved, some reform of the grounds and procedure for the acquisition and termination of the legal status of the court president, his / her powers, as well as further review of the functions performed by the administrator of the court is required. Scientific discussions on this topic have been going on for a long time; however, the issue can only be resolved with a systematic and comprehensive approach, which as a result should lead to an increase in the level of trust and respect of the population for the court.

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