DOI 10.52468/2542-1514.2021.5(2).16-32

JUDICIAL REFORM AS A TOOL FOR INCREASE EFFICIENCY OF LEGAL PROTECTION OF INDIVIDUALS**

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Article info

Received – 2021 January 15
Accepted – 2021 March 15
Available online – 2021 June 25

Keywords

Human rights, court, judicial system, judicial power, justice, judicial reform, judicial enforcement, judicial protection, increasing efficiency, artificial intelligence

The subject. The authors analyze the process and results of 30 years of reforming judicial activity in contemporary Russia, formulate and substantiate the conceptual foundations of promising transformations and specific proposals for continuing the reform, increasing the efficiency of the judicial system and protecting human rights, freedoms and legitimate interests.

The purpose is to confirm or disprove hypothesis that the Russian judicial reform needs to be adjusted in order to remain the most important factor in building the rule of law and civil society.

The research methodology includes the methods of analysis and synthesis, historical, comparative legal and formal legal methods.

The main results, scope of application. The court is one of the most democratic and civilized tools for resolving social conflicts and protecting human interests. Judicial reform is a conceptually formed, cardinal and progressive transformation carried out in the historical period in order to organize the optimal model of the judicial system and achieve maximum efficiency of its functioning to protect the rights and freedoms of the individual, the interests of society and the state. The Russian court was transformed, became the real judiciary power and took its place in the state mechanism during the reform period. The judicial system was built on new principles, procedural legislation was updated, a number of other measures were taken to improve the status of the court and its role in society. It is necessary to generalize the existing practice and regulate all problematic aspects of the formation of the judicial corps at the legislative level. We need to make this process clear and transparent. Justice as a social and legal value and a significant international goal of sustainable development should be implemented in Russian domestic policy and strategic projects. The strategy and tactics of digital transformation of judicial activity, more active introduction of modern tools in it, while ensuring human rights and freedoms in this process, are particularly in demand in the context of the coronavirus pandemic,

The conclusion is made that judicial reform is the most important factor in building the rule of law and civil society. However, it has not been completed and its potential for social influence has not been exhausted. Therefore, conceptual foundations and specific proposals for further transformations, increasing the efficiency of the judicial system in order to protect human rights, freedoms and legitimate interests have been formulated and substantiated.

** This work was supported by the RFBR grant No. 18-29-16111 "Transformation of the legal regulation of relations associated with the use of digital technologies in the judicial system and in the system of enforcement of judicial acts".

ISSN 2658-4050 (Online)

1. Introduction

The issue of human rights is complex and multifaceted. It is one of the most important for the Russian reality. Despite Russia's significant progress on the path of democracy, the intensification of legislative activity and the introduction of a number of legal guarantees of personal security, the overall situation has not yet become prosperous. Numerous sources, including the media, report that there are many serious violations in this area. Some of them are systemic and complex. So, in 2020 and early 2021, a series of TV programs of the information channel "Russia 24" showed information about the failure of officials to comply with legislation and infringement of the rights of orphans when providing them with housing in a number of subjects of the Russian Federation. According to the Ministry of Education of the Russian Federation, as of January 1, 2020, the number of orphans registered for housing was 277.4 thousand people. They have to wait for years in a queue that moves extremely slowly. Often, these citizens apply to the courts for the exercise of their rights, but in many cases, due to defects in legislation, the decisions taken are not executed within the time limit established by law. According to the chairman of the Investigative Committee of Russia A. I. Bastrykin, for 11 months of 2020, more than 250 reports of crimes involving the provision of residential premises for orphans were registered. More than 130 criminal cases have been initiated.

Moreover, in recent years, a new type of human rights violation has emerged in modern Russia: such a phenomenon as deceived shareholders, the number of which reached 196 thousand in January 2021. The topic of human rights protection is of particular importance in the context of the coronavirus pandemic. In April 2020, UN Secretary-General Antonio Guterres said that COVID-19, having caused a health crisis, is rapidly becoming a human rights crisis in the world . In turn, the Commissioner for Human Rights in Russia in a special report expressed concern about ensuring the legal protection of our citizens in a difficult epidemiological situation.

As correctly noted ин E. A. Lukasheva, "history shows that every generation needs to protect the rights of the individual, humanity is not yet aware of a situation in which efforts would not be required to maintain and protect the rights and freedoms of the individual" [1, p. 53].

Therefore, the issues of protecting people from lawlessness, arbitrariness and injustice are still extremely relevant. It is no coincidence that just recently the President of the Russian Federation, Vladimir Putin, supported the idea of creating a national court of human rights – the Russian equivalent of the ECHR as an additional guarantor of state protection of the individual.

2. The main causes of human rights violations

There are several reasons for such violations. But one of the main ones is the lack of an effective system for ensuring the rights of the individual. As correctly noted byN. I. Matuzov, today the essence of the problem is to fill the economic, social, civil, political, cultural and personal rights proclaimed by Russian legislation with real content, to create reliable mechanisms for their implementation, to correlate with the system of benefits and with the processes that take place in society. This is the weakest link in the problem of human rights. Therefore, the efforts of science and practice should be directed to the creation of effective mechanisms for the implementation of the legal status of the individual [2, p.26; 3, p. 255-278].

3. Judicial protection and prerequisites for the reform of this institution

In a sufficiently large state-legal arsenal of means designed to really ensure the interests of the individual, the leading place is given to the court. It is one of the most democratic and civilized tools for resolving social conflicts and protecting human interests. Therefore, the State and society are interested in the stable, reliable functioning of the justice system, updating outdated judicial

ISSN 2542-1514 (Print)

institutions and improving the efficiency of their activities. The need to reform the judicial system has especially increased in post-Soviet Russia, when it embarked on the path of democratic transformation, and the idea of the social value of human rights was established in the mass consciousness of society.

Recently, the problem of modernizing the court and optimizing its activities has become an object of increased interest and a leading topic of scientific research [see, for example: 4, p. 143; 5, p. 50-57; 6, p. 42-46; 7, p.3-7; 8, p. 11-19; 9, p. 12-21; 10, p. 201; 11, p. 345; 12, p. 245-249; 13, p. 2-5; 14, p. 26-31]. Special attention to this topic is largely due to fundamental factors. In particular, the constitutional consolidation (and, for the first time in the history of Russia) of the independent place of the judiciary in the state structure and the need to increase the role of the court in society, the need to improve the mechanisms of judicial protection and the incompleteness of the reforms initiated.

The cognitive "boom" to the problems of reform is explained by the growing social demand for an independent court as a necessary condition for the establishment of the principle of social justice, social stability, the formation of the rule of law and civil society, where human rights are really protected.

It should be recalled that at all the main stages of the progressive transformations of our state, it was the judicial reforms that were very actively carried out. It is enough to recall the reign of Peter I. At that time, the court was structurally separated from the administration, and for the first time, a relatively independent judicial system was established, as well as the institution of professional judges. Judicial reform of the XIX century. Alexander II outlined a new vector of legal development of Russian society. It was so democratic and effective (though, before the beginning of the counter-reform) that it received the status of Great [15, p. 432]. "At the present time, it is difficult to imagine what a huge impression the introduction of new judicial institutions must have made! - wrote Hessen, - The replacement of the clerk's hut, where everything was handled by obsequious and corrupt officials under the cover of impenetrable secrecy, with a transparent and independent court-immediately dug an impassable gap between yesterday and today " [16, p. 10].

The implementation of judicial reforms is based on a deep philosophical and legal idea of human rights, equality and social justice. The latter, as you know, is impossible to implement without a fair trial. Ideally, where there is a highly professional, independent and objective court, there is truth, truth and justice; there is stability and social, including economic, development. And any civilized society strives for such a court as a social and legal value, carrying out transformations for this purpose.

4. The modern judicial reform: prerequisites and conceptual foundations

In the modern Russian history, the reconstruction of the court began in the 90s of the last century. During this period, radical socio-political and economic transformations were clearly identified, the political system and the state system of the country were changing. The immediate prerequisite for the reform of the court was a systemic and deep crisis of the entire law enforcement system, including the judicial authorities: their inability to efficiently and promptly carry out tasks to restore violated or disputed rights, overcome obstacles in the implementation of the legal status of legal communication subjects. Along with the internal conditions, the need for reform is due to an external factor: the desire of the progressive forces of society to bring the institution of justice in line with international legal standards [17, p. 5-22].

Judicial reform at the beginning of its path had a fairly solid conceptual framework, goals, objectives and priorities. They were set out in the Concept of Judicial Reform presented by the President of the RSFSR B. N. Yeltsin and approved by the Supreme Soviet of the RSFSR on October 24, 1991 [18, p. 3-109].

The final text of this document was prepared by a group of leading experts. Many State and public institutions took part in the initiation and

ISSN 2658-4050 (Online)

development of the fundamental provisions of the upcoming judicial reforms. A large role in this process belongs to the Supreme Court of the Russian Federation, the judges themselves and the bodies of the judicial community, but the official start to the upcoming transformations was given by the Concept of Judicial Reform. Some of the fundamental ideas of this act were included in the Constitution of the Russian Federation in 1993, and became the subject of the reform.

Since at that time, in fact, a large-scale legal renewal of not only justice, but also many other spheres of human activity began immediately, Russian President Boris Yeltsin signed Decree No. 673 of July 6, 1995 "On the development of the Concept of Legal Reform in the Russian Federation". But then the named act, unfortunately, was not executed. By the way, it has not been implemented yet, and to this day we still do not have an official doctrine of the legal reform being carried out in the country. "In fact, in the history of Russia," notes. V. D. Zorkin – The state has never put forward a concept or program of legal reform. Everything that was done in different historical periods was mainly reduced to judicial reform" [19, p. 225].

In this regard, the importance of the Concept of Judicial Reform approved by the country's parliament has increased many times. This act laid down liberal ideas about the priority of human rights and freedoms as the highest value and the purpose of the judiciary as a true guarantor of real legal protection of the individual [18, p. 102].

In addition, it was assumed that the upcoming judicial reform would be carried out comprehensively in the context of broad public discussion and de-ideologization, while simultaneously modernizing substantive, procedural and judicial legislation, which would allow synchronizing the functional and organizational principles of justice in criminal, civil and administrative cases, strengthening its independence and increasing the level of humanization.

More specific measures specified in the Concept and implied for implementation were the following: bringing the country's Basic Law in accordance with generally recognized principles and norms of international law, as well as international treaties; consolidating the primacy of the latter over ordinary federal legislation; separation of powers in the field of regulation of the judicial system and judicial proceedings, retaining the right of the subjects of the federation to form courts of first instance, and fixing the authority for the center to adopt and put into effect the norms of procedural law, as ensuring the unity of the rules of administration of justice; establishing direct and indirect judicial control over the content of normative legal acts, which may be accompanied by the formulation of a special position by the judge, which does not coincide with the provisions of positive law; creation of the institute of justices of the peace and bringing it closer to the population through election; establishment of specialized arbitration, administrative and juvenile courts to resolve cases with a special subject and object composition of legal relations; simplification of individual judicial procedures for disputes of an economic nature for the needs of economic turnover; provision of guarantees for the provision of qualified legal assistance to the population (primarily by professional lawyers), which is especially important in the transition from an investigative to an adversarial and equal process; and much more.

5. The concept of judicial reform

In October 2021, the Russian legal community celebrates the 30th anniversary of the judicial reform. Therefore, taking into account the above, the idea arose to analyze the reform process and its results, including the effectiveness of the court's main human rights function, the prospects for continuing the reforms, as well as the conditions and deadlines for their completion.

To solve this problem, we should proceed from the content of the central category of the problem under study – "judicial reform". Several definitions of this phenomenon have been proposed in the literature.

In particular, N. N. Efremova believes that "judicial

ISSN 2542-1514 (Print)

reform is a set of measures taken by the competent state bodies to transform (change), in whole or in part, the foundations and institutions of the judicial system and judicial proceedings" [20, p. 25].

M. I. Kleandrov defines judicial reform as "a simultaneous, radical, complex (comprehensive), scientifically based, balanced transformation of all components (judicial, judicial and judicial-status) of the legal organization of the mechanism of judicial power with the aim of qualitative (if possible in specific, tangible indicators of society) improvement of justice, based on a single program basis, provided with appropriate resources" [10, p. 12].

According to V. P. Kashepov, judicial reform should be understood as "a set of interrelated, systemically defined, normative changes fixed at the state level (including through codification) in the field of the judicial system and judicial proceedings, undertaken to achieve maximum efficiency of the judicial system and implemented in a historically limited period of time" [21, p. 279].

V. P. Prieredko writes that judicial reform can be defined "as a conceptually and legislatively developed, materially and organizationally secured radical and comprehensive transformation of all components of the judiciary in order to improve the quality of national justice" [9, p. 12-21].

In the phrase "judicial reform", the generic word is "reform". Explanatory dictionaries of the Russian language denote the following meanings of this term: "transformations, changes, changes, rearrangement" [22, p. 547]. Given this initial position, we can name several features that are characteristic of both the reform in general and the judicial reform in particular.

First, any reform is carried out in a strictly defined area of human activity, and judicial reform – in the sphere of the organization and functioning of the judiciary. Secondly, the reform is not just formal, cosmetic updates, but deep, constructive, cardinal transformations. This is, in fact, a change in the previously existing principles of building and functioning of a social phenomenon, such as the judicial system. According to these features, the concept of "judicial reform" can be distinguished from the often used now related term - "modernization", which implies a certain improvement, renewal, modernization of the existing phenomenon, in particular, the justice system. Third, reform is not all changes, but only democratic, positive ones that have led to progressive results, judicial and legal progress. And, on the contrary, the implemented measures can lead to regressive results (counter-reforms), or results with elements of stagnation. Fourth, reform is not an instantaneous act, it cannot be carried out with a single stroke of the pen. This is a long and, as a rule, multi-stage evolutionary process, carried out in a historically time range. Fifth, the reform itself, the process of reconstruction, is not an end in itself. They are necessary in the presence of objective prerequisites, and the planned transformations involve the conceptual design, formulation and achievement of tasks and goals. The main one is to form the most effective court: fast, right and fair.

Summing up the essential features of this phenomenon, we can give its definition. Judicial reform is a conceptually formed, cardinal and progressive transformation carried out in the historical time period to organize the optimal model of the judicial system and achieve maximum efficiency of its functioning to protect the rights and freedoms of the individual, the interests of society and the state.

6. The process and results of the reform of the Court

It is worth noting that over the past years, a lot has been done to implement the Concept, as well as the provisions of the 1993 Constitution and to reorganize the domestic justice system.

The main achievements of the changes, in our opinion, were the consolidation at the highest legal level of the legal status of a person, his basic rights and freedoms as the highest value; the normative legalization of the theory of the separation of powers and the independent place of the court in the state mechanism; a clear

ISSN 2658-4050 (Online)

allocation of the main-human rights function of the court.

According to the general theory, the key feature of any government, including the judiciary, is its competence, that is, the possession of such a volume of authority that is sufficient for the full performance of its tasks and functions. As you know, in the relatively early pre-perestroika years, many of the powers inherent in the court did not belong to the courts, but to party, administrative structures, as well as to the prosecutor's office. In particular, prosecutors authorized the election of preventive measures in the form of detention, they also issued sanctions for the administrative eviction of citizens from occupied residential premises; traffic police officers deprived motorists of their driver's licenses, and the fire department suspended the activities of legal entities. There were lists of entire branches of the national economy, whose employees had no right to go to court on issues of dismissal and imposition of disciplinary penalties.

In the course of the subsequent reform, these powers were rightfully returned to the court, since only it is called upon to resolve legal issues that significantly affect human rights and freedoms, the legitimate interests of society and the state. The significant changes that have taken place in the judicial competence have become a sufficient reason to believe that the judicial power in the Russian Federation has legally taken place in the basic parameters.

The parameters of its functioning have changed dramatically. If before the adoption of the Constitution of 1993, approximately 1 million civil disputes were resolved in the courts annually, now more than 25 million. . Every year, the interests of more than 50 million citizens are covered by judicial activities. The court, in addition to the traditional function of justice, performs other equally important functions: judicial control over the decisions and actions of state bodies and their officials, including pre-trial proceedings, checking the normative content of adopted legal acts for their constitutionality, etc. [23, p. 167].

Among the undoubted achievements of the reform was the constitutional consolidation of the foundations of the judicial system. This refers to such a component of justice as the judicial system. Immediately in the first years of the reforms, Federal Constitutional Laws were adopted: on the Constitutional Court, on arbitration courts and the judicial system of the Russian Federation. They became the legal foundation for the organization and functioning of new institutions of power – constitutional justice and arbitration courts that resolve disputes in the field of business and other economic activities. Then the Federal Constitutional Laws came into force, fixing the organization and functioning of the system of courts of general jurisdiction, including magistrates, and the updated Supreme Court of the Russian Federation, which concentrated in its hands the full judicial power after the liquidation of the Supreme Arbitration Court of the Russian Federation in 2014.

In addition, the key decision to improve the efficiency and fairness of justice was the creation of 5 appeal and 9 cassation extraterritorial courts in the courts of general jurisdiction. These additional courts became operational on October 1, 2019. As the Chairman of the Supreme Court V. M. Lebedev noted, the introduction of the procedure of continuous cassation allowed to increase the efficiency of justice. The number of satisfied complaints in civil proceedings increased from 4 to 13 percent, in administrative proceedings – from 3 to 16 percent, in criminal proceedings-from 8 to 12 percent.

Legal practitioners also welcome the establishment of the courts of cassation and appeal of general jurisdiction. In particular, A. Reshetnikova writes that "in general, the reform of the system of appeal and cassation courts and the principle of transferring all complaints directly to the cassation instance will definitely have a positive impact on the protection of the rights and legitimate interests of both citizens and legal entities who apply to higher courts."

A landmark event was the revision of Article 118 of the Constitution of the Russian Federation as amended in 2020, which clearly establishes the new configuration of the state's judicial system. First of all, we are talking about the fact that as a

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result of the implementation of the Federal Law of December 17, 1998 on magistrates, the world justice system has been revived in the Russian Federation. In turn, in 2020, justices of the peace received constitutional status, which is enshrined in Article 118 of the Basic Law of the country. Currently, they work in all regions of the Russian Federation, their number is 7761 people. Justices of the peace consider about 80 % of the total number of all cases submitted to the courts of general jurisdiction. This, in turn, had a positive impact on solving many problems of the functioning of the judicial system as a whole [13, p. 2-5]. For example, with the beginning of the work of magistrates, the efficiency of justice increases from year to year. At the same time, the number of cases considered in violation of procedural deadlines is steadily decreasing. Thus, if in 1999 in the Russian Federation courts of general jurisdiction resolved 25% of criminal and 15.6% of civil cases outside the established time limits, then in 2019 - less than 1 %. According to the European Commission for the Efficiency of Justice of the Council of Europe, civil cases are processed in Russia 5 times faster, and administrative cases 25 times faster than the European ones. That is why, as well as for other reasons, in 2020, this Commission recognized the domestic judicial system as one of the most efficient, technologically advanced and least expensive compared to 47 countries in Western Europe. Among other things, the Commission cited the following data: the average time for consideration of civil cases and economic disputes in Russia is 50 days; in Europe, such a trial takes an average of 233 days (in Germany, this period is 220 days, in France – 420, in Italy – 527).

In the course of the reform, measures were taken to improve the social and legal status of the judiciary. The Law on the Status of Judges, which came into force in 1992, created the basis for a unified legal status of the servants of Themis, the requirements imposed on them, the forms and methods of granting powers, as well as appropriate guarantees for their activities.

The task of updating the procedural legislation has been partially solved. The new Arbitration and Civil Procedure Codes, the Criminal Procedure Code, and, somewhat later, the Code of Administrative Procedure of the Russian Federation were adopted. The jury trial, the institution of judicial control over the pre-trial production of criminal cases, has been revived. It should be noted that among scientists and practitioners for a long time debated the question: to be or not to be arbitration proceedings? As you know, within the walls of the State Duma of the Federal Assembly of the Russian Federation, the Concept and draft of the unified Civil Procedure Code of the Russian Federation were developed, which provided for the unification of civil procedural legislation [24].

However, in Article 118 of the Constitution of the Russian Federation, as amended in 2020, arbitration proceedings are legalized, now judicial power is also exercised through the procedural activities of arbitration courts, which has put a final end to theoretical and practical disputes about whether arbitration proceedings have independence or are covered by civil judicial proceedings. It is obvious that at present there is a logical correlation between the organizational principles of the structure of courts of general and arbitration jurisdiction, on the one hand, and the autonomous procedural foundations of their functioning, on the other hand.

Unfortunately, the same cannot be said about administrative proceedings, since the Code of due process was adopted by the Russian legislator, but there were no independent administrative courts. The draft federal constitutional law No. 7886-3 "On Federal Administrative courts in the Russian Federation" was adopted by the State Duma of the Federal Assembly of the Russian Federation in 2000 in the first reading, but did not receive further movement. Therefore, today administrative proceedings are carried out by courts of general jurisdiction in certain categories of cases, despite the fact that arbitration courts in their activities are not guided by the provisions of the said Code, which is focused on the settlement of disputes arising from administrative and other public legal relations and related to the exercise of judicial control over the legality and validity of the exercise of state or other public powers. At

ISSN 2658-4050 (Online)

the same time, it should be taken into account that in Russia, administrative proceedings are not equated with proceedings on administrative offenses, since the latter is regulated by a separate code (Administrative Code of the Russian Federation).

Further, a very significant milestone for the judicial system was the establishment of bodies of the judicial community – Councils and qualification boards of judges, examination commissions for the admission of examinations for candidates for judges. These associations have a significant impact on the course of ongoing transformations.

The creation of the Judicial Department under the Supreme Court of the Russian Federation and its local bodies, as well as the implementation of the Federal Targeted Programs "Development of the Judicial System" for 2002-2006, 2007-2011 and 2013-2020, helped to alleviate many problems and somewhat strengthen the financial, logistical and personnel support of the courts. On July 1, 2010, the Federal Law "On Ensuring Access to Information about the Activities of Courts in the Russian Federation" came into force, which establishes the principle of publicity (openness) of justice. The acts of the courts, with some exceptions (in cases of state secrets, adoption, establishing legal facts, etc.), began to be stirred up for public viewing.

The state automated system "Justice", audio-recording and video-conferencing of court sessions, an electronic system for distributing cases between judges, and an electronic system "My Arbitrator" have been introduced in the judicial system. Now the idea of introducing the super service "Justice-Online" is being implemented, which provides for remote submission of documents to the courts, the ability to participate in meetings online with a biometric system of audio identification of participants in the process and other measures of digitalization of the judiciary.

In the context of the coronavirus pandemic, the strategy and tactics of digital transformation of judicial activity, more active introduction of modern tools in it, while ensuring human rights and freedoms in this process, are particularly in demand. The measures taken for the introduction of information and digital technologies, the transition of legal proceedings to an electronic format should be carried out on the principles of the rule of law and respect for human rights. The possibility of using artificial intelligence in justice is widely discussed, taking into account international experience, in particular the digital strategy of the European Union, which contains a plan for the development of artificial intelligence and databases, which was adopted in 2020. Thus, it is noted that "at the moment in the Russian Federation there are legal, technical and technological prerequisites for the active use of artificial intelligence, capable of solving highly specialized tasks (weak artificial intelligence)."

Over the years, a number of other measures have been taken to improve the legal and social status of the court and its role in society.

7. Unresolved issues and problematic aspects of judicial reform

At the same time, the judicial reform is not yet complete, and the procedural mechanism for the protection of violated or disputed rights and freedoms of individuals or legal entities is far from perfect. According to S. M. Shakhray and K. P. Krakovsky, the ideas of the Concept of Judicial Reform in 1991, as well as the most important provisions of the current Constitution of the Russian Federation, "are currently implemented only by 55-60 %" [15, p. 523]. According to the Levada Center, 25% of respondents consider it possible to restore their rights in case of violation, while 62% of respondents say that it is impossible to defend their rights. There are many problems in the field of economic justice with the participation of foreign elements. As a result, domestic business is largely oriented to Western jurisdictions. For example, "the Russians are among the top 5 most active debaters in the British commercial courts"..., they "choose alternative sites: Swedish Stockholm, Swiss arbitration Institute, Asian judicial outposts".

Therefore, to complete the reform, it will take years and serious efforts of the legal community,

ISSN 2542-1514 (Print)

legislative and executive authorities, and the support of the President of the Russian Federation.

It is quite reasonable that many researchers associate its end with the organization of an effective judicial system. Moreover, in our opinion, the main goal of the reform is not just formal institutional changes and the creation of updated institutions of justice, but first of all, transformations of a substantive, essential nature, aimed at the effective performance of the social and human rights function by the courts. "The development of Russia as a legal and democratic state depends on the effectiveness of the judicial system," the Head of State notes.

In addition, judicial reform is the most important factor in building a civil society, and its potential for social influence has not yet been exhausted. In this context, it is important to establish effective feedback with professional institutions of civil society, especially with the bar, to increase the accessibility and openness of justice, to ensure guarantees of providing qualified legal assistance to the population. Recall that "the court has two advantages: objectivity and the ability to embody the needs of civil society, and not just the political will expressed in the law" [18, p. 85].

8. Proposals for future transformations and improving the effectiveness of judicial protection of human rights

Today, we can suggest some priority areas for continuing reforms and improving the efficiency of judicial activity. First of all, it is rational to fully solve the problem of establishing the judiciary in the state mechanism as an independent and influential force, independent in its activities from the legislative and executive authorities; increasing its role in society.

Here it is necessary to pay attention to the most accurate terminology of the Resolution of the Supreme Soviet of the RSFSR of October 24, 1991 "On the Concept of judicial Reform in the RSFSR". In particular, when formulating the main objectives of the reform, the document uses the term "approval". In our opinion, this is not done by chance, since the phrase "the establishment of the judiciary" has a deep social and legal meaning. After all, it is not enough to legally legalize the judiciary, it is necessary to establish its worthy place in the state structure and increase its role in society. In this case, it must be truly independent, really independent, authoritative, equal and equal with other branches of government. Just according to these criteria, you can answer the question whether the problem set by the Concept has been solved or not fully solved. Yes, de jure judicial power in modern Russia is fixed, and in the main source of law, and de facto it has not yet become truly independent and independent.

As S. V. Borodin and V. N. Kudryavtsev correctly wrote, "the independence of the judicial branch of government means, first of all, that relations between all branches of government should be built only on the basis and within the framework of the law" [25, p. 23]. However, as the Chairman of the Council of Judges of the Russian Federation, V. V. Momotov, noted in October 2020 at the All-Russian Scientific and Practical Conference "Judicial Power in Modern Society", almost every day the judicial power faces attempts to put pressure on it, contrary to the current laws and provisions of the Constitution of the Russian Federation, from both the executive and legislative authorities.

Within the meaning of the constitutional principle of separation of powers, one branch of government cannot be made dependent on another through any procedures and mechanisms. In particular, the fundamental condition for the independent functioning of any government, including the judiciary, is its resource security. Taking into account this postulate, article 124 of the Constitution of the Russian Federation contains a provision according to which the financing of courts should ensure the possibility of full and independent administration of justice. Specifying this rule, the Constitutional Law on the Judicial System of the Russian Federation of 1996 it provides that the financing of courts is carried out on the basis of standards approved by a special law. However, to date, such standards have not been adopted. Moreover, contrary to

ISSN 2658-4050 (Online)

the Basic Law, the procedures of the Budget Code of the Russian Federation are spelled out in such a way that the independence of the judicial system was clearly vulnerable, completely dependent on the will of the Government and its Ministry of Finance. Therefore, representatives of the judicial community at almost every All-Russian Congress of Judges express concern about the current unsatisfactory situation regarding the financing of the judicial system, and ask for additional funds to ensure independent justice. In 2017, the Director General of the Judicial Department at the Supreme Court of the Russian Federation, A.V. Gusev, said that the Ministry of Finance refuses to allocate funds for the implementation of the law on the introduction of the institution of jurors at the level of district and military courts. He also spoke about the opposition from the Ministry of Finance in the development of standards for the workload of judges. By the way, such standards are not approved to this day. The departmental approach of the Ministry of Finance has led to the fact that the remuneration of employees of the judicial system is an order of magnitude lower than the corresponding positions in other authorities and clearly does not correspond to the level of their responsibility. According to the former Chairman of the Supreme Arbitration Court, A. A. Ivanov, employees of the court staff either leave quickly, or work poorly, or become agents of corruption due to low salaries. "We constantly appeal to the president and the government on this issue, but the WHO is still there," the former head of the court said. The belittled position of the judiciary has existed for a long time and, despite the 30-year period of reform, has not changed. So, according to the Chairman of the Council of Judges of the Russian Federation, the executive power is constantly making attempts to reduce the funding of the judicial system...our draft laws aimed at the adoption of the law "On the State Judicial Service in the Russian Federation" of 14.02.2017, have not yet been supported by the State Duma. As you know, the Government of the Russian Federation has given a negative opinion on this draft law. Meanwhile, the turnover of personnel in the courts is from 100 to 200 % per year. Without a fully equipped and professionally competent court apparatus, effective judicial activity is not possible.

In this regard, there is a need to adopt a special legal act on the standards of financial support for courts, as well as to make fundamental changes to the budget process. In our opinion, the preparation of the draft law on the budget of the courts for the next year should be carried out not by the Government of the Russian Federation, but by the judicial system itself and sent for discussion and adoption to the State Duma, bypassing the executive authorities.

In addition, additional measures are now needed to increase the legitimacy of the court and public confidence in the judiciary. In our opinion, during the 30-year period of reforms, a positive image of public power, including the judiciary, has not yet been formed in the public consciousness. Not so long ago Rossiyskaya Gazeta launched a public discussion on how to restore public confidence in the justice system. Well-known lawyers T. G. Morshakova, A. A. Klishas, M. A. Fedotov and S. A. Pashin expressed their opinion on this issue. In fact, these authors have formulated a noteworthy package of concrete proposals aimed at improving the efficiency of the judicial system and the reputation of the judiciary. It seems that the discussion that has been initiated should certainly continue, conduct a full analysis of the objective and subjective reasons that influence these processes, develop and propose a methodology for assessing the authority of the judiciary and a set of factors (criteria) for maintaining it at a high level.

In our opinion, it is necessary to further develop the rules of court proceedings. Here you can touch on two relevant aspects. First, it is necessary to expand the opportunities for public participation in the administration of justice, to agree with the proposals to increase the powers of the jury in criminal cases and to partially introduce this institution in civil proceedings.

Secondly, the problem of ensuring the constitutional principle of adversarial proceedings is extremely urgent. It, based on the provisions of the Constitution, should apply to all procedural

ISSN 2542-1514 (Print)

legislation, including the production of administrative cases in accordance with the Administrative Code of the Russian Federation. However, in this codified act, the adversarial nature is not only not fixed, and, despite the constitutional norms-the norms of direct action, in practice it does not actually work. In the trials of such cases, as a rule, the prosecution does not participate, which is limited to providing the materials of the case on an administrative offense. In turn, the judges, due to the lack of detailed adversarial legal regulation in the Administrative Code of the Russian Federation, partially assumed the function of the prosecution – the burden of proving the composition of the committed offense, referring to the administrative material provided.

At the same time, it is no secret that the Constitutional Court of the Russian Federation has repeatedly emphasized in its decisions that, within the framework of the principles of adversarial proceedings and the presumption of innocence, a person brought to administrative responsibility is not obliged to prove the existence of his own guilt. Thus, in the definition of the constitutional control body of July 2, 2019 No. 1835-O notes that the distribution of the burden of proof does not exempt the authorized bodies, when considering and resolving cases of administrative offenses in the field of road traffic, in the case of their fixation by special technical means operating in automatic mode, having the functions of photo and film shooting, video recording, or by means of photo and film shooting, video recording, from compliance with the requirements aimed at ensuring a comprehensive, complete, objective and timely clarification of all the circumstances and fair resolution of cases of administrative offenses .

Deviating from the principle of competition and conducting a trial outside of this principle, as is the case in many cases now, significantly infringes on the rights and freedoms of citizens, and does not add authority to those who are obliged to administer impartial and fair justice. Human rights defenders have repeatedly drawn attention to this defect in the judicial process, and citizens have sent complaints to the European Court of Human Rights. In September 2016 The Court adopted a pilot ruling in the case "Karelina v. Russia", in which it proposes to amend Russian legislation and solve this problem. In particular, the European judges stressed that the non-implementation of the principle of competition in the consideration of cases of administrative offenses by the courts; the non-participation of the prosecutor as a party to the prosecution in the course of legal proceedings; the actual and systematic law enforcement failure to comply with the presumption of innocence in such cases leads to a violation of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

As you know, we are currently developing drafts of a new Administrative Code and a Procedural Code on Administrative Offenses, the adoption of which should be accelerated as much as possible in order to strengthen the legal protection of participants in legal relations.

In 1992, the Law on the Status of Judges was adopted. It became the first and fundamental legal act for the implementation of judicial reform. However, as further events have shown, systemic adjustments have been made to the legislation on the status status of judges. The most radical of them are considered to be the amendments and additions of December 15, 2001, by which the important guarantees of the position of the servants of Themis, previously contained in Federal Constitutional Laws, were translated into a legal act of lesser legal force.

In the theory of law, the category of "the legal status of judges" is considered as a multidimensional phenomenon consisting of several components. And one of the central ones was the mechanism of guaranteeing the status. The constitutional nature of the construction of the system of guarantees can be conditionally designated as "3 NOT": independence, irremovability, inviolability, the content of which has become the most contested both in theory and in legal practice. Under the pretext of strengthening the fight against corruption, individual proposals are sometimes initiated aimed at reducing the guarantees of independent justice

ISSN 2658-4050 (Online)

[26, p. 18-32].

The formation of a professional judicial corps is one of the main conditions for the effectiveness of judicial bodies. However, in recent years, the solution to this problem has become problematic. The number of candidates for judicial positions is decreasing from year to year. At the same time, almost a third of judges recommended for judges by qualification boards do not pass the personnel commission of the Presidential Administration of the Russian Federation. One of the main reasons is a conflict of interest: consideration of cases involving the bodies where the candidate's relatives work. The lack of vacancies makes the qualification boards of judges turn a blind eye to the professional qualities of applicants. In this regard, it is necessary to generalize the existing practice and regulate all problematic aspects of the formation of the judicial corps at the legislative level. We need to make this process clear and transparent.

Today, there is a lack of effectiveness of the mechanism for implementing judicial acts. In this regard, it is necessary to take a number of measures aimed at improving the regulatory regulation of executive legal relations, codifying legal acts and adopting the Executive Code of the Russian Federation. The problem of improper enforcement of court decisions against vulnerable segments of the population requires a separate discussion. January 15, 2009 The European Court of Justice issued a "pilot" ruling against Russia in the case "Burdov v. Russia No. 2", which recorded" a systemic violation - non-execution of judicial acts on social issues" [27, p. 5-6]. Moreover, in the Russian Federation, it is extremely difficult to execute those decisions of the judicial authorities, according to which the debtor is the state treasury, and the recoverer, as a rule, is the most vulnerable segments of the population. For example, on December 25, 2009. The Federation Council of the Federal Assembly of the Russian Federation expressed concern about numerous facts of non-execution of acts of justice on the provision of housing for orphans. At that time, 889 decisions were not implemented in respect of this category of children. As can be seen from the statistics we have given, when at present the number of orphans registered for housing was 277.4 thousand people, the negative situation in this area still persists. Updated, effective legal regulation of the legal relations that have arisen and reliable mechanisms of legal protection are required. In particular, it is necessary to eliminate the defects of legislation in the enforcement proceedings for such a category of judicial acts, where the debtor is listed as budgetary institutions and the state treasury. It is necessary to create a mechanism of enforcement that meets the interests, first of all, of the recoverer, especially if it is an individual. To do this, the norms of budget legislation should be brought into line with the provisions of the Constitution of the Russian Federation that a person, his rights and freedoms are the highest value. Moreover, a person is the only highest value, all other social and legal values in relation to it occupy a different constitutional level and cannot contradict it. The rights and freedoms of a person cannot be dominated by the norms of such a legal institution as the property immunity of the state (state budget), which is referred to by legislators when adopting normative legal acts, and law enforcement agencies, without actually executing the decisions of the judicial authorities.

The idea of creating a human rights court, supported by Russian President Vladimir Putin, requires independent study. In the very formulation of the question, it seems that the public's concern about the state of legality in this area is visible. And, at first glance, such a proposal should be accepted. The practice of specialized courts, for example, the domestic intellectual Property Rights court, shows positive results of its organization and functioning. Subject specialization is more likely to provide high-quality justice. At the same time, there will be a number of difficulties, primarily with the formation of the jurisdiction of the Human Rights Court, its differentiation with the Constitutional Court of the Russian Federation and courts of general jurisdiction, as well as with the European Court of Human Rights. In addition, it may be advisable to establish an interstate court of human rights in the space of the States of the

ISSN 2542-1514 (Print)

Eurasian Economic Union. Moreover, in 2014, these states created a permanent judicial body – the Court of the Eurasian Economic Union.

9. The concept and the next stage of judicial reforms

According to researchers, based on the current state of judicial activity, another stage of transformation is required. Such a process cannot, of course, be carried out without a doctrinal basis. As M. I. Kleandrov, as well as S. M. Shakhray and K. P. Krakovsky correctly note, the continuation of the reform requires not" patching holes", not improvisation, but a conceptual approach [5, p. 50-57; 15, p.524]. We need a national Concept of further transformations, for example, until 2030, which could become a political, legal, ideological and moral foundation for a long-term reorganization of all aspects of judicial activity, a strategy and tactics for strengthening the judiciary and building a Fair Court of the XXI century [29, p. 11-19]. The main provisions of this document could become one of the goals of sustainable development of the country in accordance with the Decree of the President of the Russian Federation of 21.07.2020 No. 474 "On National Development Goals of the Russian Federation for the period up to 2030". The problem is that the act of the Head of State does not contain such an independent goal as the development of justice, while the UN in its program document provides for this target setting. In our opinion, justice as a social and legal value and a significant international goal of sustainable development should be implemented in Russian domestic policy and strategic projects.

And, of course, it is impossible not to agree with the constructive proposal of M. I. Kleandrov on the organization in Russia of a permanent state-power body that embodies the judiciary and performs the functions of its strategic development, since today no state or public institution specifically exercises such powers, which negatively affects the course and results of the reform of the entire sphere of judicial activity [30, p. 142].

The above list of proposals is not exhaustive and should certainly be continued.

10. Conclusions

The conducted research allows us to formulate the following main conclusions. For Russia, given its democratic vectors of movement, the idea of strengthening human rights remains promising. To solve this problem, judicial means of protecting the rights and freedoms of the individual are very important. Improving this legal institution and increasing its effectiveness is a real path to progressive results, a more developed legal system and a fair society. During the 30-year period of transformation, the domestic court was transformed, which became the judicial power and took its place in the state mechanism, the judicial system was built on new principles, the procedural legislation was updated, and a number of other measures were taken to improve the status of the court and its role in society. Judicial reform is the most important factor in building the rule of law and civil society. However, it is not complete and its potential for social influence is not exhausted. Therefore, the conceptual foundations and concrete proposals for further transformations, improving the efficiency of the judicial system in order to protect human rights, freedoms and legitimate interests are formulated and justified.

REFERENCES

1. Kartashkin V. A., Kolesova N.S., Larin A. M., et al. General theory of human rights. Moscow, Norma Publ., 1996. 509 p. (In Russ).

2. Matuzov N.I. Theory and practice of human rights in Russia. *Pravovedenie*, 1998, no. 4, pp. 22-35. (In Russ).

3. Matuzov N.I. Actual problems of the theory of law. Saratov, Saratov. Gos. Akad. Prava Publ., 2003. 510 p. (In Russ).

4. Zor'kin V.D. Civilization of law and development of Russia. Moscow, Norma - INFRA-M Publ., 2015. 320 p. (In Russ).

5. Kleandrov M.I. Does Russia need judicial reform. *Sud'ya*, 2015, no. 2, pp. 50-57. (In Russ).

6. Melkonyan G.P. On the issue of optimization of judicial activity in the Russian Federation. *Rossiiskoe pravosudie = Russian Justice*, 2015, no. 1, pp. 42-46. (In Russ).

7. Kolokolov N.A. 25 Years of the Concept of Judicial Reform: Lost Illusions. *Ugolovnoe sudoproizvodstvo = Criminal Judicial Proceedings*, 2016, no. 4, pp. 3-7. (In Russ).

8. Mal'ko A.V., Terekhin V.A. Judicial policy as a means of optimizing justice in the Russian Federation. *Gosudarstvo i pravo = State and Law*, 2016, no. 7, pp. 11-19. (In Russ).

9. Ochered'ko V.P. Judicial reforms in Russia (in connection with anniversaries). *Rossiiskoe pravosudie = Russian Justice*, 2016, special issue, pp. 12-21. (In Russ).

10. Kleandrov M.I. Legal organization of the mechanism of justice in the Russian Federation: problems of improvement. Moscow, Norma - INFRA-M Publ., 2017. 288 p. (In Russ).

11. Terekhin V.A. Judicial reform in Russia at the turn of XX-XXI centuries. Moscow, Yurlitinform Publ., 2017. 376 p. (In Russ).

12. Polyakov M.P., Smolin A.Yu. Digital technologies in the service of justice: ideological prerequisites and technical perspectives. *Vestnik Nizhegorodskoi akademii MVD Rossii*, 2018, no. 2, pp. 245-249. (In Russ).

13. Terekhin V.A. World justice in modern Russia: from the idea of revival to constitutional status. *Rossiiskaya yustitsiya = Russian Justitia*, 2020, no. 7, pp. 2-5. (In Russ).

14. Prokhorov V.N. Regulation of judicial load as a measure of increasing the efficiency of justice. *Rossiiskoe pravosudie = Russian Justice*, 2020, no. 10, pp. 26-31. (In Russ).

15. Shakhray S.M., Krakovskiy K.P. The court that is fast, right, merciful and equal for all: to the 150th anniversary of the judicial reform in Russia. Moscow, Kuchkovo pole Publ., 2014. 536 p. (In Russ).

16. Gessen I.V. Judicial reform. St. Petersburg, Typographiya F. Vaysberga i P. Gershunina, 1905. 267 p. (In Russ).

17. Petukhov N.A., Bobrenev V.A. Judicial system in justice in the pre-reform period. Prerequisites for judicial reform in the Russian Federation. *Rossiiskoe pravosudie = Russian Justice*, 2011, no. 11, pp. 5-22. (In Russ).

18. Pashin S.A. The concept of judicial reform in the Russian Federation. Moscow, Respublika Publ., 1992. 111 p. (In Russ).

19. Zor'kin V.D. Russia and the Constitution in the XXI century. View from Ilyinka. Moscow, Norma Publ., 2007. 399 p. (In Russ).

20. Efremova N.N. Historiography of the Russian state and law: a short sketch. *Gosudarstvo i pravo = State and Law*, 2016, no. 3, pp. 23-27. (In Russ).

21. Kashepov V.P. Constitutional principles of the judiciary of the Russian Federation. Moscow, Yurisprudentsiya Publ., 2011. 336 p. (In Russ).

22. Ozhegov S.I. Explanatory dictionary of the Russian language. Moscow, Mir i obrazovanie, 2019. 1376 p. (In Russ).

23. Terekhin V.A., Gerasimova A.A. Functions of the judiciary in the mechanism of the Russian state. Moscow, Yurlitinform Publ., 2015. 296 p. (In Russ).

24. Krasheninnikov P.V., Abova T.E., Fabrichniy S.Yu., Yarkov V.V. The concept of a unified Civil Procedure Code of the Russian Federation. Moscow, Statut Publ., 2015. 224 p. (In Russ).

25. Borodin S.V., Kudryavtsev V.N. On the judiciary in Russia. *Gosudarstvo i pravo = State and Law*, 2001, no. 10, pp. 21-27. (In Russ).

26. Kryazhkov V.A. How the 2020 constitutional reform changed the Constitutional Court of the Russian Federation. *Gosudarstvo i pravo = State and Law*, 2020, pp. 18-32. (In Russ).

ISSN 2542-1514 (Print)

27. Kovler A.I. Judgments adopted by the European Court of Human Rights in respect of the Russian Federation in 2009. *Rossiiskoe pravosudie = Russian Justice*, 2010, no. 2, pp. 5-18. (In Russ).

28. Morozova L.A. Execution of court decisions, or Respect for the court. *Rossiiskoe pravosudie = Russian Justice*, 2015, no. 11, pp. 31-38. (In Russ).

29. Mal'ko A.V., Terekhin V.A. Judicial policy as a means of optimizing justice in the Russian Federation. *Gosudarstvo i pravo = State and Law*, 2016, no. 7, pp. 11-19. (In Russ).

30. Kleandrov M.I. On the Council of the Judicial Power of the Russian Federation. Moscow, Norma: INFRA-M Publ., 2016. 160 p. (In Russ).

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BIBLIOGRAPHIC DESCRIPTION

Malko A.V., Afanasiev S.F., Terekhin V.A. Judicial reform as a tool for increase efficiency of legal protection of individuals. *Pravoprimenenie = Law Enforcement Review*, 2021, vol. 5, no. 2, pp. 16–32. DOI: 10.52468/2542-1514.2021.5(2).16-32. (In Russ.).