

EARLY TERMINATION OF A JUDGE'S POWERS AS A MEASURE OF LEGAL RESPONSIBILITY: PROBLEMS OF LEGAL REGULATION AND LAW ENFORCEMENT

Irina V. Glazunova¹, Anna V. Nikitina^{2,3}

¹ *Dostoevsky Omsk State University, Omsk, Russia*

² *Far Eastern Branch of Russian State University of Justice, Khabarovsk, Russia*

³ *Judges Qualification Board of the Khabarovsk Territory, Khabarovsk, Russia*

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The subject of the study is the theoretical, legislative and practical application problems of the early termination of a judge as a measure of legal responsibility. According to the authors' opinion there are several problems: the lack of scientific and legislative unity on the issue of the sectoral nature of this measure; the unsystematic, uncoordinated nature of legislation and law enforcement practice; the apparent discrepancy of the Law of the Russian Federation "On the Status of Judges in the Russian Federation" (hereinafter - the Status of Judges) which regulates the grounds and procedure for the early termination of the powers of a judge and the practice of its application to the fundamental principles of legal responsibility.

The aim of this article is to make recommendations aimed at improving the legal regulation and practice of such a legal liability measure as early termination of the power of the judge. The methodology. The main method of research is the general scientific dialectical method of cognition, using universal scientific methods: analysis and synthesis, induction and deduction, formal-logical and systemic. The specific scientific methods are applied: the formal legal method, the methods of legal modelling and the methods of forecasting.

Main results and field of application. The authors concluded that the early termination of a power of judge, for whatever reason, is related to his or her illegal behaviour. It should be explicitly recognized as a measure of legal responsibility in the Status of Judges. It is necessary that the legal grounds for judge early termination meet the requirements of legal certainty. The application of this measure is based on the fundamental principles of legal responsibility: justice, humanism, legal equality, proportionality of the sanction to the degree of social danger of the act committed, individualization of the punishment, etc. The Status of Judges and the Regulation on the functioning of the qualification collegium of Judges should be supplemented by legal provisions governing the procedure for applying to a judge early termination as a measure of legal liability that does not involve the commission of a disciplinary offence. A fair, public and adversarial procedure must be used to ensure that judges in the high and medium courts can be terminated early. The rules for this procedure must be laid down in federal constitutional law.

Conclusions. The implementation of such proposals would lead to the formation of legislation and the law enforcement practice, consistent with the main principles of legal responsibility and the basic provisions of its theory. It would guarantee the fairness and predictability of decisions towards judges. Ultimately it would ensure an appropriate balance between the independence of judges and their accountability for gross and systematic violations incompatible with the status of judges.

1. Introduction

The constitutional and legal status of a judge as an official performing publicly significant functions in the administration of justice requires special guarantees to ensure its independence, among which an important place is occupied by the grounds and procedure for early termination of powers imposed on a judge as a measure of legal responsibility for illegal behavior. The principles of irremovability and inviolability of a judge will be effective only if the early termination of powers is applied as an exceptional measure to a person whose behavior is absolutely incompatible with the status of a judge, damages his or her reputation and discredits the judiciary. At the same time, the legally established grounds for the early termination of powers should be characterized by legal certainty, and the procedure for its application should guarantee the judge a fair public independent trial.

At the same time, the Law of the Russian Federation "Concerning the Status of Judges in the Russian Federation", enacted in 1992 (hereinafter – the Law on the Status of Judges), does not fully meet these requirements, despite constant changes. In our opinion, the main problems of legal regulation and enforcement of the early termination of powers are caused by heterogeneous reasons. Firstly, the unsystematic, uncoordinated nature of the transformation of the norms of the law on the legal responsibility of judges, which is often either a response to individual legal cases or an attempt to "reconcile" archaic norms of the law with other, rapidly developing legislation. Secondly, the fact that the official explanation of the legal norms on the disciplinary responsibility of judges does not fully comply with the current version of the Law on the Status of Judges, since enacted in 2016 the Resolution of the Plenum of the Supreme Court of the Russian Federation "On Court Application of Laws Regulating the Issues of Disciplinary Liability of Judges" has never been updated. However, there were significant corrections in 2018 to Article 12.1 of the Law on the Status of Judges and several norms of the Federal Law an "On the Bodies of the Judicial Community in the Russian Federation" in

regulations issues of disciplinary responsibility of judges. Thirdly, the inconsistency between many norms of the law with the basic provisions of the theory of legal responsibility. Despite the introduced amendments to the Constitution of the Russian Federation in 2020 establishing specific grounds and procedure procedures for the early termination of the powers of judges of higher and middle-level courts, they do not add harmony and unity to the legislation on the status of judges.

The opinion expressed by M.I. Kleandrov more than ten years ago is still valid. M.I. Kleandrov said that neither the legislation on the responsibility of the judge, the Code of Judicial Ethics, nor other acts (including acts of the judicial community), nor the rather extensive law enforcement practice regarding the responsibility of judges give reason to believe that the whole cumulative mechanism of judicial responsibility is ... perfect, adequate, proportionate, effective and does not require constructive and meaningful changes» [1, p. 1]. In this connection, various problems of the legal responsibility of judges continue to be the subject of numerous scientific studies (see, for example: [2; 3; 4, pp. 103-121]).

A more general problem hurts legislation. It is the lack of scientific unity on the issue of the nature of the legal responsibility of judges for violating the Law on the Status of Judges and the Code of Judicial Ethics, including the possibility of using the early termination of powers.

All these circumstances led to a scientific analysis of the problems of legal regulation and the practice of applying such a measure of legal responsibility as the early termination of the powers of a judge.

2. Problems of the nature of the legal responsibility of judges

According to the Law on the Status of Judges, the early termination of the powers of a judge is recognized as disciplinary responsibility, which causes criticism from scientists, who notice that "the disciplinary responsibility of judges does not correspond to their constitutional and legal status, and it must be replaced by measures of constitutional and legal responsibility" [5, p. 14]; "the concept of "disciplinary responsibility of judges" was formed in Soviet times and does not correspond

to the modern recognition of a judge as a bearer of judicial power" [6, p. 103]; "the legal essence of the analyzed type of responsibility of judges does not coincide with the signs of the generic concept of disciplinary responsibility" [7, p. 27].

Scientists also object to the establishment of disciplinary liability for violation of ethical norms included in the Code of Judicial Ethics [8, p. 12; 9, p. 65].

The complexity of the sectoral identification of such responsibility and its attribution to a certain type is also caused by the fact that with the adoption of the anti-corruption legislation and its extension to judges, a corruption offense began to be included in the scope of disciplinary misconduct. According to clause 3.1.1 of the Methodological Recommendations on the implementation by the qualification boards of Judges of the norms of the legislation of the Russian Federation on combating corruption, a judge may be brought to disciplinary responsibility for non-compliance with anti-corruption requirements on the grounds and by the procedure provided for by the Law of the Russian Federation "On the Status of Judges in the Russian Federation" and the Federal Law "On Bodies of the Judicial Community in the Russian Federation". As a result, there are very ambiguous statements that "a corruption offense committed by a judge fully corresponds to the concept of disciplinary misconduct, through which the content of disciplinary responsibility of judges is revealed, since it is a consequence of the violation of duties, restrictions and prohibitions established by the Law on the Status of Judges, the Code of Judicial Ethics and other normative legal acts" [10, p. 62].

Even more complex and ambiguous is the problem of attributing the early termination of powers to a specific type of legal responsibility. The fact is that the grounds for the early termination of a judge's powers, enshrined in articles 14 and 14.1 of the Law on the Status of Judges, are very eclectic. Among this grounds, we find the death of a judge, the voluntary retirement, and the violation of various prohibitions and restrictions (not to have foreign citizenship, not to keep money in foreign banks, not to engage in activities incompatible with the status of a judge, etc.). At the same time, several of such grounds are directly related to the

violation by the judge of Russian legislation preventing him from holding the position of judge.

However, the only case of the early termination of a judge's powers is explicitly called a measure of legal responsibility by the Law on the Status of Judges. The case is committing a disciplinary offense for which a disciplinary penalty is imposed on the judge by a decision of the qualification board of Judges in the form of the measure in question (sub-paragraph 13, paragraph 1, Article 14 of the Law on the Status of Judges). In all other cases, the culpable conduct of a judge, entailing the early termination of powers, is not legally recognized by any kind of legal liability. In practical terms, this approach deprives the judge of the most important guarantees. The statute of limitations does not apply to judges, the general principles of legal responsibility (legal certainty, justice, legal equality, individualization of punishment, proportionality of the sanction of the public danger of the committed act, etc) do not apply to judges.

At the same time, long before the amendments to the Constitution of the Russian Federation in 2020, which, according to the statement of V.P. Priyadko and K.A. Safronova, introduced into legal circulation, if not the term, then the content of the concept of constitutional responsibility of judges of higher courts" [11, p. 53], the idea based on the statement that "the early termination the powers of a judge as punishment for a constitutionally significant violation of the status and judicial provisions is a measure of constitutional, not disciplinary responsibility of a judge" [1, p. 8]. It was proposed to differentiate the measures of disciplinary and constitutional legal responsibility of judges, excluding the early termination of powers from among the measures of disciplinary responsibility, establishing a full-fledged procedure for impeachment of a judge with the participation of legislative authorities [12, pp. 122-123], or a special federal state authority representing the judiciary and located at the same level with parliament and the government - the Council judicial authorities of the Russian Federation [13, pp. 139-140].

At the same time, amendments to the Constitution of the Russian Federation and legislative changes developing them, in our opinion, did not

solve, but even aggravated the existing problems: a special mechanism of responsibility (not named constitutional in the law) was established only for judges of higher and middle-level courts, and for judges of lower courts the grounds and procedure for bringing to responsibility remained the same. This problem raises the question of violation of the principle of unity of the status of judges, according to which judges in the Russian Federation have a single status and differ only in powers and competence (Article 12 of the Federal Constitutional Law "On the Judicial System of the Russian Federation"). In addition, according to a several researchers, "these changes not only create an imbalance in the system of checks and balances between the branches of government, but also have a huge manipulative potential" [14, p. 23] since the grounds for the early termination of the powers of judges of higher courts do not differ in legal certainty and are not provided with "due process" [15, pp. 12-22].

3. Problems of legal regulation and practice of the early termination of the powers of a judge for committing a disciplinary offense.

As specified in paragraph 5 of Article 12.1 of the Law on the Status of Judges, the early termination of powers as a measure of disciplinary responsibility may be imposed on a judge in exceptional cases for a significant, culpable, incompatible with the high rank of a judge violation of the provisions of substantive law and (or) procedural legislation, the Law on the Status of Judges and (or) the Code of Judicial Ethics (para. 1 paragraph 5 of Article 12.1). At the same time, this disciplinary penalty may be imposed on a judge for violating the specified provisions allowed in the administration of justice only if there is a combination of the following conditions: these violations are systematic and (or) rudest nature, have led to a distortion of the principles of judicial proceedings, indicate the impossibility of continuing the exercise of the judge's powers; these violations are established by a judicial act of a higher judicial instance that has entered into force or a judicial act adopted upon application for expediting the consideration of the case or awarding compensation for violation of the right to legal proceedings within a reasonable time; there

are complaints or appeals from the participant (participants) of the process about the violation of his (their) rights by illegal actions of the judge; the judge was previously subjected to disciplinary punishment (para. 2, paragraph 5, Article 12.1).

Therefore, the Law on the Status of Judges distinguishes between a significant violation of the norms of the substantive and procedural law of the Law on the Status of Judges, of the Code of Judicial Ethics, incompatible with the rank of a judge, and a violation of the same norms in the administration of justice, making in the latter case the early termination of powers dependent on compliance with several conditions, some of which are special guarantees for a judge, who does not unreasonably apply such a strict measure of responsibility. However, one of the significant problems of applying the provisions of this article is the lack of a uniform interpretation of the term "violations committed in the administration of justice" in the practice of the qualification boards of judges and the Supreme Court of the Russian Federation, in connection with which the scope of the guarantees specified in para. 2 of paragraph 5 of Article 12.1 of the Law on the Status of Judges is rather vague and uncertain.

It is worth noting that the provisions of this paragraph were introduced into the law in 2018 to distinguish disciplinary offenses committed in the field of justice from judicial errors that may arise during the resolution of a particular case in the interpretation and application of substantive or procedural law and to protect judges from being held accountable for such errors. As it was noted by the Constitutional Court of the Russian Federation in its Resolution No. 19-P dated 20 July 2011, such unintentional judicial errors of an ordinary nature are possible in the course of judicial activity, do not discredit a priori the persons who committed them, and cannot be regarded as a manifestation of the judge's unfair attitude to his professional duties. Such errors may be the result of the uncertainty of legal regulation, which allows for a double interpretation of legal norms, gaps and conflicts in normative acts, as well as the result of the discretion of the judge, who is often forced to make court decisions in the absence of complete information, including intentionally hidden from him by the parties to the case. However, if judicial errors related

to violations of the substantive law or provisions of procedural legislation, if errors are systematic or rude, if they lead to distortion of the principles of judicial proceedings if they indicate a negligent or unfair attitude of the judge to the performance of his duties, the judge cannot continue his professional activity, his powers must be terminated prematurely.

Despite legislative changes, the Supreme Court of the Russian Federation has not yet developed stable legal positions that would allow distinguishing between the grounds for early termination of a judge's powers by the provisions of para. 1 and para. 2 of paragraph 5 of Article 12.1. The consequence of this is complaints about the decisions of the qualification boards of judges who prematurely terminated the powers of judges who committed rude violations of procedural or substantive law during the consideration of one or more unrelated cases. The question of whether violations were committed "in the administration of justice" in the cases mentioned as an example was not raised, and accordingly the early termination of the powers of judges was not made dependent on compliance with the conditions listed in para. 2 of paragraph 5 of Article 12.1 of the Law on the Status of Judges. However, in fairness, it should be recognized that the violations committed by the judges were indeed exceptional, and incompatible with the status of a judge.

Another practice develops when the qualification collegiums of judges and the Supreme Court of the Russian Federation consider cases on the termination of the resignation of a judge in case of detection after the retirement of violations committed by a judge in the exercise of the powers of a judge, which are the basis for imposing disciplinary punishment in the form of early termination of powers by para. 1 and 5 of Article 12.1 of the Law on the Status of Judges (subclause. 1 para. 6 of Article 15 of the Law). As can be seen, this reason for termination of resignation is "tied" to the grounds for the early termination of the powers of an acting judge, applied as a measure of disciplinary responsibility. Therefore, the interpretation and application of these norms should be uniform, however, there is no unity of practice.

Thus, the Higher Qualification Board of Judges of the Russian Federation, when considering one of the cases, used a fairly broad interpretation of the term "in the administration of justice", extending it to numerous cases of rude violation of the deadlines for making decisions on administrative offenses, handing copies of them to persons involved in the case, applying for the execution of decisions in various cases. At the same time, in a scientific article published later by one of the members of the board, certain difficulties were noted that the Higher Judges' Qualifications Board of the Russian Federation faced in interpreting these provisions [16, p. 10]. Therefore, as it can be seen from the examples above, the Supreme Court of the Russian Federation is not inclined to consider multiple significant heterogeneous violations committed during the consideration of various cases as "violations committed in the administration of justice" and uses a narrow approach to the interpretation of this term. An example is the case of the judge of the district court N.V., whose resignation was terminated by the Qualification Collegium of Judges of the Udmurt Republic, the Supreme Court of the Russian Federation. The decision was based on the requirements of para. 2 of paragraph 5 of Article 12.1 of the Law on the Status of Judges, the fact of consideration by judge N.V. of a civil case on the claim of Z. to Z. for debt collection under the contract loan in the presence of signs of a conflict of interest in the absence of complaints from the participant (participants) of the process about the violation of his (their) rights by illegal actions of the court and the relevant judicial act of a higher judicial instance or a judicial act adopted upon application for speeding up the consideration of the case or for awarding compensation for violation of the right to legal proceedings within a reasonable time, which would establish violations of the provisions of substantive law and (or) procedural legislation, the Law on the Status of Judges and (or) the Code of Judicial Ethics in the administration of justice could not serve as an independent basis for terminating the resignation of a judge.

Such contradictions in the practice of interpreting and applying the same norms by different law enforcement agencies could have been avoided if the Resolution of the Plenum of the

Supreme Court of the Russian Federation "On Court Application of Laws Regulating the Issues of Disciplinary Liability of Judges" had clarified the concept of "violations committed in the administration of justice" and formulated criteria for distinguishing them from other violations of the provisions substantive law and (or) procedural legislation, the Law on the Status of Judges and (or) the Code of Judicial Ethics, which are an independent basis for the early termination of the powers of a judge. It is extremely important to comply with the principles of legal responsibility (such as the establishment of limitation periods, proportionality and individualization of punishment) when applying early termination of a judge's powers as a sanction, including for non-compliance with established restrictions and prohibitions. The expiration of the limitation period is a universal characteristic for all types of grounds for the exemption from legal liability [17, p. 7]. N.V. Vitruk pointed out that "establishing a statute of limitations, the legislator thus presumes that for this period the offence has lost public danger and (or) the offender himself does not pose a public danger. The responsibility cannot haunt a person all his life. This is the social meaning of the institution of prescription in public law" [18, p. 329]. The Constitutional Court of the Russian Federation, concerning various types of liability, has developed legal positions on the inadmissibility of finding a person under threat of persecution and punishment for an unreasonably long time, which, according to several scientists, are universal [19, p. 55]. The principles of proportionality and individualization of responsibility are universal and crucial for the application of all types of legal liability, making it fair and individualized [20, p. 109; 21, p. 35; 22, p. 502].

4. Conclusion

To sum up, it should be noted that there is a need to make significant changes to the Law on the Status of Judges in terms of the application of the early termination of the powers of a judge. An urgent problem requiring a legislative solution is the division of the grounds for the early termination of powers into two groups: not related to illegal behavior (resignation, inability to exercise the powers of a judge for health reasons, declaring

a judge dead, declaring him incompetent, etc.), and caused by his guilty illegal behavior (engaging in activities incompatible with the status judges, violation of anti-corruption prohibitions and restrictions, commission of a serious disciplinary offense incompatible with the rank of a judge, etc.). At the same time, the early termination of the powers of a judge on all infringing grounds should be explicitly recognized as a measure of legal responsibility in the Law on the Status of Judges and in the future have a different name, for example, the deprivation of powers of a judge or the dismissal of a judge from office. All grounds for the early termination of powers must meet the criteria of legal certainty, while the application of this measure should be based on the fundamental principles of legal responsibility – justice, humanism, proportionality of the sanction to the degree of public danger of the committed act, individualization of punishment, etc.

The Resolution of the Plenum of the Supreme Court of the Russian Federation "On Judicial Practice of applying legislation Regulating the disciplinary responsibility of judges" requires updating in order to bring it into line with the amendments introduced in 2018 to the Law on the Status of Judges and the Federal Law "On the Bodies of the Judicial Community in the Russian Federation". The Supreme Court of the Russian Federation needs to develop an official position on the term "violations committed in the administration of justice" as a basis for the early termination of powers, applied as a disciplinary measure, in order to ensure the unity of practice of the qualification boards of judges. The implementation of such proposals will lead to the formation of legislation and law enforcement practice that meet the most important principles of legal responsibility and the fundamental provisions of its theory, will guarantee the fairness and predictability of decisions made against judges, and, ultimately, will ensure an appropriate balance between the independence of judges and the inevitability of their responsibility for gross and systematic violations incompatible with the status judges.

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INFORMATION ABOUT AUTHORS

Irina V. Glazunova – PhD in Law, Associate Professor;
Associate Professor, Department of State and Municipal
Law

Dostoevsky Omsk State University
55a, Mira pr., Omsk, 644077, Russia
E-mail: irine.glazunovoi@yandex.ru
RSCI SPIN-code: 9844-8842; AuthorID: 297941

Anna V. Nikitina – Doctor of Law, Associate Professor;
¹Professor, Department of Civil Law; ²Member
¹*Far Eastern Branch of Russian State University*
of Justice

²*Judges Qualification Board of the Khabarovsk Territory*

¹ 49, Vostochnoe shosse, Khabarovsk, 680014, Russia

² 60, Serysheva ul., Khabarovsk, 680000, Russia E-
mail: A_Nikitina@inbox.ru

RSCI SPIN-code: 8657-1647; AuthorID: 395573

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