

CONSTITUTIONAL PRINCIPLES OF JUDICIARY AND JUSTICE IN THE RUSSIAN FEDERATION: CURRENT REGULATION AND STATUS

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Abstract: *The present article is devoted to the analysis of regulation and content of the principles of judiciary and justice in the Russian Federation which are declared in the Constitution and federal laws of. These principles stipulate basic procedural rights belonging to anyone facing an adjudicative process or procedure that affects fundamental rights and freedoms, and certain substantive standards related to the rule of law that regulate the actions of the state. The authors analyze the interrelation between the concepts of “principles of justice” and “principles of judicial power”, describe the institutionalization of the judiciary in Russia taking into account constitutional reforms latest held in 2014. The article is based on the current legislation, as well as Russian doctrinal sources.*

Keywords: *Judicial Power, Judiciary, Justice in the Russian Federation, Constitution of the Russian Federation, Constitutional Principles of Justice in the Russian Federation, Judges.*

INTRODUCTION

The current Constitution of the Russian Federation which was adopted by referendum on December 12, 1993 in article 1 declares Russia a democratic federal state based on a rule of law. Rule of law is one of a number of overlapping ideas, including along with constitutionalism, sovereignty, due process justice, that make claims for the proper character and role of law in well-ordered states and societies [*Comparative constitutional law*, p. 233.].

The Constitution of the Russian Federation provides that justice shall be administered only by courts. In other words, the judicial power is implemented through the function of justice [LEIBO, Yu.I., PAVLOV, E.Ya., RAKITSKAYA, I.A., KREMYANSKAYA, E.A., KUZNETSOVA, T.O., p.1349]. Being one of the branches of state power the judicial power is autonomous and acts independently from the legislative and the executive powers. This is considered to be one of the major principles of judiciary in a modern democratic state [*Konstitutsionnopravovye osnovy sudebnoi vlasti...*, p.7]. At the same time the independence of the judicial power is not absolute. This quality is fully realized only in the course of the administration of justice.

Some Russian scholars rightfully express the idea that the material and, in part, the legal guarantees necessary to ensure a decent place for the courts in the exercise of power are still insufficient in Russia [*Aktual'nye problemy...*, p. 588]. As the most acute shortcomings of the Russian judicial system, as well as the judicial systems of many other modern countries, can be pointed out complicated trial proceedings [GREBNEV R.D., pp. 48-53], the excessive overloading of claims in the absence of adequate resources and sometimes politicized nature of judiciary's activities [*Aktual'nye voprosy...*, p. 327. BAZINA O.O., LEIBO Yu.I., KUZNETSOVA T.O., MOLCHANOVA D.K., SLAVKINA N.A., p. 1087], suspicion of corruption of persons involved in the administration of justice

[SHASHKOVA A.V., pp. 143-154].

METHODOLOGY

The methodological basis of the article is formed by general scientific and special methods of investigation into legal phenomena such as systematic and structural analysis, the synthesis of social and legal studies, formal logical and comparative legal methods.

The judicial system of the Russian Federation is generally described in the Constitution in the chapter 7 "Judicial Power and Prosecutor's Office". Initially this chapter was titled as "Judicial Power", but after the constitutional amendments adopted in 2014, its title was supplemented with the phrase "Prosecutor's Office" as well. Another important legal source which regulates the judicial system, its principles and structure is the Federal Constitutional Law No 1-FKZ dated December 31, 1996 "On the Judicial System of the Russian Federation". In addition to the above mentioned Federal Constitutional Law, other numerous both material and procedural laws (over a dozen in total) regulate different aspects of judiciary in the Russian Federation [*Constitutional Basics of the Russian Federation...*, p. 178].

In February 2014, in order to strengthen public trust in the judiciary, modernize the judicial system and ensure a unified approach to the resolution of disputes between legal as well as private persons, a Law on the amendment to the Constitution of the Russian Federation No 2-FKZ dated February 5, 2014 "On the Supreme Court of the Russian Federation and Prosecutor's Office" was adopted. As a result, the Supreme Court of the Russian Federation, heading the system of courts of general jurisdiction since the Constitution's adoption in 1993, was merged with the High Arbitration Court of the Russian Federation, heading the system of commercial state courts, to form a new Supreme Court of the Russian Federation, which is now the highest court for civil, administrative, criminal cases, cases on the resolution of economic (commercial) disputes and other cases. The cases which were trialed in the High Arbitration Court before are currently being considered in the Judicial Chamber of the Supreme Court of the Russian Federation on Economic

Disputes [LEIBO, Yu.I., PAVLOV, E.Ya., RAKITSKAYA, I.A., KREMYANSKAYA, E.A., KUZNETSOVA, T.O., p. 1349].

The basic principles of the construction and activity of the judiciary are expressed in its principles, which are common for all courts composing the judicial system of Russia. The most important principles are provided in the Basic Law, indeed. Being fundamental, these principles guarantee the protection of the rights and freedoms of the individuals during court proceedings, protect against judicial arbitrariness and unfair justice and ensure the legitimacy of the activities of justice in a state governed by the rule of law.

It should be noted that many scholars in Russia do not differentiate the principles of judiciary (judicial power) and the general principles of justice. In this connection, they identify the concepts of "principles of judiciary" and "principles of justice". However, it is not correct to rank all of the principles of justice to the principles of judiciary. On the one hand, justice as a form of state activity is the main function of the judiciary, and accordingly, it is carried out on the basis of principles that reflect its essence. This may mistakenly lead to the conclusion that the principles of the judiciary are at the same time the principles of justice. On the other hand, it seems incorrect to attribute general or procedural principles of justice to principles of the judiciary. This approach does not allow to fully disclose the entire scope of the judicial power [KOMAKHIN B.N., LYSOV P.K., p.86].

Under the principles of the judiciary in the Russian Federation should be understood the fundamental, initial provisions declared by the Constitution defining essence and character of its state and legal influence on public relations. The correct distinction between the principles of justice and the principles of judiciary is facilitated by the definition of the system of principles of the latter, which characterize it as an independent and full-fledged type of state power.

LEGAL REGULATION AND CONTENT OF PRINCIPLES OF JUDICIARY AND JUSTICE

The system of constitutional principles of judiciary with the properties of the interrelationship, interdependence and co-dependence includes the following: (i) equality of all citizens before the law and the courts; (ii) administration of justice exclusively by the court; (iii) the independence of judges, their immunity and irremovability; (iv) freedom of access to judicial protection; (v) binding nature of court decisions; (vi) possibility of appeal and review of a court decisions; (vii) state responsibility for miscarriage of justice. These principles should be considered directly the principles of the judiciary reflecting its state-imperious nature.

With regard to the constitutional principles of justice, they may be defined as basic principles of the organization and functioning of the judiciary which are provided in international legal documents, the Constitution and expressed in the provisions of procedural legislation and legislation on the judicial system. The main objective of the constitutional principles of the judiciary is to ensure its independent and effective functioning for the implementation of a fair and lawful resolution of legal disputes, the protection of individuals, society as a whole, the preservation of stability in a state.

The following distinctive features of the principles of justice can be specified. Firstly, they have objective character, i.e. they reflect the historical patterns of construction and functioning of the judicial bodies [SHASHKOVA, A.V., RAKITSKAYA, I.A., PAVLOV, E.Ya., pp. 1333-1344], and embody the dominant legal and ethical ideas in society. Secondly, they have general character, consolidating the most common approaches to the organization of the courts. Thirdly, they are guidelines for the participants of trials, being mandatory for all courts and persons involved in the legal proceedings. Fourthly, they are declared by the basic law of the state – the Constitution - and other legislation.

Russian legal doctrine knows different classifications of the principles of justice. The classification is carried out on different grounds. More often, the principles of justice are divided into constitutional principles, i.e. those formulated in the Constitution, and principles that are not directly declared by the Constitution, but follow from legislative provisions (for example, the principles of objective truth, continuity, immediacy, oral process) [YAROSHENKO N.I., p. 8]. Moreover, the principles of justice are classified on the basis of branch of procedural law (constitutional, civil, criminal, administrative), depending on the provisions of what branch of procedural law they are fixed [RZHEVSKY V.A., CHEPURNOVA N.M., p. 131]. The Russian scholar V. Anishina classifies all the principles of justice into the general legal principles related to the organization and activities of the judiciary as a constitutional basis for the independence of Russian courts, and special principles of the judiciary as a constitutional and legal basis for its activities [ANISHINA V.I., p. 114-117]. Another Russian scholars P.M. Ganizheva and M.K. Treushnikov distinguishes such principles of justice as constitutional principles, general principles provided in the Federal Constitutional Law on Judicial System of the Russian Federation”, and specific principles which are subject to regulation in different branches of law [GANIZHEVA P.M., pp. 57-58].

Below we will focus on some of the constitutional principles of justice and judiciary in the Russian Federation.

One of the major constitutional principles of judiciary in the Russian

Federation is considered to be *the principle of administration of justice exclusively by courts*. This means that any other bodies or organ except the courts should not be entitled to resolve civil, criminal and other cases. It is specifically stipulated in the Constitution that the creation of any extraordinary courts shall not be allowed in the

Russian Federation (§ 3 Art. 118 of the Constitution).

Despite the federal structure and opposed to other federations (the USA, Switzerland, Belgium) Russia has a unified (single) judicial system, which means that the subjects (federation territorial entities) of the Russian Federation are not entitled to have their own judicial systems [KREMYANSKAYA, E., KUZNETSOVA, T., and RAKITSKAYA, I., p.169]. All courts in Russia (except two their types) are established by the federation and federal bodies. However, there are two types of courts which are considered to be the courts of the federation territorial entities. This refers, firstly, to the constitutional courts of the republics within the Russian Federation and the charter courts of all other constituent entities of the Russian Federation (territories (krai), regions (oblast), cities of federal importance, an autonomous region and autonomous areas), and secondly, to the justices of peace which form the courts of peace – the first (lowest) level of courts in the judicial system of the Russian Federation. Constitutional (charter) courts of the federation entities as well the justices of peace do not form any centralized judicial system. It should be emphasized that constitutional courts of the republics and charter courts of other subjects of the Russian Federation do not form a single system of constitutional courts under the supervision of the Constitutional Court of the Russian Federation either [LEIBO, Yu.I., PAVLOV, E.Ya., RAKITSKAYA, I.A., KREMYANSKAYA, E.A., KUZNETSOVA, T.O., p.1348]. This provision has been taken from German practice, where the constitutional courts of the *bundesländer* (territorial entities of the German federation) do not form a unified system of constitutional courts together with the Federal Constitutional Court of Germany

(*Bundesverfassungssgericht*) [*Konstitutsionny kontrol'...*, p. 8].

Currently, Russia's judicial system is composed of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, federal courts, constitutional (charter) courts and justices of the peace of constituent entities of the Russian Federation.

The main task of the Constitutional Court of the Russian Federation is to resolve cases regarding the constitutionality of normative legal acts of all levels. Constitutional (charter) courts of constituent entities of the Russian Federation check the adherence of the normative legal acts of the constituent entities of the Russian Federation to their constitutions (charters).

The Supreme Court of the Russian Federation heads the system of courts of general jurisdiction and the system of commercial courts. As a top judicial instance, the Supreme Court is the only court, competent to consider cases as a court of first, appellate, cassation or supervisory instance. The Supreme Court of the Russian Federation exercises control over the activities of lower courts, gives them clarifications on issues of judicial practice in order to guarantee a uniform application of legislation.

District courts are the basic element of the system of courts of general jurisdiction. These courts handle most civil, criminal and administrative cases.

There are specialized military courts within the system of courts of general jurisdiction: at the level of garrisons and at the level of military circuits (fleets).

Arbitration (commercial) courts administer justice in the sphere of entrepreneurial and other economic activities. The system of commercial courts is composed of three elements: commercial courts of the constituent entities of the Russian Federation (first instance), appellate commercial courts (appellate instance) and commercial courts of circuits (cassation instance). There is a specialized court – the Intellectual Property Rights Court – within the system of commercial courts.

Justices of the peace consider property disputes with an amount of claims under 50 000 RUB, criminal cases, in which the maximum possible punishment does not exceed three years of imprisonment and other cases of similar complexity. Appeals against the decisions of justices of the peace are considered by district courts of general jurisdiction.

The principle of administration of justice by courts alone includes also the universal requirement of strict implementation of court decisions by all citizens, their organizations, associations, state and municipal bodies, the state itself, represented by the highest state authorities. The court's decision is therefore an act of power that cannot be overturned by either the legislative and executive body or the head of state [*Konstitutsionnoe pravo...*, p. 310].

Moreover, only a court may deprive a person of his or her liberty in cases provided for by law. And in this, in our opinion, the power function of the judiciary is most clearly expressed.

In Russia *the judicial power shall be exercised by means of constitutional, civil, administrative, and criminal proceedings*. The judicial power is being realized in accordance with the procedural order prescribed by the law. This order is generally universal and is being based on such universally recognized principles as the equality of all persons before the law and court, protection of individual's rights and freedoms in court proceedings, national language of the hearings, competitiveness and equality of the parties during the trial, right to file appeals against procedural actions and decisions. However, depending on the nature of the considering relationships legal proceeding has its peculiarities which allow to classify legal proceeding in Russia as constitutional, civil, administrative, and criminal proceedings. Each type of legal proceeding is a subject to regulation by the separate law, for example, constitutional procedure is stipulated in the Federal Constitutional Law No 1-FKZ dated July 21, 1994 "On the Constitutional Court of the Russian Federation", civil proceeding – in the Civil Procedure Code of the Russian Federation (No 138-FZ dated November 14, 2002), criminal proceeding – in the Criminal Procedure Code of the Russian Federation (No 174-FZ dated December 18, 2001), administrative proceeding – in the Code on administrative offences (No 195-FZ dated December 30, 2001) and in the Code of administrative procedure (No 21-FZ dated March 8, 2015). There is one more kind of legal proceedings in the Russian Federation – arbitration proceeding which is close to the civil procedure but is stipulated in the separate Code - Arbitration Procedure Code of the Russian Federation (No 95-FZ dated July 24, 2002).

Principle of equality of all persons before law and the courts. Pursuant to article 7 of the Federal Constitutional Law "On the Judicial System of the Russian Federation" courts shall not display preference towards any bodies, persons, parties in a litigation by their state, social, gender, race, national, language or political belonging or depending on their origin, property or position status, residence, birth place, attitude

to religion, beliefs, membership in public associations and equally on other grounds not provided in the federal law.

Russian Criminal Code specifies that the persons committing crimes on the territory of the Russian Federation involving the use of torture (irrespective of the citizenship of the victim) shall be held criminally liable under the applicable articles of the Criminal Code of the Russian Federation (§ 1 article 11). In this way, Russian criminal law protects both its own citizens and foreign citizens, and also persons with no citizenship, from the use of torture. The criminal liability of the diplomatic representatives of foreign states and of other citizens who enjoy immunity, in the event of their commission of crimes on the territory of the Russian Federation, is determined in accordance with the rules of international law (§ 4 article 11 of the Criminal Code).

Pursuant to § 1 article 12 of the Criminal Code, citizens of the

Russian Federation and persons with no citizenship permanently resident in the Russian Federation who commit crimes outside the territory of the

Russian Federation involving the use of torture incur criminal liability under the Criminal Code of the Federation if the acts perpetrated by them are deemed to be crimes in the state on where the crime was committed and if the perpetrators have not been convicted therefore in that foreign state.

When such persons are being convicted, their punishment may not be more severe than the most severe punishment prescribed by the law of the foreign State on whose territory the offence was committed.

Foreign citizens and stateless persons not permanently resident in the Russian Federation who have committed crimes outside the territory of the Russian Federation may be subject to criminal prosecution provided either of the followings conditions: if the committed crime was aimed at threatening the interests of the Russian Federation, or in cases covered by an international treaty of the Russian Federation (§ 3 article 12 of the Criminal Code) .

Criminal Procedure Code (§ 1 article 2) provides that criminal proceedings conducted on the territory of the Russian Federation, regardless the place of crime, shall follow the rules of the Criminal Procedure Code of the Russian Federation, unless provided otherwise by an international treaty of the Russian Federation.

Military servicemen of the Russian Federation serving in units deployed outside the territory of the Federation shall be held liable under the Criminal Code of the Russian Federation for offences committed on the territory of a foreign state, unless provided otherwise by an international treaty of the Russian Federation.

The Basic Law of the Russian Federation declares the *principle of open trial* (§ 1 article 123) which is providing that examination of cases in all courts, as a rule, shall be open. Examination in camera shall be allowed only in cases envisaged by the federal law. First of all these cases are listed in the article 241 of the Criminal Procedure Code of the Russian Federation which says that conducting the judicial proceedings in camera shall be admissible on the ground of a court ruling or resolution, if:

- 1) judicial proceedings on a criminal case in court may lead to an indulgence of the state or of the other kind of a secret, protected by the federal law;
- 2) criminal cases under examination concern the crimes, perpetrated by the persons who have not reached 16 years of age;
- 3) an examination of the criminal cases on the offences of the sexualimmunity and sexual freedom of the personality and on other crimes may lead to an indulgence of the information on the intimate aspects of life of the participants in the criminal court proceedings or of information humiliating their honor and dignity; 4) this is called forth by the interests of guaranteeing security for the participants in the judicial proceedings, for their close relatives, relations or near persons.

Obvious and actual circumstances shall be indicated in the court ruling or decision on hearing in camera which were used by the court as the grounds for the given decision to be adopted. The persons, attending an open court session, shall have the right to carry out audio recording and to make records of it in writing. Taking photographs, video recording and/or cinema shooting shall be admissible only with the permission of the presiding justice of the court session (§ 5 article 241 of the Criminal Procedure Code of the Russian Federation).

Examination of a case in absentia is not to be allowed if otherwise is not stipulated by the federal law. In general, in criminal trial a case is to be examined in the presence of a defendant. However, the federal laws may provide the situations when a case may be examined by the court in absentia. Pursuant to § 4 article 247 of the Criminal Procedure Code judicial proceedings in the absence of a defendant may be permitted, if the defendant files a petition on a crime of a minor or a medium gravity for an examination of the given criminal case in his absence.

Principle of adversarial proceedings and equality of the parties. This principle is provided in § 3 article 123 of the Constitution of the Russian Federation which says: "Judicial proceedings shall be held on the basis of adversarial proceedings and equality of the parties". Principle of adversarial proceedings means that legal proceedings may be started only if there is a plaintiff's statement, a request of the state body or official, a complaint of a victim, an accusation of a public prosecutor claiming the court to consider their claims. The functions of defence, accusation and consideration of the case are separated from each other and may not be entrusted to the same organ or official. The courts in Russia are not considered to be the bodies of persecution. They are to provide with all necessary conditions for performance by the parties of their procedural obligations and rights.

In accordance with the *principle of presumption of innocence* which is the basis of criminal court proceedings means that an accused person shall be regarded as non-guilty until his being guilty of committing the crime is proved in accordance with the procedure, stipulated by the federal law, and is established by court sentence, which has entered into legal force. The suspect or accused person is not obliged to prove his or her innocence. The burden of proving the charge and of refuting the arguments cited in defence of the suspect or of the accused person, shall lie with the party of the prosecution. All doubts concerning the guilt of the accused, which cannot be eliminated in accordance with the procedure established by the law, shall be interpreted in favor of the accused. The verdict of guilty cannot be based on suppositions.

In cases provided by the federal law citizens may take part have the right to participate in the administration of justice in the Russian Federation. There are two forms of administration of justice with the participation of ordinary citizens in Russia: participation of citizens as jurors and arbitration assessors. The Constitution has only one provision related to this. Pursuant to § 4 article 123 *justice in the Russian Federation shall be administered by a court of jury in cases provided by the federal law.* Jury trials were introduced in the Russian Federation in 1993. Participation of jury members in the administration of justice is a civic duty of the citizens. The requirements of citizens participating in the administration of justice are to be set forth in the federal law. There is the Federal Law No 113-FZ dated

August 20, 2004 "On federal jurors in federal courts of general jurisdiction". Courts of jurors in the Russian Federation are established at the Supreme Court of the Russian Federation, regional courts of general jurisdiction (Supreme Courts of the Russian republics, courts of the territories of the Russian Federation, regions, cities of federal importance, autonomous region and autonomous areas) and district (fleet) military courts. Courts of jurors in Russia consider only the criminal cases, namely felonies such as for example, treason, terrorist acts, gangsterism, propaganda of war, divulgence of state secrets, kidnapping etc.

In conformity with the above mentioned Federal Law 113-FZ of 20 August 2004, lists of candidates for jurors are compiled every four years by the supreme executive bodies of the constituent entities of the Russian Federation from among citizens residing permanently in those constituent entities. The Law specifies the procedures and time frame for compiling the lists, the requirements made of jurors and the conditions for removing citizens from the general and reserve lists, and deals with issues relating to jurors' subsistence and so forth. The law imposes a number of restrictions on the appointment of jurors (age of a candidate under 25 years old, a criminal record of a candidate, his or her legal incapability, registration in narcological or psycho- neurologic dispensaries, suspicion in committing a crime, physical and mental diseases preventing from full-fledged participation in consideration of the criminal case etc.).

The citizens who have been included in the lists of jurors' candidates are to be excluded from such lists by the executive bodies of the constituent entities of the Russian Federation in two cases: *firstly*, if the citizens do not meet the requirements provided to the jurors; and *secondly*, if the citizens deliver the written application stating that there are circumstances which prevent from performing of the jurors' duties if these citizens do not speak the language which is used in the hearings, are not capable to perform the juror's duty because of their state of health proved by the medical certificate, are older than 65 years, are replacing the public officials or elective office in self-government, are military personnel, are retired from the bodies of the federal security service, state guard service or foreign intelligence service (within five years from

their retirement); perform the duties of the judges, public prosecutors, investigators, attorneys, public notaries, bailiffs or private detectives within time of performance of such duties and within five years hereinafter; have special rank of the official of the bodies of internal affairs, drug control, customs office, and law-enforcement system; are the priests.

As regard to the institution of arbitration assessors it was introduced in the civil proceedings in Russia in 2001 after the adoption the Federal Law No 30-FZ dd. May 30, 2001 "On arbitration assessors in the subjects of the Russian Federation". Cases in arbitration courts of first instance can be considered by a professional judge and two arbitration assessors, who are, on the one hand, citizens, representatives of society, on the other - the business community. Institute of arbitration assessors embodies as a professional element of justice, as an element of people's representation, so the introduction of arbitration assessors into the Russian legal system was to improve the quality of the received court decisions and strengthen trust of citizens to justice. Since the introduction of the institute of arbitration assessors in the legal state system it was often used in arbitration courts of subjects Russian Federation. However, practical activities have revealed shortcomings of the institute, hindering its proper functioning. In order to improve the Institute of arbitration assessors was Federal law No. 228-FZ of 27 July 2010 "On the introduction of amendments to the Arbitration Procedural Code of the Russian Federation". However, at present, the institute of arbitration assessors is almost not it is used in the consideration of cases by arbitration courts [SHKALOVA N.A., p.

131-138.].

Judges are persons vested with the powers to administer justice and perform their duties on a professional basis. There are general and specific requirements to the candidates for the positions of judges in the Russian Federation.

General requirements mean that judges may be only persons who are Russian citizens, have a higher legal education, don't have and have not had before any criminal records, do not have foreign citizenship or residence permit in a foreign country, are not either incapable or restricted capable, are not standing registered in narcological or psycho neurologic dispensaries, do not suffer physical and mental diseases which prevent from performing of the duties of a judge.

Specific requirements are being provided by the law to the candidates for different judges:

☐ Judges of the arbitration courts of the subject of the Russian Federation, constitutional (charter) court of the subject of the Russian Federation, district courts, justice of the peace, and also the garrison military courts may be citizens of the Russian Federation over 25 years of age with a higher education in law and a law service record not less than 5 years. ☐ Judges of the supreme courts of republics, of territorial, regional courts, courts of cities of federal importance, courts of autonomous regions and autonomous areas, district (fleet) military courts, federal circuit arbitration courts, arbitration appellate courts, specialized arbitration courts may be citizens of the Russian Federation over 30 years of age with a higher education in law and a law service record not less than 7 years.

☐ Judges of the Supreme Court of the Russian Federation may be citizens of the Russian Federation over 35 years of age with a higher education in law and a law service record not less than 10 years.

☐ Finally, judges of the Constitutional Court of the Russian Federation may be citizens of the Russian Federation over 40 years of age with a higher education in law and a law service record not less than 15 years with unblemished reputation and high recognized reputation in legal sphere.

All the judges in the Russian Federation shall have a common status and shall differ among themselves solely by powers and competence. The specifics of the legal status of specific categories of judges are to be determined by the federal laws and, should there be provision therein, they are to be determined also by the laws of the constituent members of the Russian Federation. Candidates for the offices of judges shall be selected on the competitive basis.

Judges of the Constitutional Court of the Russian Federation and the Supreme Court of the Russian Federation are to be appointed by the upper chamber of the Russian bicameral Parliament upon the proposals of the President of the Russian

Federation.

Judges of cassation courts of the general jurisdiction, appeal courts of the general jurisdiction, arbitration courts of districts and specialized arbitration courts are appointed by the President of the Russian Federation upon the proposals of the Chairman of the Supreme Court of the Russian Federation. These proposals are to be sent to the President of the Russian Federation no later than 30 days upon the date of receipt from the chairman of the relevant court of the proper proposal on appointment of the recommended candidate to the position of the judge.

Judges of other federal courts of general jurisdiction and arbitration courts are appointed by the President of the Russian Federation upon the proposals of the Chairman of the Supreme Court of the Russian Federation which are needed to be sent to the President of the Russian Federation no later than 30 days upon the date of receipt from the chairman of the relevant court of the proper proposal on appointment of the recommended person to the position of the judge.

Judges of military courts are appointed by the President of the Russian

Federation upon the proposals of the Chairman of the Supreme Court of the Russian Federation with the positive conclusion of the Highest Qualification College of judges of the Russian Federation. The specified representation is to be sent to the

President of the Russian Federation no later than 30 days from the date of receipt from the chairman of the relevant court of the proper proposal on appointment of the recommended person to the position of the judge.

As in many other countries, the principle of incompatibility of posts and occupations for judges applies in Russia. In accordance with the Russian legislation judges are not entitled to be engaged in entrepreneurial activities, undertake any paid work except for scientific, teaching, literary and other creative activity. They cannot replace other state positions, positions of state service, municipal positions, or to be arbitrators. They are politically neutral, they cannot be the members of any political party, support them and take part in political actions and political activity, to express publicly their attitude to the political parties and other public organizations. Finally, it is prohibited to express publicly their attitude to the subject of the case which is being under consideration of these judges.

Pursuant to article 120 of the Constitution of the Russian Federation judges shall be *independent* and *obey the Constitution and other federal laws*.

The Russian legislation provides the following guarantees to ensure independent status of the judges: establishment of special procedures for the appointment of judges, and their appointment for life, special procedures for administration of justice, prohibition (under threat of prosecution) of interference by any person in the administration of justice by judges, special standards governing the procedures for suspending judges and removing them from office, inviolability of judges, existence of professional judicial bodies, payment to judges by the State of a salary and benefits in keeping with their high status, provision of special state protection for judges and members of their families, as well as for their property.

In the Russian Federation, no law or regulation may be promulgated that abolishes or curtails the autonomy of the courts or the independence of judges.

The powers of judges of the federal courts shall not be limited to a fixed term except as otherwise provided by the Constitution of the Russian Federation, and Federal Law "On the status of judges". In general, the maximum age for holding the office of a judge of a federal court is 70 years.

No judge shall be removed from his or her office. A judge may not be appointed (elected) to another position or to another court without the prior consent of a judge. The office of a judge shall be terminated or suspended by the decision of the relevant Qualification College of Judges. The decision of the relevant qualification college of judges on termination of the powers of judges may be appealed in accordance with a federal constitutional law. The Federal Law "On the Status of Judges in the Russian Federation" provides three main conditions of the termination of judges: if a judge is recognized by the court's decision as a missing person, if a criminal case is initiated against a judge, if a judge takes part in the presidential, parliamentary elections, elections to the legislative body of any subject of the Russian Federation or municipal representative body as a candidate.

Judges in Russia enjoy immunity which means individual inviolability, inviolability of the dwelling and office premises of the judges, transport, documentation, luggage and other property belonging to the judges, and also the secrecy of their correspondence.

Judges cannot be brought to criminal responsibility for their decisions taken upon consideration of the cases.

A decision on initiating of *a criminal case* shall be taken:

- ⓧ against judges of the Constitutional Court of the Russian Federation – by the Chairman of the Inquiry Committee of the Russian Federation upon
the consent of the Constitutional Court of the Russian Federation;
- ⓧ against judges of the Supreme Court of the Russian Federation, the supreme courts of republics, of territorial, regional courts, courts of cities of federal importance, courts of autonomous regions and autonomous areas, military courts, federal arbitration courts - by the Chairman of the Investigative Committee of the Russian Federation upon the consent of the
High Qualification College of the Judges of the Russian Federation;
- ⓧ against judges of other courts - by the Chairman of the Investigative Committee of the Russian Federation upon the consent of the Qualification College of the Judges of the correspondent subject of the Russian Federation.

A decision on initiating of *an administrative case* shall be taken upon receipt of the report of the General Prosecutor of the Russian Federation:

- ⓧ against judges of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, the supreme courts of republics,
of territorial, regional courts, courts of cities of federal importance, courts of autonomous region and autonomous areas, military courts, federal arbitration courts – by the panel of judges consisting of 3 judges of the Supreme Court of the Russian Federation (the composition of this panel is to be renewed every year by the High Qualification College of Judges of the Russian Federation);
- ⓧ against judges of other courts - by the panel of judges consisting of 3 judges of correspondingly supreme courts of republics, of territorial, regional courts, courts of cities of federal importance, courts of autonomous region and autonomous areas (compositions of these panels are to be renewed every year by the Qualification College of Judges of the correspondent subject of the Russian Federation).

CONCLUSION

A necessary condition for the existence of a state governed by the rule of law is the existence of an independent and qualified judiciary. In a democratic state, the judiciary is a type of state authority that performs functions clearly defined by law. This branch of power is distinguished by a special organizational structure and a specific legal framework [*Konstitutisonno-pravovye osnovy sudebnoi vlasti...*, p. 64]. The Russian Constitution devotes a special chapter to the legal foundations of the judiciary and the principles of justice.

The Basic Law provides that justice in the Russian Federation can be administered only by courts, organized in accordance with law and no other bodies can perform judicial functions both within peace and war times or state emergency. Judiciary is an integral part of the constitutional system of the Russian Federation, as stated in the chapter I of the Constitution, which is dedicated to the fundamentals of the constitutional system of the state. This chapter shall not be changed except by the adoption of a new Constitution. This ensures stability of the state.

All the principles of justice and judiciary are inextricably linked to each other. The violation of one of them may result the violation of the other and thus the violation of law itself in the proceedings. Therefore, failure to comply with at least one of the principles entails the cancellation of decisions taken by the court in a specific case.

The importance of the principles of justice is that they guarantee respect for the rights and legitimate interests of individual and legal persons in the conduct of legal proceedings, as well as guarantee of a legal

and reasonable decision in the case. The principles are the starting point or basis for the interpretation of specific procedural rules, as well as for the resolution of all contradictions that arise in the administration of justice and taking decision upon a trial, because it is the court decision that is the most important law enforcement act, which should guarantee justice in the process of compliance with all its principles.

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