

# Challenges of holding the presidents of general jurisdiction courts liable to disciplinary measures and termination of their powers in the Russian Federation

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**For citation:** Zholobov, Yaroslav B., Viktor N. Kornev. 2023. "Challenges of holding the presidents of general jurisdiction courts liable to disciplinary measures and termination of their powers in the Russian Federation". *Vestnik of Saint Petersburg University. Law* 4: 905–921.  
<https://doi.org/10.21638/spbu14.2023.405>

The article examines the challenges of holding the presidents of general jurisdiction courts liable to disciplinary measures and issues of terminating their powers. It is shown that the legal status of the presidents of general jurisdiction courts encompasses various elements, such as the procedure for terminating their powers, their liability, the procedure for replacing their post, their competence, and guarantees of independence. Five cases of termination of the powers of the president of a general jurisdiction court were considered: automatic suspension in the event of termination or suspension of powers as a judge, which may be directly tied to disciplinary proceedings, limitation of an office term, voluntary rejection of the position while retaining the powers of a judge, early termination of the court president's powers while maintaining his/her position as judge for failure to fulfill or inadequately fulfill his/her official duties, commission of an act defaming the honor and dignity of a judge, as well as in any other circumstances specified under federal constitutional law indicating the inability of a judge to perform his/her duties. Significant gaps in matters of early termination of the court presidents' powers are evident in Russian judicial practice, as demonstrated by numerous examples. The matters concerning the disciplinary liability of the presidents of general jurisdiction courts are analyzed with respect to the procedures, grounds and peculiarities for holding both judges and court presidents liable. A practical view of the modern interpretation of the concept "disciplinary offense of a judge" is shown. Recommendations have been made to improve the Russian legislation that deals with the issues of disciplinary liability of the presidents of general jurisdiction courts and termination of their powers, with a focus on the Law of the Russian Federation on the Status of Judges in the Russian Federation of 1992.

*Keywords:* general jurisdiction courts, court president, elements of legal status, termination of powers, early termination of powers, voluntary rejection of a position, disciplinary offense of a judge, disciplinary liability.

## 1. Introduction

The judicial reform that took place in the Russian Federation during the 1990s had as one of its key objectives to determine the legal status of the presidents of general jurisdiction courts. The legal status of the president of a general jurisdiction court is dual

in nature, as it combines two types of professional roles: that of a judge, who possesses the authority to administer justice (judicial status), and a judicial-administrative role that encompasses organizational-administrative duties (status of the court's governing body).

The role of the president of a general jurisdiction court is distinguished by functional responsibilities, official rights and the type of liability established at the federal law level and shaped, firstly, by the duty of guaranteeing the court's autonomy and the judges' independence and, secondly, by the need for distinguishing the managerial powers among the court president, the court vice-president, professional manager or administrator who is not a judge, and the judicial community body.

The legal status of the president of a general jurisdiction court comprises constitutional-legal, procedural, and organizational-administrative levels. It is structured into five elements, which include the procedure for replacing a post, competence reflecting the balance of procedural, organizational-dispositive, administrative rights and obligations, the procedure and methods of their implementation, the procedure for termination of activities, liability, guarantees of the court president independence, distinguishing him/her from other public entities — carriers of state power.

Although the issues of holding the presidents of general jurisdiction courts liable to disciplinary measures and termination of their powers are crucial, they have not been adequately addressed in scholarly works, in practice, many questions also arise.

## 2. Basic research

The termination of powers of the presidents of general jurisdiction courts is a common occurrence. For instance, from 2019 to 2021, the powers of 74 presidents of general jurisdiction courts were terminated in the Russian Federation.

The termination of the powers of the court president can occur in five instances.

The powers of the court presidents are suspended or terminated automatically when their powers as judges of the relevant courts are suspended or terminated.

The regulation of this matter falls under paragraph 11 of Art. 6.1 of the Law on the Status of Judges in the Russian Federation<sup>1</sup>. In this instance, there is no need for an independent decision regarding the termination of the court president's powers.

An exemplary case, as previously demonstrated, is to take disciplinary action against a judge that results in the early termination of their powers, concurrently causing them to lose their status as the court president<sup>2</sup>.

It seems implausible for someone whose work in the administration of justice is not deemed satisfactory to fulfill the duties of the court president.

The court president's powers are naturally terminated upon the judge's resignation. The guarantee of a right to an honorary resignation from the position of a judge is regarded as a crucial factor in securing their independence. Paragraph 2 of Art. 15 of the

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<sup>1</sup> The Law of the Russian Federation No. 3132-1 on the Status of Judges in the Russian Federation dated June 26, 1992 (as amended on June 13, 2023). Hereinafter (unless otherwise stated) all the Russian and international acts and court decisions are cited from SPS "ConsultantPlus". Accessed June 26, 2023. <https://www.consultant.ru>.

<sup>2</sup> The Determination No. 84-G05-1 of the Judicial Chamber for Civil Cases of the Supreme Court of the Russian Federation on the claim of V.N. Izotov on a partial change in the decision of the qualification board of judges of the Novgorod Region dated April 27, 2005.

Law of the Russian Federation on the Status of Judges in the Russian Federation contains the list of reasons for resignation. Experts have simultaneously observed that the gap is attributed to the absence of a norm that specifies the minimum duration of a judge's term for an honorary resignation. This infringes upon the basic understanding of the word "honor" (Vasiagina 2016, 160). The judge who retired still holds the title of judge, maintains membership in the judicial community, and is entitled to personal immunity guarantees. G. T. Ermoshin's estimates suggest that during the period of 2003–2014, approximately 36 000 judges served in the Russian Federation, with approximately 44 % (about 16 000 individuals) choosing to exercise their right to resign (Ermoshin 2016, 295).

The second option to consider is that the office term of the presidents of general jurisdiction courts is limited to a designated period of six years. In contrast, the presidents of district courts can be reappointed for the same period only twice consecutively, according to Art. 35 of the Law on Courts of General Jurisdiction in the Russian Federation<sup>3</sup>.

It is noteworthy that the duration of the opportunity to serve as the head of a particular court of general jurisdiction is sufficient for achieving long-term and strategic objectives. This improves the quality of justice administration, promotes proper functioning of the court as a whole, and ensures the independence of the judges of the respective court.

The third option involves rejecting a position voluntarily while retaining the powers of a judge.

At first sight, this option appears to be the most natural and straightforward. Nonetheless, it is vital to take into account the legal force of the document that oversees this procedure — the Regulation on the Procedure for the Work of Qualification Boards of Judges approved by the Higher Qualification Board of Judges of the Russian Federation on March 22, 2007. This document represents one of the acts of the judicial community bodies. It appears that for the purpose of guaranteeing the required level of judicial independence, the grounds for terminating the powers of the court presidents must be enshrined in the Law on the Status of Judges of the Russian Federation and the mechanism for execution of certain statutory provisions should be integrated into the approved documents of the judicial community bodies.

The fourth option pertains to the early termination of the court president's powers while maintaining his/her position as judge for failure to fulfill or inadequately fulfill his/her official duties. This practice is not rare. In the first six months of 2020, the qualification boards of judges of the constituent entities of the Russian Federation decided to terminate the powers of four presidents and vice-presidents of district (city) courts earlier than scheduled, with the exception of a judge's powers<sup>4</sup>.

A similar situation is anticipated not only domestically but also globally<sup>5</sup>.

The most challenging issue pertains to the early termination of the court president's powers while retaining the position of a judge owing to his/her failure or poor execution of official duties. According to the legal stance outlined in paragraph 10 of the Ruling No. 13 of the Plenary Session of the Supreme Court of the Russian Federation on the Judi-

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<sup>3</sup> The Federal Constitutional Law No. 1-FKZ on Courts of General Jurisdiction in the Russian Federation dated February 7, 2011 (as amended on April 16, 2022).

<sup>4</sup> Higher Qualification Board of Judges of the Russian Federation. 2020. 5 (73).

<sup>5</sup> See, for instance, paragraph 27 of the Opinion of the Consultative Council of European Judges (CCJE) No. 19 on the Role of Court Presidents dated November 10, 2016. *Consultative Council of European Judges*. Accessed June 26, 2023. <https://rm.coe.int/opinion-no-19-on-the-role-of-court-presidents/16806dc2c4>.

cial Practice of Applying Legislation Regulating the Disciplinary Liability of Judges dated April 14, 2016, which governs disciplinary liability of judges, this is not considered a disciplinary offense. Meanwhile, in accordance with paragraph 4 of Art. 29 of the Regulation on the Procedure for the Work of Qualification Boards of Judges, the process of examining this matter is comparable to that of holding a judge liable to disciplinary measures.

The legal liability of the court president comprises of the judge's disciplinary liability (due to the derivative nature of the court president's legal status) and another type of liability that could lead to the termination of the court president's powers due to inadequate or non-performance of his/her official duties. It is important to note that the early termination of the powers of a judge is disciplinary in nature (Art. 12.1 of the Law of the Russian Federation on the Status of Judges in the Russian Federation).

In light of the situation, it is essential to support M. I. Kleandrov's opinion about the pressing need to revise the disciplinary liability approach for Russian judges, including the court presidents. Furthermore, experience in the post-Soviet space already exists (Kleandrov 2018, 118). The laws of the Republic of Kazakhstan classify the removal of the court president due to improper performance of his/her duties as a disciplinary action.

Additionally, the designation of state authority to bring the court presidents to disciplinary or "other" established liability, which may result in the early termination of their powers, to the competence of qualification boards of judges, which are bodies of the judicial community, is deemed by some experts to be not entirely aligned with the objectives of these bodies, because, in this scenario, they may act in a manner that contradicts the interests of the judges (Khabrieva, Tikhomirov 2015; Mashkina, Morozova 2003).

G. T. Ermoshin suggests that a viable solution is to confer authority to the Chief Justice of the Supreme Court of the Russian Federation to terminate the legal status of the president of a general jurisdiction court at an early stage, as an administrative-organizational measure in case of non-fulfillment or improper performance of official duties, or on a voluntary basis (Ermoshin 2017).

Russian judicial practice indicates notable deficiencies regarding the early termination of the court presidents' powers, including that of the vice-presidents.

In its Decision No. АКПИ17-634 dated September 18, 2017 the Supreme Court of the Russian Federation ruled that, although no disciplinary misconduct was found in the conduct of the court vice-president and the court president, an unfavorable climate was created in the court. Consequently, the court legitimately decided to terminate the powers of the senior officials of the court.

Another example is the position set out in the Appellate Ruling of the Judicial Chamber for Administrative Cases of the Supreme Court of the Russian Federation No. 53-АП18-2 dated March 28, 2018, according to which the proper exercise by the court president of his/her organizational-dispositive powers ensures the effectiveness of the justice administration in the relevant court, the necessary level of control over the activities of judges and employees of the court apparatus, respectively, increasing the level of protection of citizens in the court that he/she heads.

While evaluating the court presidents' performance, it is imperative to uphold a certain equilibrium that does not compromise the independence of judges and autonomy of courts.

The Judgment of the European Court of Human Rights of in the *Baca v. Hungary* case dated June 23, 2016 states that one cannot legitimately invoke the independence of the

judiciary in order to justify a measure such as the premature termination of the mandate of a court president for reasons that had not been established by law and which did not relate to any grounds of professional incompetence or misconduct. Regarding the previously mentioned case, the President of the Court openly expressed his professional point of view, despite being critical, concerning the proposed reform of the judicial system by the legislative body. Due to the state's actions, he was dismissed from his position, which inevitably resulted in a negative perception of the current situation among representatives of the judicial community.

The year 2020 saw the introduction of a new kind of termination of the powers of the court presidents, vice-presidents and judges of appeal and cassation courts through the adoption of amendments to the Constitution of the Russian Federation. As per the provisions of paragraph e.3 of the Art. 83 of the Constitution, the President shall present to the Federation Council of the Federal Assembly of the Russian Federation a proposal for the termination of the powers of a judge if he/she engages in an act that defames the honor and dignity of the judiciary or if any other circumstances specified under federal constitutional law indicate the inability of a judge to perform his/her duties. The decision on the termination of powers in this case is made by the Federation Council (paragraph 1 of part 1 of Art. 102). Nevertheless, there are no current regulations that govern the process of revoking powers on this ground, and specific criteria for this basis are also lacking. A new federal constitutional law must be adopted under this provision of the Constitution, which will establish the criteria and procedure for implementation. At present, there is an expressed opinion that the termination of the court president's powers is unacceptable without the participation of judicial bodies and judicial community members, as it undermines judicial independence (Koroleva 2021, 48).

Thus, a scientifically sound and carefully devised regulatory mechanism is required for the termination of the court president's powers. This is essential to guarantee the independence of the judges within the concerned court and to maintain the effectiveness of the judicial system as a whole, free from arbitrary interference by the state.

An adequate period for an individual to serve as the president of a general jurisdiction court permits the execution of long-term and strategic objectives, elevating the standards of justice administration, maintaining the proper functioning of the court and the independence of the its judges. The challenges related to the fact that the voluntary refusal of the judge's position with the preservation of the judge's powers is regulated by an act of the judicial community bodies, and the early termination of the court president's powers with the preservation of the judge's position due to failure or improper performance of his/her official duties is not a disciplinary offense, the process of examining this matter is comparable to that of holding a judge liable to disciplinary measures.

It is deduced from the above that the assurance of an adequate degree of autonomy for court presidents can only be achieved through the codification of legal safeguards at the federal level, rather than through the actions of judicial community bodies to revoke their leadership positions. Part 11 of Art. 6.1 of the Law of the Russian Federation on the Status of Judges in the Russian Federation is proposed to be supplemented with a provision which suggests that "the powers of court presidents and court vice-presidents can be terminated before the end of their appointment period, if they request it, but they will retain their powers as a court judge, in which they replaced the post of court presidents or court vice-presidents".

When we consider the liability of the court president in his/her official legal status, it is imperative to focus solely on disciplinary liability for the commission of a wrongful act or omission during official duties or outside of them. Such actions have the potential to “undermine the authority of the judiciary” and “harm the reputation of the judge”<sup>6</sup>. The inclusion of committing a crime and holding the court president criminally liable is excluded from the scope of the “legal status” notion. The framework also excludes Art. 1017 of the Civil Code of the Russian Federation, which stipulates the civil liability for the harm inflicted on an individual during the legal process. The reimbursement for such harm is sourced from the state treasury, a treasury of constituent entity of the Russian Federation or a municipality<sup>7</sup>.

When it comes to the disciplinary liability of the presidents of general jurisdiction courts, it is important to differentiate between two aspects:

- procedure and grounds for holding a judge liable to disciplinary measures;
- peculiarities of holding the court president liable to disciplinary measures.

The procedure and grounds for holding a judge liable to disciplinary measures are determined by the Law of the Russian Federation on the Status of Judges in the Russian Federation<sup>8</sup> and the Federal Law on the Bodies of the Judicial Community in the Russian Federation<sup>9</sup>.

Given that the disciplinary liability in such laws is mirrored as the disciplinary liability of a judge and other regulations that specifically identify the disciplinary liability of the court president are yet to be established, and in reality, court presidents are held liable not only as judges but also as leaders, it is imperative to scrutinize the existing process of holding judges liable for disciplinary breaches in general, with a focus on the unique aspects concerning court presidents.

A disciplinary offense is defined by the Law of the Russian Federation on the Status of Judges in the Russian Federation and the Code of Judicial Ethics as the act of guilt, or guilty inaction, performed by a judge while performing official duties or during off-duty hours, which leads to a decrease in the judiciary’s authority and causes damage to the judge’s reputation. Except for the judges of the Constitutional Court of the Russian Federation<sup>10</sup>, as stated in paragraph 1 of Art. 12.1 of the Law of the Russian Federation on the Status of Judges in the Russian Federation, a judge may receive a disciplinary penalty for violating disciplinary rules.

The phrase “may be imposed” holds significant importance in this article. It signifies that the act of initiating disciplinary action against a judge and reviewing a suitable petition or appeal is a right, rather than an obligation, of the competent individuals and bodies

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<sup>6</sup> The Code of Judicial Ethics (approved by the VIII All-Russian Congress of Judges on December 19, 2012) (as amended on December 1, 2022).

<sup>7</sup> The Civil Code of the Russian Federation (Part Two) No. 14-FZ dated January 26, 1996 (as amended on July 1, 2021, with the changes made on July 8, 2021) (with the changes to enter into force on January 1, 2022).

<sup>8</sup> The Law of the Russian Federation No. 3132-1 on the Status of Judges in the Russian Federation dated June 26, 1992 (as amended on June 13, 2023).

<sup>9</sup> The Federal Law No. 30-FZ on the Bodies of the Judicial Community in the Russian Federation dated March 14, 2002 (as amended on December 8, 2020) (with the changes to enter into force on January 1, 2023).

<sup>10</sup> The procedure for holding judges of the Constitutional Court of the Russian Federation liable to disciplinary measures is determined by the Federal Constitutional Law No. 1-FKZ on the Constitutional Court of the Russian Federation dated July 21, 1994.



within the judicial community. The determination of disciplinary proceedings is subject to the specifics of a particular legal relationship. This phenomenon operates on corporatist principles, which, at some stages, are distinct from public principles (Tuganov, Aulov, Nekrasov 2017, 212).

The concept “disciplinary offense of a judge” comprises three elements.

Firstly, it is the failure to adhere to the obligations of a judge as outlined in Art. 3 of the Law of the Russian Federation on the Status of Judges in the Russian Federation. These obligations include upholding the Constitution of the Russian Federation and other laws, preventing actions that may harm the credibility of the judiciary, undermine the judge’s integrity and create doubts about their impartiality and equity.

Secondly, this is the violation of the norms that determine what a judge is not authorized to do. This list is quite broad: 1) to fill other government positions, civil service positions, municipal positions, municipal service positions, be an referee, arbitrator; 2) to belong to political parties, financially support these parties and take part in their political actions and other political activities, as well as express his/her attitude to political parties and other public associations; 3) to engage in entrepreneurial activity in person or through agents; 4) to engage in other paid activities, except for pedagogical, scientific and other creative activities; 5) to open and have accounts (deposits), store cash and valuables in the foreign banks located outside the territory of the Russian Federation, own and/or use foreign financial instruments; 6) to be an attorney or representative (except in cases of legal representation) for the affairs of individuals or legal entities; 7) to allow public statements on the issue, which is the subject of consideration in court, until the entry into force of the judicial act on this issue; 8) to use means of material, technical, financial and information support intended for official activities for the purposes not related to the exercise of the powers of the judge; 9) to disclose or use the information classified in accordance with federal law as restricted information, or official information that has become known to him in connection with the exercise of the judge’s powers for the purposes not related to the exercise of the judge’s powers; 10) to receive remuneration from individuals and legal entities in connection with the exercise of the powers of a judge not provided for by the legislation of the Russian Federation; 11) to accept honorary and special titles (with the exception of scientific and sports ones), awards and other insignia of foreign countries, political parties, other public associations and other organizations without permission of the relevant qualification board of judges; 12) to travel on business trips outside the territory of the Russian Federation at the expense of individuals and legal entities; 13) to be a member of governing bodies, board of trustees or supervisory boards, other bodies of foreign non-profit non-governmental organizations and their structural divisions operating in the Russian Federation; 14) to terminate the performance of official duties in order to resolve labor disputes (Art. 3 of the Law of the Russian Federation on the Status of Judges in the Russian Federation).

Thirdly, this constitutes non-compliance with the rules of conduct during the execution of professional duties in the administration of justice and in extrajudicial activities. These rules are based on high moral and ethical requirements as established by the Code of Judicial Ethics, and are in accordance with generally accepted principles of moral and ethical behavior in society and international justice standards.

In the event that a judge encounters challenges in evaluating a specific situation from an ethical standpoint, the Ethics Commission of the Council of Judges of the Russian Federation can be requested for clarification, and such request cannot be denied.

One of the tasks of the judicial community bodies is to ensure judges adhere to the Code of Judicial Ethics (Art. 4 of the Federal Law on the Bodies of the Judicial Community in the Russian Federation).

In the Russian Federation, the authority to hold judges liable, excluding judges of the Constitutional Court, is vested in the relevant qualification boards of judges<sup>11</sup>. The procedure for reviewing complaints is determined by Art. 22 of the Federal Law on the Bodies of the Judicial Community in the Russian Federation and Art. 27 of the Regulation on the Procedure for the Work of Qualification Boards of Judges.

The disciplinary proceedings is initiated by qualification board of judges upon the request of the judicial community body, including the Council of Judges of the Russian Federation, the Presidium of the Council of Judges of the Russian Federation, and the Council of Judges of the constituent entity of the Russian Federation. This request is made to hold a judge liable to disciplinary measures. Additionally, the report of the Commission of the Higher Qualification Board of Judges of the Russian Federation and the qualification boards of judges of the constituent entities of the Russian Federation on the presence of signs of disciplinary misconduct in the actions or inaction of a judge based on the complaint also serves as the ground for disciplinary proceedings<sup>12</sup>. Presently, the court presidents are not incorporated in this mechanism.

The imposition of a disciplinary penalty on a judge must occur within six months of detecting a disciplinary offense, except during periods of temporary disability, vacation, official audit, and never after two years from the date of the offense<sup>13</sup>.

Appeals against decisions to hold judges, including court presidents, liable to disciplinary measures can be made in court. Similarly, the decisions of qualification boards of judges of the constituent entities of the Russian Federation can be contested in the Higher Qualification Board of Judges of the Russian Federation<sup>14</sup>.

Seeking disciplinary action, which may be imposed on a judge for committing a disciplinary offense, when examining the legal status of the president of a general jurisdiction court, is necessary for two reasons: firstly, such a penalty as early termination of the powers of a judge can lead to the dismissal of the post of court president due to its derivative from the legal status of a judge, as already mentioned above, and secondly, disciplinary sanctions against court presidents are not specifically defined, so one can only be guided by established practice.

The fact that disciplinary actions may be taken against court presidents, rather than all other judges, confirms the thesis that only a lawyer with relevant experience as a judge should be selected to serve as a court president.

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<sup>11</sup> Paragraph 7 of Art. 12.1 of the Law of the Russian Federation on the Status of Judges in the Russian Federation, subparagraph 8 of paragraph 2 of Art. 17, subparagraph 8 of paragraph 2 of Art. 19 of the Federal Law on the Bodies of the Judicial Community in the Russian Federation.

<sup>12</sup> Paragraph 1 of Art. 22 of the Federal Law on the Bodies of the Judicial Community in the Russian Federation, paragraph 16 of the Ruling No. 13 of the Plenary Session of the Supreme Court of the Russian Federation on the Judicial Practice of Applying Legislation Regulating the Disciplinary Liability of Judges dated April 14, 2016.

<sup>13</sup> Paragraph 6 of Art. 12.1 of the Law of the Russian Federation on the Status of Judges in the Russian Federation.

<sup>14</sup> Paragraph 1 of Art. 26 of the Federal Law on the Bodies of the Judicial Community in the Russian Federation, paragraph 7 of Art. 12.1 of the Law of the Russian Federation on the Status of Judges in the Russian Federation.



Pursuant to Art. 12.1 of the Law of the Russian Federation on the Status of Judges in the Russian Federation, a judge who commits a disciplinary offense, excluding a judge of the Constitutional Court of the Russian Federation<sup>15</sup>, may be subjected to one of four types of disciplinary penalties.

The first one is an admonition. This disciplinary sanction was introduced in the Russian Federation on July 14, 2013. The qualification board of judges may impose it on a judge if it concludes that oral censure of the judge's actions or inaction is sufficient for the disciplinary offense committed by the judge.

For example, on January 29, 2020, the Higher Qualification Board of Judges of the Russian Federation considered the complaint of the judge of the Pervomaiskii District Court of Novosibirsk G. F. Demidovich about holding her liable to disciplinary measures in the form of an admonition for unfair and improper performance of her duties (poor quality of consideration of cases, insufficient control over the performance of her subordinates' duties, untimely transfer of cases to the records management department, etc.). This decision of the Qualification Board of Judges of the Novosibirsk Region dated September 13, 2019 was canceled<sup>16</sup>.

The second type of penalty refers to a caution that may be imposed on a judge for committing a disciplinary offense if the qualification board of judges responsible determines that a disciplinary penalty in the form of an admonition is insufficient or if the judge has previously been disciplined.

As practice shows, a caution is generally given for disciplinary violations that do not cause a notable infringement upon the interests and rights of citizens and organizations:

— red tape, which refers to the violation of procedural deadlines for consideration of civil law disputes due to improper organization of lawsuits caused by either inept planning or insufficient knowledge of legislation, has occurred;

— unmotivated upholding of a motion for measures to ensure the complaint, going beyond the stated requirements;

— refusal to consider the petition for preventive detention at the end of the duty time, which indicates a disregard for the criminal procedure legislation;

— refusal to consider the cases submitted to the judge by the president of a district court, which is the non-performance of official duties<sup>17</sup>.

Consequently, Yu. A. Khrenkov, the president of the Proletarskii District Court of Saransk in the Republic of Mordovia, was subjected to a disciplinary penalty in the form of a caution for inability to provide criminal cases and court materials for examination upon request by the Chief Justice of the Supreme Court of the Republic of Mordovia, for verifying the compliance of cases with the quality and timeframe of the proceedings<sup>18</sup>.

The third second type of penalty, which was introduced on September 1, 2019, is a downgrade in the qualification class. The judge will be subjected to this disciplinary ac-

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<sup>15</sup> For committing a disciplinary offense (violation of the norms of this Federal Constitutional Law, the Federal Law on the Status of Judges, as well as the provisions of the Code of Judicial Ethics approved by the All-Russian Congress of Judges), a judge of the Constitutional Court of the Russian Federation may be disciplined in the form of caution, termination of the judge's powers (Art. 15 of the Federal Constitutional Law No. 1-FKZ on the Constitutional Court of the Russian Federation dated July 21, 1994).

<sup>16</sup> Higher Qualification Board of Judges of the Russian Federation. 2020. 5 (73).

<sup>17</sup> Ibid. 2006. 1 (7).

<sup>18</sup> Ibid. 2021. 2 (76).

tion for a substantial violation of this Law and/or the Code of Judicial Ethics, only if he/she has previously been disciplined.

There have been limited instances of the application of this disciplinary sanction yet. On July 24, 2019, the Higher Qualification Board of Judges of the Russian Federation reviewed D.S. Torgoboev's complaint against the decision made by the Qualification Board of Judges of the Republic of Buryatia to terminate his powers of a judge prematurely and strip him of the seventh qualification class due to a gross violation of the law during the hearing of a criminal case and for not adhering to reasonable terms in case consideration. Consequently, the disciplinary measure was modified to a caution<sup>19</sup>.

The fourth type of penalty refers to the early termination of a judge's powers, which is only imposed in exceptional cases. This measure is enforced on judges who commit serious violations of the law and/or the Code of Judicial Ethics that are incompatible with their dignity. Such disciplinary action may be imposed only if there is a complaint or appeal from the participant (participants) in the process on violation of his/her (their) rights by illegal actions of a judge who was previously disciplined if the violations committed by the judge are systematic and/or of gross nature, have entailed distortion of the principles of legal proceedings, indicate the impossibility for the judge to further exercise his/her powers and are ascertained by a judicial act of a higher court or the judicial act adopted on the application for expediting the consideration of the case or on awarding compensation for violation of the right to judicial proceedings within a reasonable period.

The reviews of practice note that most often disciplinary action in the form of early termination of the powers of a judge is imposed for gross red tape (deliberate violation of the procedural terms of consideration of cases), repeated deliberate violation of procedural legislation, raising doubts about the fairness and objectivity of the court, gross violation of procedural norms that entailed grave consequences for a person, violation of the rules of jurisdiction when accepting statements of claim, violation of labor regulations, abuse of office, dissemination of far-fetched offensive fabrications against judges and the judiciary<sup>20</sup>.

Nevertheless, there is still no consensus on the interpretation of the grounds for the early termination of the judge's powers. In 2011, the Constitutional Court of the Russian Federation conducted a review of the constitutionality of paragraphs 1 and 2 of Art. 3, paragraph 1 of Art. 8 and paragraph 1 of Art. 12.1 of the Law of the Russian Federation on the Status of Judges in the Russian Federation and Art. 19, 21 and 22 of the Federal Law on the Bodies of the Judicial Community in the Russian Federation, following a complaint made by a citizen A. B. Matiushenko. The said citizen, who served as a judge in the Preobrazhenskii District Court of Moscow, faced disciplinary action in the form of early termination of her powers, along with the deprivation of her fourth qualification class. The Ruling that Constitutional Court of the Russian Federation issued stated that these articles of the laws are interconnected and do not contradict the constitutional provision that prohibits the early termination of the judge's powers due to a wrongful judgment. In the case of A. B. Matiushenko, a gross violation was committed when applying the current norms of both substantive and procedural law<sup>21</sup>.

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<sup>19</sup> Ibid. 2020. 5 (73).

<sup>20</sup> Ibid. 2006. 1 (7).

<sup>21</sup> The Ruling No. 19-P of the Constitutional Court of the Russian Federation (dated July 20, 2011) on the Case of Checking the Constitutionality of the Provisions of Paragraphs 1 and 2 of Art. 3, Paragraph 1

In 2011, two judges of the Constitutional Court expressed a dissenting opinion regarding this matter. The opinion made by K. V. Aranovskii was to widen the range of disciplinary offenses for judges, clarify those already established, and specify the grounds for holding judges liable to disciplinary measures. Specifically, it should be noted that even minor systematic violations may form the basis for disciplinary action against a judge. Therefore, the legality and justification of the decision of the Qualification Board of Judges of the Jewish Autonomous Region to terminate the powers of the judge M. early was acknowledged by the Disciplinary Chamber of the Supreme Court of the Russian Federation referring to the fact that this judge had presided over 219 criminal cases from 2015 to 2017, of which only 47 were processed in general order, 11 sentences were reversed by the appellate court, and 23 were modified<sup>22</sup>.

The inadequacy of legal regulation on this matter has been highlighted by M. I. Kleandrov, due to the imprecise definition of the concept “disciplinary offense of a judge”, which allows for the early termination of a judge’s powers for actions committed during the administration of justice.

The situation underwent some correction when the definition of disciplinary misconduct of judges included in the Law of the Russian Federation on the Status of Judges in the Russian Federation was amended in 2013. The retired judge of the Constitutional Court rightly believes that it is illogical to impose disciplinary measures on Russian judges for ethical misconduct instead of legal misconduct (Kleandrov 2018, 110).

The Ruling No. 13 of the Plenary Session of the Supreme Court of the Russian Federation on the Judicial Practice of Applying Legislation Regulating the Disciplinary Liability of Judges dated April 14, 2016 also provided clarification on certain aspects. Its emergence was linked with the enforcement of the Code of Administrative Procedure of the Russian Federation on September 15, 2015<sup>23</sup>. Thus, according to paragraph 4, the consideration cases on complaints against the decisions of the Higher Qualification Board of Judges on imposing disciplinary sanctions on the judge and on decisions of the qualification boards of judges of the constituent entities of the Federation on early termination of the powers of the judge for committing a disciplinary offense, and at the request of the Chief Justice of the Supreme Court of early termination of the powers of judges for the commission of disciplinary offenses in cases, if the Higher Qualification Board of Judges or the qualification boards of judges of the constituent entities of the Federation refused to satisfy the submissions of the presidents of federal courts on the termination of the powers of judges, is within the powers of the Disciplinary Chamber of the Supreme Court of the Russian Federation.

In the imposition of disciplinary penalties, the nature of the offense, the circumstances surrounding its commission, the form of guilt, the identity of the judge who committed the disciplinary offense, as well as the degree of violation of the rights and freedoms of

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of Art. 8 and Paragraph 1 of Art. 12.1 of the Law of the Russian Federation on the Status of Judges in the Russian Federation and Art. 19, 21 and 22 of the Federal Law on the Bodies of the Judicial Community in the Russian Federation in connection with the Complaint of Citizen A. V. Matiushenko.

<sup>22</sup> “The Review of judicial practice for the consideration of administrative cases on bringing judges to disciplinary responsibility by the Disciplinary Chamber of the Supreme Court of the Russian Federation in 2017–2018 and the first half of 2019”. *Official website of the Supreme Court of the Russian Federation*. Accessed November 20, 2023. <https://www.vsrfr.ru/documents/all/28943/>.

<sup>23</sup> The Code of Administrative Procedure of the Russian Federation No. 21-FZ dated March 8, 2015 (as amended on June 13, 2023).

citizens and the legitimate interests of organizations caused by the actions or inaction of the judge are all taken into account.

It is important to note that the Disciplinary Chamber may not always concur with the decision of the qualification boards of judges. As an illustration, it resolved the complaint of citizen I. in opposition to the decision of the Qualification Board of Judges of the Samara Region. The initial decision made by the Avtozavodskii District Court of Tolyatti, Samara Region, was to terminate the judge's powers early for committing a disciplinary offence.

As per the submission from the president of the regional court, the judge I. granted the ownership claim made by the citizen K. over the reconstructed complex for petroleum storage after considering the case, thereby ruling in favor of K. against the Tolyatti mayor's office. Despite this, the Judicial Chamber for Civil Cases of the Samara Regional Court made an appellate decision that nullified the previous verdict and issued a new decision that denied the citizen K.'s claims. In the case, a special ruling was issued which indicated gross violations of the law committed by the judge I.

The Disciplinary Chamber of the Supreme Court of the Russian Federation has determined that, in the first instance, the higher court promptly corrected the judicial error, thereby preventing any negative consequences. Secondly, unintentional judicial errors cannot be construed as an unfair attitude of the judge towards their professional duties<sup>24</sup>.

One of the reasons to hold a judge liable, including the court president, is a special ruling made by a higher court to both the judge and the court president.

With regard to this matter, it is imperative to make reference to the notion of a special ruling (resolution) (part 1 of Art. 226 of the Code of Civil Procedure of the Russian Federation<sup>25</sup>, part 4 of Art. 29 of the Code of Criminal Procedure of the Russian Federation<sup>26</sup>, Art. 200 of the Code of Administrative Procedure of the Russian Federation). Namely, when considering a specific civil or criminal case, including an administrative claim, cases of violation of the rule of law or circumstances contributing to the commission of a crime, violation of the rights and freedoms of citizens, as well as other violations of the law admitted, in particular, when considering a criminal case by a lower court, are revealed, the court shall have the right to issue a special ruling or resolution in which attention of the president of the lower court, in addition to other officials and participants in the trial, is drawn to these circumstances and facts of violation of the law committed by the judge and requiring the necessary measures. At the same time, the court president, to whom a special ruling was addressed, must report back to the court that issued such a ruling on the actions taken to remedy the specified violations within a month.

It is worth noting that the Code of Administrative Offenses of the Russian Federation does not explicitly specify the option of the court's special ruling (resolution). However, Art. 17.4 outlines administrative liability for leaving an official without considering not

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<sup>24</sup> The Review of judicial practice for the consideration of administrative cases on bringing judges to disciplinary responsibility by the Disciplinary Chamber of the Supreme Court of the Russian Federation in 2017–2018 and the first half of 2019.

<sup>25</sup> The Code of Civil Procedure of the Russian Federation No. 138-FZ dated November 14, 2002 (as amended on April 14, 2023, with the changes made on April 26, 2023) (with the changes to enter into force on April 28, 2023).

<sup>26</sup> The Code of Criminal Procedure of the Russian Federation No. 174-FZ dated December 18, 2001 (as amended on June 13, 2023).

only such decisions but also the judge's submission or failing to take measures to rectify law violations. This can result in a fine ranging from 500 to 1000 rubles<sup>27</sup>.

Thus, a special ruling (resolution) stands as an independent judicial act, given its similarity in requirements with the court's decision or verdict. Furthermore, it serves as an individual act of legal regulation, akin to the most recent acts. This is due to the fact that it relates to specific individuals whose actions or inaction are being probed and assessed within the confines of a specific case, and they alone can be subjected to demands for rectifying violations of current legislation.

Pursuant to the explanations provided in the Ruling No. 11 on the Practice of Issuing Special Rulings (Resolutions) by Courts issued by the Plenary Session of the Supreme Court of the USSR on September 29, 1988, a special ruling of the court must be lawful, reasonable, and grounded solely on evidence verified in court.

Also The Ruling No. 5 of the Plenary Session of the Supreme Court of the Russian Federation on Increasing the Role of Courts in Fulfilling the Requirements of the Law Aimed at Identifying the Circumstances that Contributed to the Commission of Crimes and Other Offenses dated September 1, 1987 determines that when considering a criminal case the court that established during the consideration of the case in the appeal, cassation or supervisory order that the court of first instance did not comply with the law requirements on the identification of circumstances contributing to the commission of crimes or offenses takes, in accordance with part 4 of Art. 29 of the Code of Criminal Procedure of the Russian Federation and Art. 368 of the Code of Civil Procedure of the Russian Federation, appropriate measures to eliminate the identified shortcomings by issuing the special ruling (resolution) addressed to the heads of the relevant enterprises, organizations and, additionally, draws the attention of the court of first instance to the violation of the law committed by them.

Simultaneously, the Ruling No. 19 of the Plenary Session of the Supreme Court of the Russian Federation on the Application of the Norms of Chapter 47.1 of the Criminal Procedure Code of the Russian Federation Governing Proceedings in the Cassation Court dated June 25, 2019 establishes that the right to make an appeal to the Court of Cassation, with a complaint regarding the legality of the special ruling (resolution) issued by the court, is also applicable to individuals who may face disciplinary proceedings or other measures that affect their personal interests, due to circumstances specified in the special ruling (resolution).

Thus, disciplinary, administrative and criminal liabilities may arise as a result of issuing a special ruling (resolution) concerning a judge or court president. Due to a lack of sufficient scientific foundation, these issues cannot be adequately analyzed, researched, assessed or legally regulated.

Should a special ruling (resolution) be issued regarding the judge's violations and the court president be notified to take necessary actions, the following question arises: considering the fundamental principle of judicial independence in the administration of justice, how can the court president take action against a judge, and what steps should he/she undertake to do so?

The complexity of the matter is compounded by the fact that the court president, who did not participate in the case proceedings, could not have anticipated any violations

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<sup>27</sup> The Code of Administrative Offenses of the Russian Federation No. 195-FZ dated December 30, 2001 (as amended on June 24, 2023).

committed by the judge during the trial. Therefore, the judge who presided over the case is solely responsible for any violations that may have occurred during its consideration.

Consequently, the present approach to addressing the errors made by the judge, when the responsibility to address them is also delegated to the court president, is not consistent with the principle of independence of judges. It is necessary to specify that if a judge has committed violations while considering a case, only a special ruling (resolution) should be used to prevent similar violations from occurring in the future, as stated in the procedural legislation above. The judge, when making a decision, assumes full responsibility for the verdict and bears the burden of such responsibility alone, because the court president is not authorized to interfere with the judge's activities when addressing a specific case.

If violations result from the court president's actions as a leader, such as expediting the consideration of a specific case or due to mismanagement of the court, leading to infringements of the participants' rights or influencing the court's verdict, then the court president is directly responsible for these violations.

As per the Special Ruling No. 5-KF17-181 of the Judicial Chamber for Civil Cases of the Supreme Court of the Russian Federation on Informing the Judges of the Judicial Chamber for Civil Cases of the Moscow City Court, Judge of the Moscow City Court, President and Judge of the District Court of the Violations Committed by Them When Considering a Civil Case dated November 28, 2017, the violations were committed not only by the judges of the district court and the Moscow city court, but also by the president of the district court, who, during the civil case proceedings, disregarded the explanations contained in paragraph 15 of the Ruling No. 29 of the Plenary Session of the Supreme Court of the Russian Federation on the Application by the Courts of the Norms of Civil Procedure Legislation Governing the Proceedings in the Cassation Court dated December 11, 2012 stating that to comply with reasonable terms of proceedings (Art. 6.1 of the Civil Procedure Code of the Russian Federation) the judge's request to claim the case should immediately be processed by the court. This violation resulted in an extension of the duration of consideration of the cassation appeal and the annulment of all judicial decisions rendered subsequent to the appeal ruling of January 10, 2017, which was appealed to the Supreme Court of the Russian Federation. Furthermore, under part 1 of Art. 226 of the Code of Civil Procedure of the Russian Federation, the court possesses the authority to issue a special ruling in cases where a breach of the law has been identified. The court may then address it to the pertinent institutions or officials, who are mandated to provide a response within a month, outlining the measures they have taken. Therefore, the court has resolved to highlight the significant infringements of the procedural legislation committed by the president of the Moscow City Court, to prevent such violations from occurring again. A monthly reporting period for the measures taken was established in the operative part of the decision.

In this case, an individual act of legal regulation has been implemented, which covers the managerial activities of district and city court presidents. The act doesn't determine any new powers for court presidents regarding the organization of court work. However, it enforces the imperative to take action against judges' gross violations, including presidents of respective courts, to prevent such violations from happening in the future.

The issue at hand pertains to whether the court of appeal or cassation instance must directly hear the court president's explanations regarding violations of procedural and other legislation, specifically regarding his/her inaction or improper action as the leader. This implies that the court presidents may be deprived of their right to defend themselves.



Regarding this matter, there is a question of amending procedural codes to enable individuals subject to a special ruling (resolution) to voice their objections directly during a court session on charges of law violation and their authority.

It is noteworthy to mention that violations that may arise outside the court session of a specific case, such as the criminal case of the Smolensk Regional Court considered in cassation by the Supreme Court of the Russian Federation, were addressed in the special ruling<sup>28</sup>. The ruling acknowledged the unnecessary bureaucratic procedures in terms of preparing the protocol, informing the parties involved and submitting the case to the cassation court. In this instance, there were violations regarding the court mismanagement, and thus, the higher court conferred upon the court president the responsibility of addressing the violations in this aspect.

In specific cases, if it is specially ruled that the court presidents have breached their duties as leaders, there may be justification for taking disciplinary action against them.

One of the ways of influencing the actions of the court president in an individual procedural manner to organize his/her work in the court against the backdrop of the ongoing judicial reform is a specific ruling (resolution), which is gradually undergoing changes in terms of the scope and breadth of these violations and possible corrective actions against judges. However, the principle of independence limits the powers of the court president in this case.

As a special ruling is considered a court decision, there should be an opportunity to appeal it. Firstly, this is a consequence of the constitutional provision for judicial protection of rights and freedoms, as well as the right to appeal the decisions made by state authorities and officials to the court (Art. 46 of the Constitution of the Russian Federation). Among all procedural codes, only part 2 of Art. 200 of the Code of Administrative Procedure of the Russian Federation explicitly grants the right to challenge a special ruling (resolution). Other procedural codes only imply the possibility of appealing court decisions through a broad interpretation of the law.

It must be emphasized that, in accordance with the concerned judicial individual act reserved only for judges, the court president assumes the relevant oversight and supervisory powers.

Thus, the Order No. 161 of the Judicial Department at the Supreme Court of the Russian Federation on the Approval of the Instructions on Judicial Proceedings in the Supreme Courts of the Republics, Courts of Territories, Regions, Federal Cities, Courts of the Autonomous Regions and Autonomous Districts dated December 15, 2004 (Section 12 “Enforcing sentences, decisions, judgments and orders of the court”) stipulates that special rulings (resolutions) in criminal and civil cases must be logged accordingly (forms No. 31 and 32), with the inclusion of the control data on the addressee of the ruling, a reminder of its implementation, the receipt of a message about the measures taken, the check of its execution by the court, the removal from the register and, as a note, the fact that a case was initiated under Art. 17.4 of the Code of Administrative Offenses of the Russian Federation.

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<sup>28</sup> The Special Ruling No. 36-O11-1 of the Supreme Court of the Russian Federation (dated February 7, 2011) on Drawing Attention of the President of the Regional Court to the Violations of the Requirements of the Criminal Procedure Law Committed by the First Instance Court When Preparing the Protocol, Informing the Parties Involved and Submitting the Case to the Cassation Court.

This order also mandates the maintenance of a statistical record card (annex to the order). Its paragraph 11 requires the card to record the number of special rulings (resolutions) made in the case along with other data. Therefore, if the court president fails to perform the aforementioned control and supervisory tasks, which also involves addressing any deficiencies or infringements in the special rulings and their execution, then they may be held liable to disciplinary measures as the court leaders.

Given that the court president is a judge, he/she is subject to all rules concerning disciplinary liability of judges.

Currently, there is a situation where the qualification boards of judges are holding court presidents liable to disciplinary measures. Practice suggests that this is possible in the following cases:

— failure to exercise his/her powers, including lack of control over the progress of cases, record-keeping, analysis of reasons for violating case consideration terms, uneven distribution of workload among judges, assigning cases to judges on vacation or sick leave and delay in transferring cases in the event of a judge's dismissal or resignation;

— breach of ethical obligations as the court leader, which includes creating a challenging psychological environment, harsh treatment of court staff, employing intimidation as the primary approach to monitoring reports<sup>29</sup>.

The disciplinary liability of the court president is objectively determined by the internal consistency between his/her proper management performance and corresponding disciplinary measures.

This necessitates an amendment to the Law of the Russian Federation on the Status of Judges, as it lacks provision for such a regulation. It is recommended that Art. 12.1 of this law be amended as follows: “10. The court presidents and court vice-presidents are liable for any failure to perform their duties or follow ethical requirements as leaders, in addition to the disciplinary liability imposed on them as judges”.

The objective nature of the disciplinary liability of the court president lies in the correlation between his/her management responsibilities and the relevant disciplinary actions. The notion of a disciplinary offense of the court president as the court leader is not exclusively tied to the measures of accountability that are enforced for non-performance or inappropriate execution of judicial duties. It has been suggested that the dismissal of a court president be combined with the continuation of his/her duties as a judge, as a distinct type of disciplinary liability.

### 3. Conclusions

The level of independence required for court presidents must be guaranteed through federal law, with grounds for removal from their leadership positions based on such legislation rather than judicial community acts. It is proposed to amend part 11 of Art. 6.1 of the Law of the Russian Federation on the Status of Judges in the Russian Federation by introducing a provision that permits the termination of the powers of court presidents and court vice-presidents upon their personal application without affecting their role as a judge in the court, where they served as president or vice-president.

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<sup>29</sup> Higher Qualification Board of Judges of the Russian Federation. 2006. 1 (7).

The disciplinary liability of the court president is defined by the internal coherence between his/her efficient management performance and the relevant disciplinary actions. The notion of disciplinary offense of the court president as the court leader cannot be solely associated with the penalties imposed for neglect or inadequate execution of the judge's official duties. It has been proposed to combine the dismissal from the court president role with the preservation of the judge position as an independent form of disciplinary liability. It is recommended to amend Art. 12.1 of this law as follows: "10. The court presidents and court vice-presidents are liable for any failure to perform their duties or follow ethical requirements as leaders, in addition to the disciplinary liability imposed on them as judges".

In light of the development of the internal system function of judicial management, it is imperative to provide further legal regulation for the position of the presidents of general jurisdiction courts.

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Received: June 30, 2023

Accepted: July 31, 2023

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