

REALIZATION OF JUDICIAL AUTHORITY IN THE LAW-ENFORCEMENT POLICY

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Abstract: The paper deals with the role and the status of the court in the system of judicial authority. The judicial reform and its consequences are discussed.

As certain stereotypes concerning the court status have been formed, even the possibility of judicial authority participation in any politics seems illogical. Court independence, its impartiality is accentuated both in studies, constitutional and state law textbooks and in publications, law comments, as well as in legislation itself.

Judicial reform is aimed at establishing an independent and authoritative judicature, procedural guarantee of lawyers' independence and their social welfare and endowment. The first and the most important of new laws was the one issued in 1992 year – the Law “About the judges' status in Russian Federation”. There for the first time in the post-revolutionary history of our country regulations about judges' independence, their inviolability and about establishing judicial community bodies as an independent corporation, ensuring the interests of judiciary and protecting its rights were actually allocated. It's significant that under the stated Law all judges have unified status and absolute immunity.

Legislative execution by the independent and impartial court, arisen in antiquity, is one of the components of the democratic constitutional state basis, in which human rights make up legal base of a state, where it's always possible to find protection from arbitrariness. Therefore the independence of judges and the court as “law enforcement officers” is urgent [3].

The court by its legal nature is in the center of conflict situation, parts of an argument hope the court to come down just on their side, and even more than that they believe to impact a judge somehow. It's mostly true about “powerful” –

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rich – part. This is the reason of establishing supplementary legal mechanism to guarantee independence and impartiality of courts and judges [2, p. 24–26].

However, the independence of judicial authority is often misunderstood both in society and principles of arrangement and establishment of judiciary system and legislative execution. Therefore the question whether the court is the subject of juridical policy may seem irrelevant. Whereas in modern theoretical research the subject of law (which is undoubtedly judicial authority) is characterized as a multidimensional concept, including some aspects: the subject of law as a person (juridical look), as a legal will which is the sum of legal bonds, as legal conscience, as a figure, as a social and legal value. But its main quality is that the subject of law is the creator of law, the instance, solving and implementing its decisions [1, p. 120–123]. The subject of juridical policy apparently must satisfy the following claims: must be rather an independent person (body); function in the field of law; have a will – an ability to make decisions; bring its decisions to society’s notice; rest upon strategic legal ideas when making decisions; have systematic and essential influence on the progress of legal life of a society. Thus, the subject of juridical policy is a person or a social formation, which can systematically influence legal progress of society by its decisions and acts, based on strategic ideas.

As M.G. Korotkov truly notes, court is an independent state institution, it has its own inalienable functions and authority; its activity generally refers to the law sphere, it makes legally significant decisions, which are to be executed. It is guided by certain strategic ideas, which are partially fixed in legislation, but have doctrinaire nature as well. And finally, there is no doubt that the court plays an important role in justice development (at least, in democratic states) [4]. Thus, the question is what the peculiarities of the court as the subject of juridical policy are and what place in juridical policy of modern state it has.

Does the court manifest any social interests? Any social institution, not manifesting anybody’s interests, can’t be established, because it’s not clear why members of society will make efforts and spend budgets for its establishment and support its activity. The activity of the court is aimed at protecting quite certain social interests, among which the most significant is interest in fair and impartial decision of arguments about law. But, it doesn’t mean, that the court can’t be used as an instrument to protect interests of other character.

Do political ideas influence the court? As political ideas in their nature affect all society, then the court can’t avoid their influence. It is influenced either directly, or indirectly – via its subjects (individuals), who ask for legal protection and inevitably carry their views, political ones as well, over the court. Moreover, the degree of the influence can be various, from minor to crucial.

If to take into consideration the statement – “juridical policy must serve an individual and this is it’s main purpose”, “an individual is the main purpose of juridical policy” [8], then it must be admitted that from this point of view judicature has greater opportunities in juridical policy, because the court is much closer to an individual than the body of legislative authority and even executive authority.

The history shows, that refusal from the principle of separation of powers leads to intensification of functions of executive and administrative organs, discrimination of judiciary and its dependence, involving development of authoritarianism in management of state affairs, discrimination of individuals and exposure of rights and liberties of citizens. Analysis of ineffective Russian state formation is the evidence of it. Just because of it one of the main objectives of modern society democratization was the idea of legal state formation, where judicial authority must become one of the most significant elements of state authority structure equally with legislative and executive one.

Specificity of judicial authority in this case is that it carries out such particular form of state activity, which is executed as jury system. Peculiarities of the form are as follows [7, p. 5].

First, realization of this form has a clear tendency to implement judicial policy in a state. Possibility of judicial policy isolation means that it has some effect on a society in a certain life area, aiming to bring it to desirable structural and functional characteristics. Such effect ensures certain tendency of law enforcement to achieve criminal, economic, administrative, environmental protection of individual's rights in conditions of just society organization.

Secondly, its realization is aimed at a particular sphere of state activity, where human rights, regulating and law enforcement elements of authority content are distinguished and basis of actual and legal equality of all social groups and segments of population, each certain citizen in the face of justice are formed. Because of this justice assumes an independent character in overall state activity, which sets conditions for its assignment in every corresponding Constitution as a separate, integral element.

Thirdly, it's characteristic for any form of state activity that certain state functions are implemented via it. Accordingly justice is closely connected with implementation of such state functions, which clearly express its specific purpose [6].

The structure of judicial authority confirms that only integrity and complex analysis of activities of all its elements enables to reveal its character as a state authority integrated into a system of all authority branches and simultaneously capable to be assigned as a part of the whole into a separate branch.

Only judicature has particular powers of constitutional control (specifically, over legislative acts, presidential power), judicial control in management, etc. But the main purpose of judicial system is administration of justice. And justice is the court prerogative; it is "implemented only by the court".

The judicial system of Russia is determined by an exhausting list of courts, implementing justice, pointing out by this the only reason of judicature establishment, i.e. by means of constitutional assignment and excluding even a possibility of establishing any extraordinary courts. But at the same time judicial system is associated with personal judges and people attracted to justice implementation. In conformity with the Law of RF dated by the 26th of July 1992 "Of the judges status of RF" judges are the bearers of judicial authority, they are authorized with the powers by constitution to implement justice and execute their duties professionally. More than that the powers and competence

of judges of different levels and the court types differ, but the judge status in all Russia by act of Law is unified.

The difference between legislative execution and other spheres of social life is in a particular object of state impact, which includes an inherently uniform system of social relations, having an increased value for state and society. The latter is caused, on the one hand, by particular objectives which the court activity faces, connected with person protection and realization of his legal rights and interests, and on the other hand, by specificity of the activity, which is implemented in a particular judicial manner, being the most complex, ramified and minutely arranged of all the jurisdictional procedures. The unlimited "power" of judicature have a certain influence on delinquents, possibility of decisive effect on realization of personal, property, labour and other rights of citizens, ensuring forced performance of their duties themselves indicate the importance and particular character of social relations in justice [5, p. 7].

Thus, the place of the court in the system of subjects of juridical policy is defined by its specific features. The most significant of the peculiarities are as follows: the court works out its decisions in conflict situation; it is independent from other subjects; law policy in justice is set up by highly skilled lawyers; independent individuals and social groups influence law policy by means of the court; the court has to join law policy not on its own initiative; the court decisions are made in a special procedural order; while setting up law policy the court relies on limited factual material; law policy of the court has individualize character; it is legally obligatory. Thereby the court occupies among other subjects of juridical policy an exceptional and powerful position.

References

1. Архипов, С.И. Субъект права (теоретическое исследование) / С.И. Архипов. – СПб. : Юридический центр Пресс, 2004. – 469 с.
2. Бойков, А.Д. Третья власть в России (Очерки о правосудии, законности и судебной реформе 1990–1996 гг.) / А.Д. Бойков. – М. : Изд-во НИИ проблем укрепления законности и правопорядка, 1997. – 264 с.
3. Ефимичев, С.П. Обеспечение прав личности, интересов общества и государства – приоритетная составляющая судебно-правовой реформы / С.П. Ефимичев // Журн. рос. права. – 2001. – № 11. – С. 74–75.
4. Коротков, М.Г. Суд как субъект правовой политики (к постановке проблемы) / М.Г. Коротков // Рос. судья. – 2006. – № 8. – С. 11–14.
5. Лебедев, В. От концепции судебной реформы к новым идеям развития судебной системы / В. Лебедев // Рос. юстиция. – 2000. – № 3. – С. 2–9.
6. Рафиков, Р.Р. Особенности судебной власти в РФ как особой формы государственной деятельности / Р.Р. Рафиков // Право и политика. – 2004. – № 3. – С. 45–57.
7. Ржевский, В. Судебная власть в конституционной системе разделения властей / В. Ржевский, Н. Чепурнова // Рос. юстиция. – 1997. – № 7. – С. 3–10.

8. Рыбаков, О.Ю. Личность и правовая политика / О.Ю. Рыбаков // Российская правовая политика : курс лекций / под ред. Н.И. Матузова и А.В. Малько. – М., 2003. – С. 71–85.

**Реализация судебной власти
в правоприменительной политике**

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Ключевые слова и фразы: законодательство; исполнение законодательства; независимость; правоприменительная политика; суд; судебная власть; судебная реформа.

Аннотация: Рассматривается роль и статус суда в системе судебной власти. Обсуждаются судебная реформа и ее последствия.

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