



RULING OF THE PLENARY SESSION OF THE SUPREME COURT OF THE RUSSIAN FEDERATION

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On Court Application of Laws Regulating the Issues of Disciplinary Liability of Judges

In order to ensure the correct and uniform application of legislation in consideration of administrative cases on challenge of decisions of qualification boards of judges regarding the disciplinary liability of judges for disciplinary offences, the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation, Articles 2 and 5 of Federal Constitutional Law of 5 February, 2014 No. 3 “On the Supreme Court of the Russian Federation”, hereby rules to provide the following explanations to the courts:

1. Being the holders of judicial power, judges are independent, irremovable and immune, subordinate only to the Constitution of the Russian Federation and federal law (Part 1 of Article 120, Part 1 of Article 121 and Part 1 of Article 122 of the Constitution of the Russian Federation).

The constitutional law status of judges stipulates specific requirements to them, contained in the Law of the Russian Federation “On the Status of Judges in the Russian Federation” No. 3132-1 of 26 June, 1992 (hereinafter referred to as “the Law of the Russian Federation “On the Status of Judges in the Russian Federation”) and in the Code of Judicial Ethics, approved on 19 December, 2012 by the 8th All-Russian Congress of Judges (hereinafter referred to as “the Code of Judicial Ethics”). Failure to comply with these requirements, resulting from guilty actions (failure to act) committed by a judge in the performance of professional duties or in extraoccupational activities, entailing the diminishing of authority of

the judiciary and harm to the reputation of the judge, is considered to be a disciplinary offence, for committing which a disciplinary punishment may be imposed upon that judge (except for judges of the Constitutional Court of the Russian Federation) (Item 1 of Article 12.1 of the Law of the Russian Federation “On the Status of Judges in the Russian Federation”).

2. According to Item 2 of Article 16 of the Law of the Russian Federation “On the Status of Judges in the Russian Federation”, a judge cannot be held in any way liable for the expression of opinion in the administration of justice or for a decision adopted by the court, unless the judge is found guilty of abuse of power or knowing adoption of an unlawful judicial act by virtue of an effective court sentence.

A judge cannot be held disciplinarily liable for the mere fact of adopting an illegal or unsubstantiated judicial as a result of a judicial error caused by inappropriate assessment of evidence in the case or incorrect application of norms of substantive or procedural law.

3. The manner and grounds for holding a judge disciplinarily liable are stipulated in the Law of the Russian Federation “On the Status of Judges in the Russian Federation” and in Federal Law No. 30 “On Bodies of the Judiciary in the Russian Federation” of March 14, 2002 (hereinafter referred to as “the Federal Law “On Bodies of the Judiciary in the Russian Federation”) and apply, in particular, to judges, whose term of office is expired, since they reached the age limit for judicial office, but who keep exercising their powers until the end of consideration of a case on its merits, where that case consideration was commenced with their participation or until a new judge is appointed to the given court.

4. The decision of a qualification board of judges to hold a judge to disciplinarily liable may be appealed in judicial manner of before the High Qualification Board of Judges of the Russian Federation (according to Item 1 of Article 26 of the Federal Law “On Bodies of the Judiciary in the Russian Federation”).

In accordance with Item 3 of Article 26 of the Federal Law “On Bodies of the Judiciary in the Russian Federation”, Item 3 of Article 201 of the CAJP RF, a decision of a qualification board of judges of a constituent entity of the Russian Federation, imposing a disciplinary punishment in the form of a notice or a warning upon a judge for committing a disciplinary offence may be appealed against before the supreme court of a republic, a court of a territory, region, federal city, autonomous region, autonomous circuit.

Consideration of cases on appeals against decisions of the High Qualification Board of Judges of the Russian Federation on imposition of disciplinary punishments on judges and against decisions of qualification boards of judges of constituent entities of the Russian Federation regarding the early termination of

judicial powers for committing a disciplinary offence, as well as regarding addresses of the Chief Justice of the Supreme Court of the Russian Federation regarding early termination of judicial powers for disciplinary offences, where the High Qualification Board of Judges of the Russian Federation or qualification boards of judges of constituent entities of the Russian Federation refuse to satisfy the presentations of presidents of federal courts regarding the termination of judicial powers for disciplinary offences, are referred to the powers of the Supreme Court of the Russian Federation (the Disciplinary Chamber of the Supreme Court of the Russian Federation) by Items 4, 5, 51 of Article 26 of the Federal Law “On Bodies of the Judiciary in the Russian Federation”, as well as by Item 3 of Article 21 and Parts 1, 2 of Article 230 of the CAJP RF.

A decision of a qualification board of judges of a constituent entity of the Russian Federation that is left unchanged by the High Qualification Board of Judges of the Russian Federation may be appealed in court in the following manner: if a disciplinary punishment is imposed upon the judge in the form of a notice or warning, this can be appealed against before the supreme court of a republic, the court of a territory, region, federal city, autonomous region, autonomous circuit; if punishment is imposed in the form of early termination of judicial powers, this can be appealed before the Disciplinary Chamber of the Supreme Court of the Russian Federation.

The decision of the High Qualification Board of Judges of the Russian Federation to leave the decision of the qualification board of judges of a constituent entity of the Russian Federation to impose a disciplinary punishment upon a judge cannot be appealed on its merits, because in this case the subject matter of appeal is the decision of the qualification board of judges of a constituent entity of the Russian Federation, imposing disciplinary punishment upon the judge.

Submission of an appeal to the High Qualification Board of Judges of the Russian Federation against a decision of a qualification board of judges of a constituent entity of the Russian Federation on imposition of a disciplinary punishment upon a judge is a good reason for missing the procedural period for applying to court with a similar appeal; the court should take this into account when resolving the issue of restoring the time period.

The High Qualification Board of Judges of the Russian Federation has no right to examine an appeal of a judge against the decision of a qualification board of judges of a constituent of the Russian Federation, imposing a disciplinary punishment on that judge, if the judge appealed against this decision in court.

An appeal or an administrative statement of claim (hereinafter referred to as “appeal”) against the decision of a qualification board of judges, imposing a disciplinary punishment on the judge, may be filed by the person in respect of whom it was made within ten days from receipt of a copy of the corresponding

decision (Items 1, 2 of Article 26 of the Federal Law “On Bodies of the Judiciary in the Russian Federation”).

5. A disciplinary punishment in the form of a notice, warning or termination of judicial powers can be imposed upon a judge for committing a disciplinary offence, according to Item 1 of Article 12.1 of the Law of the Russian Federation “On the Status of Judges in the Russian Federation”.

When determining the proportionality of the disciplinary punishment imposed upon the judge to the severity of the committed offence, the court shall take into account the nature of this offence, the circumstances and consequences of its commission, the form of guilt of the judge who committed the offence, the degree of infringement of rights, freedoms and lawful interests of citizens, rights and lawful interests of organizations by the guilty actions (failure to act) of the judge, as well as the facts that characterize the personality of the judge and her/his professional activity (moral and ethic qualities of the judge, circumstances pertaining to her/his family life, her/his work experience in judicial office, prior taking of measures aimed at preventing the judge from committing offences, etc.).

When establishing the reasons for the judge’s breach of procedural periods for consideration of cases or for drawing of judicial acts, the court should ascertain whether these breaches were caused by circumstances impeding the work of the judge (excessive workload, improper organization of the court’s work and other notable circumstances that prevented the judge from performing her/his official duties within the time periods stipulated by law).

When assessing the effect of the judge’s violation of requirements upon the authority of the judiciary and on the reputation of that judge, the court shall also take into account that in accordance with the Bangalore Principles of Judicial Conduct (as approved by Resolution of the United Nations Economic and Social Council No. 2006/23 of July 27, 2006) impartiality, integrity, competence and diligence in performance of a judge’s duties are fundamental to the maintenance of judicial independence (Item 1.6); compliance with the high standards of conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary (Item 2.2).

6. A disciplinary punishment in the form of a notice can be imposed upon a judge in accordance with Item 3 of Article 12.1 of the Law of the Russian Federation “On the Status of Judges in the Russian Federation”, when the disciplinary offence committed by the judge is insignificant, if the qualification board of judges concludes that it is possible to confine to an oral reprimand of the judge’s actions (failure to act).

In particular, a disciplinary offence may be considered insignificant, if its consequences do not entail any significant infringement of rights, freedoms and

lawful interests of citizens, rights and lawful interests of organizations (for example, the infringed rights of a citizen or organization were restored, or the opportunity to restore them still exists, etc.).

7. Where a qualification board of judges concludes that it is impossible to impose a disciplinary punishment in the form of a notice upon the judge (for instance, if the qualification board of judges does not deem the committed offence insignificant) or when a disciplinary punishment was earlier imposed upon the judge for a disciplinary offence, a disciplinary punishment may be imposed in the form of a warning (Item 4 of Article 12.1 of the Law of the Russian Federation “On the Status of Judges in the Russian Federation”).

Herewith, it is necessary to take into account that according to Item 8 of Article 12.1 of the aforementioned law, the judge is not considered as having a previous disciplinary punishment, if he/she does not commit a new disciplinary offence within one year after a disciplinary punishment is imposed.

This term is calculated from the day of adoption of the decision by the qualification board of judges, on the basis of which the judge was brought to disciplinary responsibility.

8. A disciplinary punishment in the form of early termination of judicial powers may be imposed upon a judge in exceptional cases, if there are circumstances referred to in Item 5 of Article 12.1 of the Law of the Russian Federation “On the Status of Judges in the Russian Federation”.

A disciplinary punishment in the form of early termination of judicial powers can be imposed upon a judge not only for repeated violations committed as a result of undue performance of official duties in the administration of justice, when all other means of influence aimed at prevention of further violations on the judge’s part are exhausted, and measures that are taken against the judge do not give reason to believe that he/she will perform judicial duties in a professional and due manner in the future, as well as for a single violation committed in performance of official duties or in extraoccupational activities, which discredits the judiciary, harms that judge’s reputation and is not compatible with the status of a judge.

The qualification board of judges that adopts the decision on early termination of judicial powers for a disciplinary offence is obliged to confirm the existence of the above-mentioned exceptional circumstances.

If the judge was previously brought to disciplinary liability, and a disciplinary punishment in the form of notice or warning was imposed upon that judge, this does not by itself entail obligatory imposition of a disciplinary punishment in the form of early termination of judicial powers (in particular, if the term of office

stipulated in Item 8 of Article 12.1 of the Law of the Russian Federation “On the Status of Judges in the Russian Federation” has not expired).

9. In accordance with Item 6 of Article 12.1 of the Law of the Russian Federation “On the Status of Judges in the Russian Federation”, the decision to impose a disciplinary punishment upon a judge cannot be adopted later than six months from the day of discovery of the disciplinary offence, exclusive of the period of the judge’s holiday or temporary inability to work and the time of the service check, and later than two years from the day of commission of the disciplinary offence.

The day of discovery of the disciplinary offence, on which said six-month period starts to run, shall be the day when the fact of commission of the disciplinary offence became known to president of the corresponding or higher court or to a body of the judiciary, competent to present, accordingly, a presentation, address or conclusion regarding the disciplinary liability of the judge.

The day of commission of the disciplinary offence shall be the day when it was actually committed.

The period of the judge’s temporary inability to work shall be confirmed by a document issued by a medical institution; the fact of being on vacation shall be confirmed by an order of the head of the competent body; the period of a service check – by a certificate (formal note) of such a service check, including the dates of its beginning and ending.

If a qualification board of judges makes a decision to draw a judge to disciplinary liability after the expiration of the aforementioned time periods, this constitutes grounds for its reversal.

10. Early termination of powers of a court president, deputy court president by virtue of a decision of the corresponding qualification board of judges on the grounds stipulated in Item 11 of Article 6.1 of the Law of the Russian Federation “On the Status of Judges in the Russian Federation” is not a disciplinary offence and does not entail disciplinary punishment in the form of early termination of judicial powers.

11. Conclusions of the court regarding the facts established in an administrative case on challenge of decision of a qualification board of judges to bring the judge to disciplinary liability must be based on evidence, taken into account by the qualification board of judges in the adoption of such a decision, and upon other evidence acquired by the court, meeting the requirements of relevance and admissibility, examined during the court session and assessed in the court decision in accordance with Article 84 of the CAJP RF.

By implication of Part 3 of Article 59 of the CAJP RF, evidence acquired in violation of provisions of Item 1 of Article 16 of the Law of the Russian Federation “On the Status of Judges in the Russian Federation” regarding the immunity of judges is inadmissible, has no legal force and cannot form the basis of a court decision.

12. A qualification board of judges is not authorized to verify the lawfulness and substantiation of a judicial act.

The verification of its lawfulness and substantiation may be conducted only in the manner stipulated in law: through consideration of cases by courts of appeal, cassation and supervision.

A court act that is not deemed unlawful or unsubstantiated by a higher court shall not be considered as admissible evidence that the judge, who adopted this judicial act, committed a disciplinary offence in the form of violation of substantive or procedural law norms.

However, other violations not pertaining to the verification of lawfulness and substantiation of a judicial act (for example, failure to observe the procedural time periods for consideration of a case, evident negligence in drawing a judicial act, etc.) may be established after the examination and assessment of this judicial act and of other materials of the case and may serve as evidence that the judge committed a disciplinary offence.

13. Based on provisions of Articles 63, 178, 236, 308 of the CAJP RF, the court is not bound with the grounds and reasons of the appeal (address) and, when considering an administrative case based on an appeal against a decision of a qualification board of judges to draw a judge to disciplinary liability, may order to present evidence upon the motion of persons participating in the case or upon its own initiative, for the purpose of correct adjudication of the case.

However, the court is not entitled to change the grounds, based on which the judge was drawn to disciplinary liability, or to acknowledge the imposed disciplinary punishment as reasonable, taking into account other violations committed by the judge, if they were not considered by the qualification board of judges that adopted the challenged decision.

14. By implication of Part 2 of Article 62 of the CAJP RF, the qualification board of judges that made the decision to impose a disciplinary punishment upon a judge is obliged to prove the lawfulness of such a decision.

All insurmountable doubts regarding the proof of commission of a disciplinary offence by a judge are interpreted in favor of the judge.

15. For the purpose of conducting a complete and objective service check in regard of a complaint or address containing information about the commission of a disciplinary offence by a judge, this judge shall be informed about such a service check by the official or body that made the decision to carry out the check.

The judge is entitled to participate in the service check, to provide written explanations regarding the circumstances that led to it, to present evidence in support of her/his arguments, and, after the check is concluded, to inspect all its materials and to present objections and remarks.

Explanations, remarks, objections of the judge and evidence presented by her/him shall be attached to the materials of the check.

If a judge refuses or evades participation in a check, this does not preclude its conduction.

16. It should be noted that disciplinary proceedings may be initiated, and the issue of drawing a judge to disciplinary liability may be considered by a qualification board of judges on the basis of a presentation of the president of the corresponding or higher court in accordance with the president's powers (except for the president of a district court), or an address of the Council of Judges of the Russian Federation or of a council of judges of a constituent entity of the Russian Federation aimed at drawing the judge to disciplinary liability, or of a conclusion of a commission of the High Qualification Board of Judges of the Russian Federation or of a qualification board of judges of a constituent entity of the Russian Federation regarding the presence of elements of a disciplinary offence in the actions (failure to act) of the judge, drawn after a check is conducted in regard of a complaint (Item 1 of Article 22 of the Federal Law "On Bodies of the Judiciary in the Russian Federation").

17. In an administrative case on challenge of a decision of a qualification board of judges regarding the drawing of a judge to disciplinary liability, the court needs to verify whether the provisions of Article 11 of Federal Law "On Bodies of the Judiciary in the Russian Federation" were complied with during the formation of the qualification board of judges that adopted such a decision and to verify the powers of the court president, of the body of the judiciary applying to the qualification board with the corresponding presentation or address.

Herewith, it should be kept in mind that bodies of the judiciary (councils of judges) are authorized to apply to qualification boards of judges regarding the drawing of a judge to disciplinary liability only if they are created in compliance with the provisions of Article 8 of Federal Law "On Bodies of the Judiciary in the Russian Federation", and the decision to apply to the qualification board of judges is made in compliance with the standing rules (regulations) that regulate the activities of the council of judges.

A commission created by a qualification board of judges in compliance with the provisions of Item 2 of Article 22 of the aforementioned law is also authorized to make a conclusion (after conducting a check of a complaint and of a message containing information about the commission of a disciplinary offence by a judge) and to refer it for the consideration of a qualification board of judges.

18. If a qualification board of judges established facts confirming that the judge committed a disciplinary offence, and those facts are not mentioned in the presentation, address, conclusion of a commission of the qualification board of judges, and the board conducted an independent check in this regard in accordance with Item 2 of Article 22 of the Federal Law “On Bodies of the Judiciary in the Russian Federation”, the court needs to verify, whether the judge was given the opportunity to participate in this check, to inspect its results and to present objections, remarks and evidence.

In case of non-compliance with the aforementioned procedure, the grounds of drawing a judge to disciplinary liability, specified in that presentation, address or conclusion, cannot be supplemented.

19. The court should verify, whether a copy of the presentation (address) on the imposition of a disciplinary punishment or a copy of the conclusion of the commission of a qualification board of judges (drawn after a check is conducted in regard of a complaint) was sent to the judge in whose regard disciplinary proceedings are initiated, as well as whether the judge’s right to inspect the materials of the check in possession of the qualification board of judges was observed (whether there was enough time to do so), as well as the judge’s right to present objections and remarks and other rights stipulated in Article 21 of Federal Law “On Bodies of the Judiciary in the Russian Federation” and Article 28 of the Regulations on the work of qualification boards of judges, adopted by the High Qualification Board of Judges of the Russian Federation.

20. The court should also verify, whether the judge in whose regard disciplinary proceedings are initiated and other interested persons were notified of the time and place of the session of the qualification board of judges in a manner that would allow them enough time to inspect all the materials of the disciplinary proceedings and to timely appear in the session (Items 1, 2, 3 of Article 21 of the Federal Law “On Bodies of the Judiciary in the Russian Federation”).

In particular, a signed acknowledgement of receipt or a notification of receipt and other reliable information regarding the personal receipt of such a notification by the aforementioned persons or information regarding their refusal to receive such notification may serve as evidence of due notification.

Notification of the judge and of interested persons by SMS messages or by sending the summons via e-mail to them is only allowed in case of their consent to

notification by such means. The consent to receive notifications by SMS or by e-mail shall be confirmed by a signed acknowledgement, containing information about the judge and the interested person and about their consent to notification by such means, along with their cell phone numbers or e-mail addresses, to which notifications should be sent.

The qualification board of judges may consider the issue in the absence of a person, duly notified of the time and the place of the session of the board, if such a person fails to provide information about the reasons for non-appearance, or the qualification board of judges does not deem those reasons good, or if a person participating in the case asked to consider the issue in its absence (Item 4 of Article 21 the Federal Law “On Bodies of the Judiciary in the Russian Federation”).

21. If the case is considered by the qualification board of judges in the absence of the judge, it is necessary to ascertain, whether that judge was notified of the session of the board in the manner stipulated by law and to ascertain the reasons for the judge’s non-appearance.

Illness preventing the judge from appearing in the session, confirmed by medical documents, natural disasters, etc. may be considered as good reasons for the judge’s non-appearance in the session of the qualification board of judges.

When deciding whether the reasons for the judge’s non-appearance in the session of the qualification board of judges are good, the whole volume of available information regarding the reasons for the judge’s non-appearance should be taken into account.

22. If the qualification board of judges fails to observe the manner of adoption of decision to draw a judge to disciplinary liability, stipulated in Items 1, 2.1 of Article 23 of Federal Law “On Bodies of the Judiciary in the Russian Federation”, this constitutes grounds for reversal of that decision.

23. The Ruling of the Plenary Session of the Supreme Court of the Russian Federation “On Court Practice of Consideration of Cases on Challenge of Decisions of Qualification Boards of Judges to Draw Judges of Courts of General Jurisdiction to Disciplinary Liability” No. 27 of May 31, 2007 is abrogated.

Chief Justice of the Supreme Court of
the Russian Federation

V.M. Lebedev

Secretary of the Plenary Session, Judge of
the Supreme Court of the Russian Federation

V.V. Momotov

