

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment

of 28 February 2008 No. 3-II

in the case concerning the review of the constitutionality of certain provisions of Article 6¹ and Article 12¹ of the Law of the Russian Federation “On the Status of Judges in the Russian Federation” and Articles 21, 22 and 26 of the Federal Law “On Bodies of the Judicial Community in the Russian Federation” in connection with complaints of G. N. Belyusova, G. I. Zimina, Kh. B. Sarkitov, S. V. Semak and A. A. Filatova.

Moscow, 28 February 2008

The Constitutional Court of the Russian Federation composed of Presiding Judge N. V. Seleznev and Judges Yu. M. Danilov, L. M. Zharkova, G. A. Zhilin, V. D. Zorkin, S. M. Kazantsev, M. I. Kleandrov, N. V. Melnikov, O. S. Khokhryakova,

in the attendance of G. I. Zimina, Kh. B. Sarkitov, A. A. Filatova, attorneys Ye. Ye. Morozova and I. Yu. Pavlov, representatives of G. N. Belyusova, attorney A. V. Kiryanov, a representative of S. V. Semak, Representative of the State Duma D. D. Tsabriya, PhD in Law, Representative of the Council of the Federation Ye. V. Vinogradova, PhD in Law, Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M. V. Krotov,

pursuant to Section 4, Article 125 of the Constitution of Russian Federation, Subsection 3, Section 1, Sections 3 and 4, Article 3, Subsection 3, Section 2, Article 22, Articles 36, 74, 86, 96, 97 and 99 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”,

in an open hearing, examined the constitutionality of certain provisions of Articles 6¹ Article 12¹ of the Law of the Russian Federation “On the Status of Judges in the Russian Federation” and Articles 21, 22 and 26 of the Federal Law “On Bodies of the Judicial Community in the Russian Federation”.

The reason for the consideration of the case is complaints of G. N. Belyusova, G. I. Zimina, Kh. B. Sarkitov, S. V. Semak and A. A. Filatova. The ground for the consideration of the case is the discovered uncertainty of whether the provisions challenged by the applicants are in conformity with the Constitution of the Russian Federation.

Insofar as all the complaints concern essentially the same subject matter and by virtue of Article 48 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” the Constitutional Court of the Russian Federation is permitted to consider these applications together.

Having heard the report of Judge-Rapporteur G. A. Zhilin, statements by the parties and their representatives, and the representatives invited to participate in the hearing: a representative of the Supreme Arbitration Court of the Russian Federation, Deputy President of the Supreme Arbitration Court of the Russian Federation V. L. Slesarev; I. A. Parshin, for the Council of Judges of the Russian Federation; A. S. Velichko, for the Supreme Judicial Qualifications Board of the Russian Federation; having considered written submissions and other materials, the Constitutional Court of the Russian Federation

e s t a b l i s h e d :

1. G. N. Belyusova, G. I. Zimina, Kh. B. Sarkitov, S. V. Semak and A. A. Filatova, whose powers as judges of courts of general jurisdiction were prematurely terminated by decisions of the judicial qualifications board in the respective subjects of the Russian Federation, challenge the constitutionality of Subsections 11 and 13, Article 6¹, and Subsection 1, Article 12¹, of the Law of the Russian Federation “On the Status of Judges in the Russian Federation”, No. 3132-1 of 26 June 1992 (as amended by Federal Law No. 169-Φ3 of 15 December 2001), Subsection 6, Article 21, Subsections 1 and 2, Article 22, and Subsection 2 (2), Article 26 of the Federal Law “On Bodies of the Judicial Community in the Russian Federation”, No. 30-Φ3 of 14 March 2002, and Article 4 of the Regulation on Judicial Qualifications Boards (adopted by the Supreme Judicial Qualifications Board of the Russian Federation on 15 July 2002).

1.1. The disciplinary proceedings against Judges G. N. Belyusova and G. I. Zimina were initiated by the Acting President of the Saint Petersburg City Court, against the president of a district court Kh. B. Sarkitov by the Council of Judges of the Kharachayevo-Cherkessia Republic under a request and upon submissions by the President of the Supreme Court of the Karachayevo-Cherkessia Republic, against Justice of the Peace S. V. Semak by the President of the Taganrog City Court of the Rostov Region, and against Judge A. A. Filatova by the Council of Judges of the Novosibirsk Region under a request and upon submissions by the President of the Novosibirsk Regional Court.

In lodging requests and further participating in the consideration of the cases concerning disciplinary responsibility of the applicants, the presidents of the courts acted on the basis of powers provided by Subsection 6, Article 21, and Subsections 1 and 2, Article 22 of the Federal

Law “On Bodies of the Judicial Community in the Russian Federation” and Article 4 of the Regulation on Judicial Qualifications Boards. In adopting the decisions, the judicial qualifications boards were guided by Subsection 1, Article 12¹ of the Law of the Russian Federation “On the Status of Judges in the Russian Federation”, which determines the grounds for disciplinary responsibility of judges in the form of premature termination of the judges’ powers, and, in addition, in respect of Kh. B. Sarkitov by Subsection 11, Article 6¹ of the abovementioned Law, which determines the grounds for premature termination of the powers of the president of a court.

The complaints of G. N. Belyusova and G. I. Zimina against the decisions of the judicial qualifications boards were considered by the Saint-Petersburg City Court as a first instance court, the complaint of Kh. B. Sarkitov by the Supreme Court of the Karachayevo-Cherkessia Republic, the complaint of S. V. Semak by the Rostov Regional Court, the complaint of A. A. Filatova by the Novosibirsk Regional Court, i.e. according to the jurisdictional rules as determined by Subsection 2 (2), Article 26 of the Federal Law “On Bodies of the Judicial Community in the Russian Federation”. The Judicial Section on Civil Cases of the Supreme Court of the Russian Federation having considered the cassation appeals of the applicants upheld the decisions.

After the Constitutional Court of the Russian Federation adopted Decision No. 45-O of 2 February 2006 upon the complaints of S. V. Semak and V. P. Sokotov, the judicial decisions in respect of S. V. Semak were annulled by the Supreme Court of the Russian Federation in supervisory review proceedings due to violation of jurisdictional rules for cases concerning termination of the powers of a judge determined by the Civil Procedure Code of the Russian Federation. Pursuant to the Code, such cases shall be considered by the Supreme Court of the Russian Federation as a first instance court.

At the present time the proceedings in respect of S. V. Semak are stayed by the Supreme Court of the Russian Federation due to her application to the Constitutional Court of the Russian Federation. The judicial decisions became final in respect of the other applicants, and their supervisory review complaints were dismissed by the Supreme Court of the Russian Federation.

1.2. The judicial qualifications boards and judicial instances recognized as disciplinary offences violations of procedural law by Judges G. N. Belyusova and S. V. Semak and violation of procedural and substantive law by Judge G. I. Zimina in consideration by them of civil cases.

In respect of president of a district court Kh. B. Sarkitov, his criticism of the final decisions and activity of the President of the Supreme Court of the Karachayevo-Cherkessia Republic and expression of political views in a letter to the President of the Supreme Court of the Karachayevo-Cherkessia Republic was recognized groundless (as was stated in the decision of

the judicial qualifications boards). Further this criticism was found to be contradicting the requirements of Subsection 2, Article 3 of the Law of the Russian Federation “On the Status of Judges in the Russian Federation” and Section 5, Article 2 of the Code of Honour of a Judge of the Russian Federation, derogating the authority of judicial power and harming the prestige of the judicial profession. The other grounds for disciplinary responsibility of Kh. B. Sarkitov in the form of termination of his powers as a judge included inappropriate performance of his obligations as president of a court concerning the organization of the staff’s work, control of the docket and respect of time limits for consideration of cases by other judges, and statistical reporting obligations.

Actions of Judge A. A. Filatova, who criticized actions of the President and judges of the Novosibirsk Regional Court and final decisions in her repeated speeches at sessions of bodies of the judicial community of the Novosibirsk Region and in her written statements, were recognized contradicting the requirements of the Law of the Russian Federation “On the Status of Judges in the Russian Federation” and the Code of Honour of a Judge of the Russian Federation.

1.3. G. N. Belyusova, Kh. B. Sarkitov and S. V. Semak challenge the constitutionality of Subsection 1, Article 12¹ of the Law of the Russian Federation “On the Status of Judges in the Russian Federation”, which allows, in their opinion, judicial qualifications boards to arbitrarily hold judges responsible by prematurely terminating their powers, *inter alia*, on grounds which are not provided by the law, i.e. for opinions concerning the shortcomings of judicial activity expressed within the judicial community, for opinions expressed in the administration of justice and judicial decisions delivered, while the conclusions as to their illegality are made by judicial qualifications boards which have no justice authorities’ functions. The applicants believe that the challenged norm, by virtue of its uncertainty in determining the elements of a disciplinary offence and choice of the form of disciplinary penalty, does not conform to Articles 19, 118, 120, 121 and 122 of the Constitution of the Russian Federation.

On the same grounds, Kh. B. Sarkitov challenges, in his complaint, the constitutionality of the provisions of Article 6¹ taken in conjunction with Subsection 1, Article 12¹ of the Law of the Russian Federation “On the Status of Judges in the Russian Federation”. These provisions determine a procedure for terminating the powers of presidents of courts, and specifically Subsection 11, which permitted the judicial qualifications board to discontinue his powers prematurely, and Subsection 13, which restricted his opportunity to appeal against the termination of his powers to Supreme Judicial Qualifications Board of the Russian Federation. However, the provisions of Subsection 13 which determine a procedure for appeal against decisions concerning premature termination of the powers of presidents of courts, explicitly

provide for the respective right of presidents of courts, and, consequently they may not as such be considered violating the articles of the Constitution of the Russian Federation specified by Kh. B. Sarkitov.

Further, Kh. B. Sarkitov challenges the constitutionality of provisions of the Federal Law “On Bodies of the Judicial Community” applied in his case, specifically Subsection 6, Article 21, permitting participation of the president of the respective superior court in judicial qualifications boards’ sessions when they consider premature termination of powers of a judge, Subsections 1 and 2, Article 22, providing the presidents of these courts with the right to examine the complaints and reports concerning the commission of a disciplinary offence by a judge, and the right to lodge requests for judicial qualifications boards to consider termination of the powers of a judge on the basis of these complaints and reports. In his opinion, these provisions contradict Articles 18, 19, 46, 47 and 120 of the Constitution of the Russian Federation.

G. N. Belyusova challenges the constitutionality of the same provisions of Article 22 and the provisions of Article 4 of the Regulation on Judicial Qualification Boards, which provide detailed regulation of the specified powers of presidents of courts. In her opinion, they do not conform to Section 1, Article 120 of the Constitution of the Russian Federation as they make judges dependent and subordinated to the indicated officials. However, according to the Regulation on Judicial Qualifications Boards, which was in force when the case of G. N. Belyusova was considered, it is a corporate legal act and pursuant to Article 125 of the Constitution of the Russian Federation it may not be a separate subject of consideration by the Constitutional Court of the Russian Federation. While nothing prevents the Court from taking it into account in the course of constitutional proceedings for review of the respective norms of federal laws and revealing the meaning which they have acquired in the law-enforcement practice. The same applies to the Regulation on the Proceedings of Judicial Qualifications Boards adopted by the Supreme Judicial Qualifications Board of the Russian Federation on 22 March 2007.

1.4. G. N. Belyusova, G. I. Zimina, Kh. B. Sarkitov and A. A. Filatova challenge in their complaints the constitutionality of the provision of Subsection 2 (2), Article 26 of the Federal Law “On Bodies of the Judicial Community in the Russian Federation”, which determines the general rules for appeals against decisions of judicial qualifications boards of subjects of the Russian Federation on the termination of the powers of a judge to the respective supreme courts of republics, courts of territories, regions, cities of federal significance, autonomous regions and courts of the autonomous area. However, these provisions already have been a subject of consideration of the Constitutional Court of the Russian Federation.

In its Decision No. 45-O of 2 February 2006, the Constitutional Court of the Russian Federation relying on the legal opinions formulated in Judgments No. 9-II of 16 March 1998 and No. 13-II of 18 July 2003, reached the conclusion that this provision shall not be applicable as it does not conform to Section 1, Article 47 of the Constitution of the Russian Federation, and that in determining jurisdiction over this category of cases it is necessary to rely on Subsection 3, Section 1, Article 27 of the Civil Procedure Code of the Russian Federation placing them within the jurisdiction of the Supreme Court of the Russian Federation.

The mentioned decisions of the Constitutional Court of the Russian Federation are in force, and in the present case the proceedings shall be discontinued to the extent concerning the review of constitutionality of Subsection 2 (2), Article 26 of the Federal Law “On Bodies of the Judicial Community in the Russian Federation”.

1.5. Thus, the subject matter for consideration of the Constitutional Court of the Russian Federation in the present case is the following legal provisions:

Subsection 1, Article 12¹ of the Law of the Russian Federation “On the Status of Judges in the Russian Federation”, which permits imposing a disciplinary penalty in the form of premature termination of the powers of a judge on a judge who committed a disciplinary offence (a violation of the provisions of this Law and provisions of the Code of Judicial Ethics adopted by the Russian National Congress of Judges);

Subsection 11, Article 6¹ of the Law of the Russian Federation “On the Status of Judges in the Russian Federation”, regulating premature termination of the powers of presidents of courts due to failure to perform or undue performance of their official obligations;

Subsection 6, Article 21, and Subsections 1 and 2, Article 22 of the Federal Law “On Bodies of the Judicial Community in the Russian Federation”, providing the presidents of these courts with the right to examine complaints and reports concerning the commission of a disciplinary offence by a judge and to request judicial qualifications boards to consider termination of the powers of a judge on the basis of these complaints and reports, and to participate in the session of judicial qualifications boards considering premature termination of the powers of a judge and to express his opinion on matters under consideration within the procedure of holding a judge disciplinarily responsible.

2. Pursuant to Article 118, Section 1, Article 120, Section 1, Article 121 and Section 1, Article 122 of the Constitution of the Russian Federation as specified by the provisions of Articles 1, 4, 5, 15 and 16 of the Federal Constitutional Law “On the Judicial System of the Russian Federation”, justice in the Russian Federation is administered only by courts; courts exercise judicial power independently and irrespective of anyone’s will; judges as

representatives of judicial power are independent and bound only by the Constitution of the Russian Federation and federal law, they are irremovable and immune.

The judge's irremovability and immunity, which are elements of his constitutional status and simultaneously guarantees of the autonomy and independency of judicial power, are not personal privileges of an individual, but means of protecting public interests and first of all, administration of justice aimed at protecting the rights and freedoms of man and citizen (Article 18 of the Constitution). The judge's higher responsibility in performing professional obligations, observance of the laws and rules of judicial ethics is not only permitted, but rather implied (Judgments of the Constitutional Court of the Russian Federation No. 6-II of 7 March 1996 and No. 5-II of 19 February 2002).

Consequently, considering the constitutional status of judges predetermined by the pursuance of public aims, the legislator has the power to impose on them as representatives of judicial power, special qualifications and other requirements, including special requirements concerning the procedure of terminating the powers of a judge. The respective competence of the legislator stems from Article 119 of the Constitution of the Russian Federation, which provides for a possibility to impose, under a federal law, additional requirements for judges of the Russian Federation besides the general provisions concerning the minimal age, education, legal work experience, and from Section 2, Article 121 of the Constitution of the Russian Federation pursuant to which the powers of a judge shall be terminated only on grounds and according to a procedure prescribed by federal law.

This understanding of the constitutional status of a judge in the context of special requirements which are imposed on them corresponds to the international recommendations and standards in the sphere of justice. Pursuant to the Bangalore Principles of Judicial Conduct (appended to Resolution of the UN Economic and Social Council 2006/23 of 27 July 2006) impartiality, integrity, compliance with the established standards of competence, conduct and diligence of judges are vital in order to reinforce public confidence in the judiciary and are fundamental to the maintenance of judicial independence (Subsection 1.6). A judge shall ensure that his or her 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 (Subsection 2.2); ensure that his or her conduct is above reproach in the view of a reasonable observer (Subsection 3.1); he shall avoid impropriety and the appearance of impropriety in all of the judge's activities (Subsection 4.1); he is subject of constant public scrutiny, and a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly (Subsection 4.2); and finally a judge shall not engage in conduct incompatible with the diligent discharge of judicial duties (Subsection 6.7).

At the same time premature termination of the powers of a judge for improper conduct is not excluded. As follows from the Basic Principles of Independence of the Judiciary (approved by resolutions of the UN General Assembly 40/32 of 29 November 1985 and 40/16 of 13 December 1985) judges shall be subject to suspension or removal only for reasons of incapacity or behavior that renders them unfit to discharge their duties (Subsection 18). And the Recommendation (94) 12 on the Independence of Judges (adopted by the Committee of Ministers of Member States of the Council of Europe) provides, in particular, that if a judge fails to carry out his duties in an efficient and proper manner or in the event of disciplinary offences, all necessary measures which do not prejudice judicial independence should be taken; while a judge may not be permanently removed from office without valid reasons until mandatory retirement; such reasons, which should be defined in precise terms by the law, and may relate to incapacity to perform judicial functions, commission of criminal offences or serious infringements of disciplinary rules (Subsections 1 and 2 of Principle VI).

3. The Law of the Russian Federation “On the Status of a Judge in the Russian Federation” provides in Subsection 1, Section 1, Article 12¹ grounds for disciplinary responsibility of judges in the form of premature termination of the powers of a judge in a general manner, referring determination of elements of disciplinary offence to its other provisions and the Code of Judicial Ethics adopted by the Russian National Congress of Judges.

Such legislative regulation may not in itself be considered non-conforming to the Constitution of the Russian Federation provided that other normative provisions which are applicable in conjunction with Subsection 1, Article 12¹ of the Law of the Russian Federation “On the Status of a Judge in the Russian Federation” and ensuring its implementation are certain, preclude arbitrarily holding a judge disciplinarily responsible and do not violate the principles of autonomy and independence of courts, irremovability and immunity of a judge.

3.1. The failure to comply with the basic requirements formulated in Article 3 of the Law of the Russian Federation “On the Status of a Judge in the Russian Federation” may result in premature termination of the powers of a judge. Pursuant to these requirements a judge shall strictly observe the Constitution of the Russian Federation and other laws (Subsection 1); in discharge of his powers, a judge shall avoid everything what may derogate the authority of judicial power, dignity of a judge or raise doubts in his objectivity, fairness and impartiality (Subsection 2).

Within the meaning of the provisions of the Constitution of the Russian Federation and federal laws, which determine the legal status of a judge, not every derogation from legal and ethical requirements may be a ground for disciplinary responsibility in the form of premature deprivation of the powers of a judge, but those which by their nature are obviously incompatible

with the high rank of a judge, evidently contradict the social purpose of judicial power which a judge bears. That is why, in particular, disciplinary responsibility in the form of premature termination of the powers of a judge may not be applied for judicial mistakes, except if unfairness of a judicial act was a result of such conduct of a judge which by its nature is incompatible with his rank. Any other approach would not conform to the principles of independence, irremovability and immunity of judges, which are applicable in disciplinary prosecution of certain representatives of judicial power.

Due to Subsection 2, Article 16 of the Law of the Russian Federation “On the Status of a Judge in the Russian Federation”, which reveals one of the aspects of the principle of immunity, a judge (even after the expiration of his powers) shall not be held responsible for opinions expressed in administering justice and delivering decisions, except if a final judgment of a court established the judge’s guilt in criminal abuse of powers or delivering an unfair judgment of conviction, decision or another judicial act. As was stated by the Constitutional Court of the Russian Federation in its Judgment No. 1-II of 25 January 2001 in its analysis of the constitutional meaning of state responsibility for damages caused by the administration of justice, a judge in adversarial proceedings gives his own interpretation of legal norm, takes a decision within his legal discretion (sometimes very wide) and frequently has to assess circumstances without having sufficient information (sometimes concealed from him). Considering the significant dependence of the result of administration of justice on judicial discretion, it is an overwhelming task to delineate unlawful decisions rendered as a result of a mistake not caused by the judge’s guilt and those caused by his negligence.

3.2. Disciplinary responsibility in the form of premature termination of the powers of a judge for violating legal requirements in the consideration of civil cases is imposed by judicial qualifications boards on the basis of conclusions concerning the unlawfulness of the decisions and procedural violations committed by judges as they are presented in the materials submitted with the request of the president of a court. In the applicants’ cases the decisions in question were not reviewed by a court of superior instance. Thereby, contrary to the requirements of Article 118 of the Constitution of the Russian Federation and Article 1 of the Federal Constitutional Law “On the Judicial System of the Russian Federation”, judicial qualifications boards take upon themselves the function of administration of justice while they may not be recognized a competent body to assess the lawfulness of a judicial act, which includes both proper application of substantive law and observance of procedural rules.

Review of the lawfulness and reasonableness of judicial acts shall be conducted only in compliance with special procedures prescribed by law in consideration of a case by courts of appeal, cassation and supervisory instance. Other procedure for revision of judicial acts is

impermissible in principle, since it would defy the procedure for reconsideration of judicial acts and review of fairness (lawfulness and reasonableness) of judicial acts by superior court instances, predetermined by the nature of justice and prescribed by procedural law. This legal opinion stated in Judgment of the Constitutional Court of the Russian Federation No. 1-II of 25 January 2001 conforms to the international standards in the sphere of justice, which exclude a possibility of reviewing judicial acts in extrajudicial procedures (Article 4 of the Basic Principles of Independence of Judicial Bodies).

3.3. Establishing rules of judicial conduct in relations with representatives of mass media, Subsection 1, Article 6 of the Code of Judicial Ethics (like similar provisions of Subsection 5, Article 2 of the Code of Honour of a Judge, which was previously in force) prohibits a judge to express doubts about final judicial decisions and criticize professional actions of his colleagues in public, outside the scope of professional duties.

However, the mentioned codes, which are corporate acts of the judicial community, in determining the rules of judicial conduct shall not be based on broad interpretation of disciplinary offences as defined by the Federal Law “On the Status of a Judge in the Russian Federation”. Consequently, a failure to comply with the mentioned legal norms may not in itself serve as a ground for premature termination of the powers of a judge, except if it takes place within a course of actions considered by the law as non-compatible by their nature with the high rank of a judge. Disciplinary responsibility for criticism of judicial acts and conduct of colleagues, voiced within the judicial community or for public criticism, when imposition of sanctions is reasoned by the fact that the mentioned actions have become or may become public, is impermissible. It promotes conservation of deficiencies of judicial proceedings, contradicts the aims of the judicial community prescribed by law, leads to violation of constitutional and international principles of public (open) proceedings and to unlawful restrictions of civil rights and freedoms.

The freedoms of thought and speech, the right to address state authorities (guaranteed by Articles 29 and 33 of the Constitution of the Russian Federation), pursuant to Section 3, Article 55, shall not be restricted by corporate normative acts. The respective restrictions are permitted only under federal law to the extent necessary to protect the fundamentals of the constitutional order, morals, health, the rights and lawful interests of others, and to ensure defence of the country and the security of the state.

These constitutional provisions are applicable to all citizens of the Russian Federation and, consequently, have full effect in respect of persons who hold judicial office. However, the latter persons are not relieved of the obligation to abstain from such conduct which may derogate

the authority of the judicial power, the dignity of a judge or might raise doubts in his objectivity, fairness and impartiality.

As provided by the Basic Principles on the Independence of the Judiciary, members of the judiciary like other citizens are entitled, in compliance with the Universal Declaration of Human Rights, to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary (Subsection 8). The Bangalore Principles on the Independence of the Judiciary also provide that in the exercise of the freedom of thought, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary (Subsection 4.6).

3.4. As was stated by the Constitutional Court of the Russian Federation in Judgments No. 5-II of 19 February 2002 and No. 2-II of 31 January 2008, the status of a judge, ensuring the performance of the task entrusted to courts to protect the rights and freedoms of man and citizen and being a guarantee of the general constitutional status of a person, is under constitutional protection, the level of which shall not decrease as compared to one reached previously. The mentioned requirement is explicitly stipulated in Section 4, Article 5 of the Federal Constitutional Law “On the Judicial System of the Russian Federation”, pursuant to which no law or other normative act in the Russian Federation may be passed which revokes or derogates the autonomy of courts and independence of judges. In particular, it implies that neither legislation, nor the law-enforcement practice may decrease the guarantees precluding unreasonable termination of the powers of a judge and may not expand the possibility to apply the mentioned sanction for disciplinary offences which do not meet the requirement of incompatibility with the status of a judge and the authority of judicial office.

Precisely this approach was previously used by the federal legislator, who prescribed, in the first version of Subsection 1 (9), Article 14 of the Law of the Russian Federation “On the Status of a Judge in the Russian Federation”, that the powers of a judge may be terminated in case the judge commits an offence which disgraces the judge’s honour and dignity. Consequently, the criterion of incompatibility of a disciplinary offence with the status of a judge shall be determinative for premature termination of the powers of a judge on grounds indicated in Subsection 1, Article 12¹ of the Law of the Russian Federation “On the Status of a Judge in the Russian Federation”, brought into force by Federal Law No. 169-Φ3 of 15 December 2001.

Providing for two forms of disciplinary penalty for the commission of a disciplinary offence by a judge (formal caution and premature termination of powers), the Law of the Russian Federation “On the Status of the Judges in the Russian Federation” and the Federal Law

“On Bodies of the Judicial Community” do not formulate criteria pursuant to which a judicial qualifications board shall choose one or another form of penalty in case of a judge’s disciplinary responsibility. However, the absence of such criteria in law does not mean that judicial qualifications boards may arbitrarily choose a measure of penalty in the form of premature termination of powers of a judge without considering that it may be applied only for an offence which is incompatible with the high status of a judge and without assessing the gravity of the disciplinary offence, degree of guilt of the responsible person, the information concerning his personality and other relevant circumstances.

Any other understanding of Subsection 1, Article 12¹, of the Law of the Russian Federation “On the Status of Judges in the Russian Federation” does not conform to the principles of independence, irremovability and immunity of judges stemming from Articles 19, 120 (Section 1), 121 and 122 of the Constitution of the Russian Federation. Equally it does not conform to the general legal principles of fairness and equality, international instruments and recommendations in the sphere of justice, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6), Basic Principles of the Independence of the Judiciary, Recommendation (94) 12 on the Independence of Judges, and the European Charter on the Statute for Judges of 10 July 1998, which summarizes the requirements of the mentioned acts and prescribes in Subsection 5.1 that the scale of sanctions which may be imposed is set out in the statute, and their imposition is subject to the principle of proportionality.

The same meaning is ascribed to Subsection 1, Article 12¹ of the Law of the Russian Federation “On the Status of Judges in the Russian Federation” by the Decree of the Plenum of the Supreme Court of the Russian Federation “On the Practice of Court Consideration of Cases Concerning Appeals against Decisions of Judicial Qualifications Boards on Holding a Judge of a Court of General Jurisdiction Disciplinary Responsible”, No. 27 of 31 May 2007, which clarified that in consideration of appeals against decisions of judicial qualifications boards the gravity of the disciplinary offence, the degree to which rights and lawful interests of citizens and organization are violated, information concerning professional and ethical characteristics and other circumstances should be taken into account (Subsection 3).

3.5. Thus, the provision of Subsection 1, Article 12¹ of the Law of the Russian Federation “On the Status of Judges in the Russian Federation”, pursuant to which a judge may be held disciplinarily responsible for the commission of a disciplinary offence (violation of the provisions of the mentioned Law and the Code of Judicial Ethics, adopted by the Russian National Congress of Judges) conforms to the Constitution of the Russian Federation, as in its constitutional meaning within the system of valid norms it implies a possibility of application of

this measure of responsibility only for commission of an offence which is incompatible with the status of a judge and only relying on the principle of proportionality. The implementation of this approach shall be guaranteed by the independent status of bodies of the judicial community, which may prematurely terminate the powers of a judge, and by an appropriate procedure of consideration of the respective cases satisfying the requirements of fair administration of justice.

4. Pursuant to Section 1, Article 6² of the Law of the Russian Federation “On the Status of Judges in the Russian Federation”, the president of a court along with discharge of the powers of a judge of the respective court and procedural powers vested in the president of a court by the federal constitutional laws and federal laws, performs his obligations concerning the management of the work of a court as a whole.

Recommendation (94) 12 on the Independence of Judges also highlights the significance and importance of managerial work. Relying on the fact that trust of the society in the judicial system and authority of judicial power has paramount significance for modern democratic society, it lists among principles recommended for increasing the role of a judge and the judiciary as a whole an obligation of presidents of courts to undertake measures which the domestic law refers to their competence (Principle III). The Bangalore Principles of Judicial Conduct also provide that judges shall devote the judge’s professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations (Section 6.2). The requirements of Russian corporate norms of the judicial community conform to the international standards. Thus, pursuant to Article 5 of the Code of Judicial Ethics, a judge who has management functions in respect of other judges should undertake necessary measures to ensure timely and efficient performance of their obligations. A similar norm was stipulated in the Code of Honour of a Judge which was previously in force (Subsection 4, Article 2).

Pursuant to Subsection 11, Article 6¹ of the Law of the Russian Federation “On the Status of Judges in the Russian Federation”, the powers of presidents of courts are terminated, as a general rule, upon expiration of the term for which they were appointed. However, premature termination of the powers of the president of a court is permitted by a decision of the respective judicial qualifications board due to failure to perform or inappropriate performance, by the president of a court, of his duties of office prescribed by federal constitutional laws and by the mentioned Law.

However, failure to perform or inappropriate performance by the president of a court of his duties of office, being a ground for premature termination of powers of a president of a court, does not present as such a ground for premature termination of the powers of a judge. As follows from another provision of Subsection 11, Article 6¹ of the Law of the Russian Federation “On

the Status of Judges in the Russian Federation”, after the termination of powers of the president of a court, he retains the powers of a judge of the court in which he was president. Consequently, premature termination of the powers of the president of a court may not be considered as disciplinary penalty entailing legal consequences related to premature termination of the powers of a judge due to the commission of a disciplinary offence on grounds provided by Subsection 1, Article 12¹.

Thus, the provision of Subsection 11, Article 6¹ of the Law of the Russian Federation “On the Status of Judges in the Russian Federation” concerning the possibility of premature termination of the powers of the president of a court due to failure to perform or inappropriate performance by the president of a court of his duties of office, within its meaning in the system of valid norms, may not serve as a separate ground for premature termination of his powers of a judge and as such conforms to the Constitution of the Russian Federation.

5. The constitutional status of a judge as a bearer of judicial power, which is an independent and autonomous power within the system of separation of powers, implies a special procedure for deprivation of this status. Such procedure necessitates objective and impartial consideration of the issue by a competent authority, which in its activity strictly follows the principle of independence of judges and non-interference in judicial activities.

The Federal Constitutional Law “On the Judicial System of the Russian Federation” (Section 2, Article 15) provides that the powers of a judge may be terminated only by a decision of an appropriate judicial qualifications board, while the grounds and procedure for adopting this decision are determined by the Law of the Russian Federation “On the Status of Judges in the Russian Federation” and by the Federal Law “On Bodies of the Judicial Community of the Russian Federation”. In particular, Subsection 6, Article 21, Subsections 1 and 2, Article 22 of the mentioned Federal Law prescribe participation of the president of a respective or a superior court in proceedings concerning a judge’s disciplinary offence. And the president of a court has powers to examine the complaints and reports concerning the commission of a disciplinary offence by a judge, to lodge requests for judicial qualifications boards to consider termination of the powers of a judge on the basis of these complaints and reports, and to participate in sessions of the boards with the right to express his opinion on the matters under consideration.

The applicants believe that the participation of the president of a court in proceedings for termination of the powers of a judge influences the members of the judicial qualifications board, who are predominantly judges in dependent and subordinate position to the head of the judicial body, equally to the judge in whose respect the disciplinary proceedings are conducted, and consequently, it does not ensure state protection of the rights and freedoms of man and citizen guaranteed by Article 45 of the Constitution of the Russian Federation.

5.1. The judicial qualifications board which considers issues concerning the termination of the powers of a judge is a body of the judicial community operating under the Constitution of the Russian Federation and federal laws independently of any other bodies and officials. Pursuant to Article 5 of the Federal Law “On Bodies of the Judicial Community in the Russian Federation” and specifying provisions of Articles 3 and 4 of the Regulation on the Proceedings of the Judicial Qualifications Board, the work of the board relies on collective, open, independent, impartial and fair consideration of issues falling under its competence. However, judicial qualifications boards are not accountable to the bodies of the judicial community by which they were elected, for decisions rendered by them.

To provide further objectivity, impartiality and independence of judicial qualifications boards, including independence from the presidents of courts of a certain level and courts of departmental subordination, they are formed from judges of federal courts, judges of subjects of the Russian Federation, representatives of the public, representatives of the President of the Russian Federation according to the established norms of representation. The judges are elected to the judicial qualifications board by secret ballot at a conference of judges of the subject of the Russian Federation. Presidents of courts and their deputies may not be elected to judicial qualifications boards (Article 11 of the Federal Law “On Bodies of the Judicial Community in the Russian Federation”).

Pursuant to Articles 21 and 22 of the Federal Law “On Bodies of the Judicial Community in the Russian Federation” and specifying provisions of Subsections 1 and 2, Article 27, and Subsections 3–5, Article 28 of the Regulation on the Proceedings of Judicial Qualifications Board, a judge in whose respect proceedings are initiated must, on a compulsory basis, be informed of the time and place of the session of the judicial qualifications board; equally to the president of a respective court, he may participate in the session and express his opinion on the matters under consideration; the burden of proving the commission of a disciplinary offence by a judge is imposed on the person who signed a request or an application, or on his representative; the qualifications board has the right to conduct a necessary inquiry independently, and all irreparable doubts shall be interpreted in favor of the judge.

The rules of Article 23 of the Federal Law “On Bodies of the Judicial Community in the Russian Federation” and the Regulation on the Proceedings of Judicial Qualifications Board are aimed at making sure that judicial qualifications boards take an objective, impartial and fair decision, independent of the opinion of any persons who are not its members, including the president of a respective court. Pursuant to the mentioned provisions the decision on terminating the powers of a judge is considered adopted if no less than two-thirds of the members of the judicial qualifications board who participated in the session voted for it; the voting and adoption

of decision is conducted in the absence of the judge in whose respect the issue is being considered and in the absence of any invited persons. On the basis of examination of the request or application concerning the commission of a disciplinary offence by a judge, a judicial qualifications board has the right to impose on him a disciplinary penalty in the form of premature termination of powers or formal caution irrespective of the opinion on the form of disciplinary penalty expressed in the request or application. When it is proven that a disciplinary offence was committed by the judge, but in the absence of sufficient grounds for premature termination of the powers of a judge, the disciplinary penalty in the form of caution may be imposed on the judge. When a request or application seeking imposition of a disciplinary penalty on a judge is dismissed the judicial qualifications board may draw this judge's attention to the legal or ethical norms violated by him.

Pursuant to the mentioned provisions, as judicial qualifications boards consider premature termination of the powers of a judge, the president of a court acts in these proceedings as a party and, consequently, has no right to participate in voting on the merits (similarly to judicial proceedings based on adversariness and equality of parties under Subsection 3, Article 123 of the Constitution of the Russian Federation). This approach conforms to the Basic Principles on the Independence of the Judiciary, pursuant to which a charge or complaint made against a judge in his judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure; the judge shall have the right to a fair hearing and the right to respond to charges (Subsection 17); disciplinary, suspension or removal proceedings shall be determined in accordance with the established standards of judicial conduct (Subsection 19).

5.2. The provisions of Subsection 6, Article 21, and Subsections 1 and 2, Article 22 of the Federal Law "On Bodies of the Judicial Community in the Russian Federation" in conjunction with Article 23 of the mentioned Law, which determine the rules for voting and adopting a decision on the termination of the powers of a judge, exclude the presence during voting of a president of the respective court, who participated in consideration of the matter by judicial qualifications boards.

However, the presidents of courts have a special role in holding judges disciplinarily responsible through premature termination of the powers of a judge. They also participate in the formation of judicial qualifications boards and have managerial powers over other judges and thus have broader opportunities for influence on the conduct of the judicial qualifications boards members than the judge who is held disciplinarily responsible. Consequently, as compared to the rules of disciplinary proceedings in force there is a need for statutory imposition of an additional guarantee of independence, irremovability and immunity of a judge in procedures for premature termination of the powers of a judge by a body of the judicial community on the basis of

principles of adversariness and equality, e.g. a secret ballot by the members of the judicial qualifications board and drafting of a reasoned decision on the merits, in order to provide an opportunity for proper judicial review in case of appeal against the decision.

Despite the fact that the Federal Law “On Bodies of the Judicial Community in the Russian Federation” in its Article 23 does not prescribe such a voting procedure aimed at ensuring higher autonomy and independence of judges who are members of a judicial qualifications board, it has no norm precluding it. The regulations on judicial qualifications boards, which were in force at the time, when the applicants in the present case were held disciplinarily responsible, did not have such prohibition either. However, the Supreme Judicial Qualifications Board decreasing the level of the respective guarantees added to the Regulation on Proceedings of Judicial Qualifications Boards an imperative norm prohibiting the secret ballot (Subsection 4 of Article 18) and reflecting the results of voting (number of votes “for” and “against”) in a record and the rendered decision (Subsection 7 of Article 8). Thus, it essentially overtook the functions of a legislator and threatened the exercise of the principles of autonomy and independence of judicial power, irremovability and immunity of a judge in the procedure for premature termination of the powers of a judge.

5.3. The Civil Procedure Code of the Russian Federation, brought into force on 1 February 2003 by Federal Law No. 137-Φ3 of 14 November 2002 provides in Subsection 3, Section 1, Article 27, that cases concerning appeals against decisions on the termination of the powers of a judge are considered by the Supreme Court of the Russian Federation as a court of first instance. The jurisdiction of the Supreme Court of the Russian Federation over such cases is reaffirmed by Decision of the Constitutional Court of the Russian Federation No. 45-O of 2 February 2006 and the Decree of the Plenum of the Supreme Court of the Russian Federation in Subsection 1 of Judgment No. 27 of 31 May 2007, “On the Practice of Court Consideration of Cases Concerning Appeals against Decisions of Judicial Qualifications Boards on Holding a Judge of a Court of General Jurisdiction Disciplinarily Responsible”.

The determination of the exclusive jurisdiction of the Supreme Court of the Russian Federation over cases concerning appeals against decisions of judicial qualifications boards on the termination of the powers of a judge is also a guarantee against using the procedure for premature termination of the powers of a judge (by any persons, including the president of the respective or superior court) for unlawful influence on a judge aimed at putting him in a subordinate position in administration of justice.

5.4. Thereby, the provisions of Subsection 6, Article 21, and Subsections 1 and 2, Article 22 of the Federal Law “On Bodies of the Judicial Community in the Russian Federation” within their constitutional meaning in the system of valid norms provide that the president of the

respective or superior court has the right to examine complaints which contain information concerning the commission of a disciplinary offence by a judge, the right to lodge with judicial qualifications boards a request for termination of the powers of a judge, the right to participate in sessions of judicial qualifications boards, and the right to express an opinion on matters under consideration. These rights are conditioned to adoption, by secret ballot of the members of the qualifications board, of a reasoned decision reflecting the results of voting both in this decision and in the record of a session, consequently, providing a possibility for further judicial review. Thus, the mentioned provisions may not be considered non-conforming to the requirements of Articles 45, 46, 47, 120, 121, and 122 of the Constitution of the Russian Federation, concerning observance, in consideration of respective cases, of guarantees for priority of the rights and freedoms of man and citizen, autonomy and independence of judicial power, irremovability and immunity of a judge, providing a person held liable with an opportunity to exercise the right to judicial protection by appealing against the decision on termination of the powers of a judge to the Supreme Court of the Russian Federation, which under the law has a jurisdiction over such cases.

Pursuant to the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the federal legislator should, within a six-months period, amend the Federal Law “On Bodies of the Judicial Community in the Russian Federation” taking into consideration the present Judgment, by prescribing secret ballot of members of judicial qualifications boards in considering the application of a disciplinary penalty in the form of premature termination of the powers of a judge. However, nothing precludes the imposition of other additional guarantees aimed at ensuring autonomy and independence of the judicial power, irremovability and immunity of judges in disciplinary proceedings, including a possible use of special disciplinary courts’ jurisdiction, impeachment, and other procedures in practice around the world.

Concluding from the above and pursuant to Article 6, Section 1, Subsection 3, Article 43, Article 68, Sections 1 and 2, Article 71, Articles 72, 74, 75, 79 and 100 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation

h e l d :

1. To recognize the provision of Subsection 1, Article 12¹, of the Law of the Russian Federation “On the Status of Judges in the Russian Federation”, pursuant to which a disciplinary penalty in the form of premature termination of the powers of a judge may be imposed on a judge for the commission of a disciplinary offence, conforming to the Constitution of the Russian Federation, as in its constitutional meaning within the system of valid norms it implies a

possibility of application of this measure of responsibility only for the commission of such offences which disgrace the honour and dignity of a judge and are incompatible with the status of a judge, and only relying on the principle of proportionality. The implementation of this approach shall be guaranteed by the independent status of bodies of the judicial community, which may prematurely terminate the powers of a judge, and by an appropriate procedure of consideration of respective cases satisfying the requirements of fair administration of justice.

2. To recognize the provision of Subsection 11, Article 6¹, Law of the Russian Federation “On the Status of Judges in the Russian Federation”, pursuant to which the powers of the president of a court may be prematurely terminated due to failure to perform or inappropriate performance of his duties of office, as conforming to the Constitution of the Russian Federation, since within its constitutional meaning in the system of valid norms it may not be a separate ground for premature termination of the powers of a judge.

3. To recognize the provisions of Subsection 6, Article 21, Subsections 1 and 2, Article 22 of the Federal Law “On Bodies of the Judicial Community in the Russian Federation” under which in proceedings on premature termination of the powers of a judge the president of a court has the right to examine complaints which contain information about the commission of a disciplinary offence by a judge, the right to participate in sessions of judicial qualifications boards and to express his opinion on the matter under consideration, as conforming to the Constitution of the Russian Federation. These provision within their constitutional meaning in the system of valid norms do not permit the use, by presidents of courts, of this procedure for unlawful influence on members of qualification boards and on the judge, with an aim to put judges in subordinate and dependent position in the administration of justice, and as such do not violate the principles of autonomy and independence of judicial power, immunity and irremovability of judges. The conclusion above is conditioned by the adoption, by a judicial qualifications board, of a reasoned decision by secret ballot with the voting results (number of votes “for” and “against”) to be reflected in the record of a session and the decision itself.

4. The constitutional meaning of the provisions of Subsection 11, Article 6¹, and Subsection 1, Article 12¹ of the Law of the Russian Federation “On the Status of Judges in the Russian Federation”, Subsection 6, Article 21, Subsections 1 and 2, Article 22 of the Federal Law “On Bodies of the Judicial Community in the Russian Federation”, which was ascertained by the Constitutional Court of the Russian Federation in the present Judgment is generally binding and precludes any other interpretation in the law-enforcement practice, *inter alia* by judicial qualifications boards and courts.

5. To discontinue the proceedings in the present case to the extent concerning the review of the constitutionality of Subsection 2 (2), Article 26 of the Federal Law “On Bodies of the Judicial Community in the Russian Federation”.

6. The law-enforcement decisions in the cases of the citizens, who are the applicants in the present case delivered on the basis of the provisions of Subsection 11, Article 6¹ and Subsection 1, Article 12¹ of the Law of the Russian Federation “On the Status of Judges in the Russian Federation”, Subsection 6, Article 21, Subsections 1 and 2, Article 22 of the Federal Law “On Bodies of the Judicial Community in the Russian Federation” in their interpretation contradicting their constitutional meaning established in the present Judgment, are to be reconsidered according to the established procedure if there are no other obstacles to it.

7. Pursuant to Sections 1 and 2, Article 79 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, this Judgment shall be final and shall not be subject to any appeal, it shall come into force immediately upon pronouncement, shall be directly applicable, and shall not require confirmation by other authorities and state officials.

8. Pursuant to Article 78 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” this Judgment shall be published in the Collection of Laws of the Russian Federation and *Rossiyskaya Gazeta*. The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

Constitutional Court
of the Russian Federation

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