

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment
of 24 March 2009 No. 6-II

in the case concerning the review of the constitutionality of Section 8, Article 5, Section 6, Article 6, Law of the Russian Federation “On the Status of Judges in the Russian Federation”, and Section 1, Article 23 of the Federal Law “On the Bodies of the Judicial Community in the Russian Federation” in connection with a complaint of V. N. Ragozin.

Saint Petersburg, 24 March 2009

The Constitutional Court of the Russian Federation composed of Presiding Judge N. S. Bondar and Judges G. A. Gadzhiev, S. D. Knyazev, L. O. Krasavchikova, S. P. Mavrin, Yu. D. Rudkin, O. S. Khokhryakova, V. G. Yaroslavtsev,

in the attendance of V. N. Ragozin, who submitted his constitutional complaint to the Constitutional Court of the Russian Federation; Permanent Representative of the State Duma to the Constitutional Court of the Russian Federation A. N. Kharitonov; 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 the Russian Federation, Subsection 3, Section 1, Sections 3 and 4 of Article 3, Subsection 3, Section 2 of 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 the provisions of Section 8, Article 5 and Section 6 of Article 6 of the Law of the Russian Federation “On the Status of Judges in the Russian Federation” and Section 1 of Article 23 of the Federal Law “On the Bodies of the Judicial Community in the Russian Federation”.

The reason for the consideration of the case is a complaint of V. N. Ragozin. The ground for the consideration of the case is the discovered uncertainty of whether the provisions challenged by the applicant are in conformity with the Constitution of the Russian Federation.

Having heard the report of Justice-Rapporteur V. G. Yaroslavtsev, statements by the parties, interventions by Judge V. N. Pirozhkov for the Supreme Court of the Russian Federation, Judge A. G. Pershutov for the Supreme Arbitration Court of the Russian Federation

and the Council of Judges of the Russian Federation, V. F. Popondopulo for the Supreme Judicial Qualifications Board of the Russian Federation, T. D. Chekhovskaya for the Judicial Department of the Supreme Court of the Russian Federation; and 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. The Law of the Russian Federation “On the Status of Judges in the Russian Federation” of 26 June 1992, No. 3132-I, determines the procedure of vesting judges with powers, including consideration of requests for recommendation for the vacant judicial office by a judicial qualifications board. *Inter alia* it stipulates that if no applicant meets the requirements for the candidates for the judicial office set by this Law, the judicial qualifications board shall deny each applicant a recommendation for the judicial office by a reasoned decision; the judicial qualifications board’s decision to recommend a candidate for the judicial office may be appealed in court if the board has violated the procedure of selecting candidates prescribed by this Law; the denial of a recommendation for the judicial office may be appealed in court either in connection with violation of the established procedure of selecting candidates for the judicial office, or on the merits of the decision (Section 8, Article 5); appointment to a judicial office shall take place only if there is a positive conclusion of the respective judicial qualifications board (Section 6, Article 6). The procedure for decision-making by judicial qualifications boards is established by Article 23 of the Federal Law “On the Bodies of the Judicial Community in the Russian Federation” of 14 March 2002, No. 30-Ф3. According to Section 1 of mentioned Article 23, the decision of a judicial qualifications board is considered adopted if it has been voted for by no less than half of the board members present (with the quorum of no less than half of the members of a board).

V. N. Ragozin, who disputes the constitutionality of the mentioned provisions, was appointed to the office of a judge of the Arbitration Court of the Republic of Komi for three years by a Decree of the President of the Russian Federation of 3 December 2003. After his term of office expired he participated in a competition to fill the vacancy as the only candidate. The Judicial Qualifications Board of the Republic of Komi considered V. N. Ragozin’s application; examined the documents submitted pursuant to Section 6, Article 5 of the Law of the Russian Federation “On the Status of Judges in the Russian Federation”; heard statements by the President and the Deputy President of the Arbitration Court of the Republic of Komi, who characterized him positively. In its decision of 18 October 2006, the Board did not recommend him for the office of a judge of the Arbitration Court of the Republic of Komi since he had not passed the competition and had not got the necessary number of votes. The Supreme Court of the

Republic of Komi, in its decision of 6 December 2006 (upheld by cassation and supervisory instance courts), rejected V. N. Ragozin's action to invalidate the decision of the Judicial Qualifications Board of the Republic of Komi.

In the applicant's opinion, the challenged provisions within the meaning attributed to them in law-enforcement practice allow judicial qualifications boards, solely on the basis of voting results, to deny a recommendation for an office of an unlimited term to a judge who has been previously appointed to this office for a three-year term, meets the requirements prescribed by law and who is the only candidate for the office. Thus, these provisions violate the principles of fairness and equality in the exercise of the right to equal access to state service, and guarantees of judicial protection and therefore do not conform to Section 2, Article 19, Section 4, Article 32 and Section 1, Article 46 of the Constitution of the Russian Federation. At the same time, the constitutionality of the institution of appointing judges for three-year terms of office itself is not disputed by the applicant.

Therefore, pursuant to Articles 74, 96 and 97 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", the provisions of Section 8 of Article 5, Section 6 of Article 6 of the Law of the Russian Federation "On the Status of Judges in the Russian Federation" and Section 1 of Article 23 of the Federal Law "On the Bodies of the Judicial Community in the Russian Federation", taken in their normative unity, are the subject-matter for consideration in the present case to the extent that they regulate decision-making by judicial qualifications boards concerning denial of recommendations for appointment to the same office for an unlimited term to judges whose initial three-year term of office has expired, even when there are no other candidates.

2. Declaring that the individual, his rights and freedoms are the supreme value, and the recognition, observance and protection of rights and freedoms of man and citizen shall be a duty of the State, the Constitution of the Russian Federation guarantees judicial protection of everyone's rights and freedoms, ensures them through administration of justice (Articles 2, 18 and Section 1 Article 46) and establishes that judicial bodies shall be independent (Article 10), judges shall be independent, bound only by the Constitution of the Russian Federation and federal law, and shall be irremovable and have immunity (Section 1, Article 120, Section 1, Article 121 and Section 1, Article 122). The mentioned provisions correspond to § 1, Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, according to which, in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Since the constitutional status of judges is predetermined by the performance of a public law function of justice, the federal legislator may introduce special qualifications and other requirements for them, including moral and ethical requirements, and, consequently, establish a procedure for forming the judiciary making sure that only candidates meeting the requirements are selected. This approach corresponds to the international recommendations in the area of justice, namely impartiality, integrity, compliance with the established standards of competence, conduct and diligence of judges, which are vital in order to reinforce public confidence in the judiciary, and fundamental to maintenance of judicial independence (Sections 1.6, 2.2, 3.1 and 6.7 of the Bangalore Principles of Judicial Conduct, adopted by Resolution 2006/23 of the UN Economic and Social Council of 27 July 2006).

The respective competence of the federal legislator stems from Article 119 of the Constitution of the Russian Federation, which provides for the possibility to establish additional requirements for judges in the Russian Federation besides general provisions on the minimal age, education, experience in the legal profession necessary for a judicial office, and provisions of Section 2, Article 121 of the Constitution of the Russian Federation, which establishes that the judge's powers shall be terminated or suspended only subject to the grounds and procedure prescribed by federal law. As follows from the legal opinion expressed by the Constitutional Court of the Russian Federation in Judgment No. 3-II of 28 February 2008, the law regulation of the judge's status must not put the judge in a dependent, subordinate position and violate the principles of the judiciary as an autonomous and independent body and judges as irremovable and immune.

3. Pursuant to the Law of the Russian Federation "On the Status of Judges in the Russian Federation", a judge of a federal court, except for Judges of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation, shall be appointed to office for the first time for a period of three years; after the expiry of this term, he may be re-appointed to the same office for an unlimited term until he reaches the maximal age for service as a judge (Section 2, Article 11); the respective judicial qualifications board announces the vacancy in a judicial office in mass media no later than six months before the expiry of the current judge's term of office (Section 8, Article 6); if the judicial qualifications board refuses to recommend the judge whose term of office has expired for the judicial office for an unlimited term, he continues to exercise his powers until the end of the proceedings in the case which he began to consider or until the first appointment of a new judge to this court (Section 6, Article 11).

Within the meaning of the mentioned provisions taken in their interconnection, a judge who has originally been appointed to the office for a three-year term and who seeks re-

appointment to the office for an unlimited term has the full status of a judge as a bearer of judicial power. In legal regulation of the procedure for competitive selection of candidates to a judicial office one cannot fail to take into account this fundamental difference between him and a candidate who seeks to be appointed to the judicial office for the first time. This conclusion is confirmed by the legal opinion of the Constitutional Court of the Russian Federation, according to which the three-year term of office for judges appointed for the first time serves, in essence, as an initial probationary period. Such period aims in particular at the discovery of reasons which may prevent a particular judge from future appointment to the office for an unlimited term, and these reasons must be used as grounds for respective authorities' and officials' decisions to deny nomination to the judicial office for an unlimited term (Decisions No. 210-O of 1 December 1999, No. 87-O of 19 April 2000, No. 219-O of 5 October 2000, and others).

4. As follows from Sections 3 and 6, Article 6 of the Law of the Russian Federation "On the Status of Judges in the Russian Federation", federal judges are appointed to office by the President of the Russian Federation subject to a positive conclusion of the judicial qualifications board. The powers of the board are determined by the Federal Law "On the Bodies of the Judicial Community in the Russian Federation".

According to the mentioned Federal Law, the mission of judicial qualifications boards and other bodies of the judicial community is to contribute to the improvement of the judicial system and judicial proceedings, protect the judges' rights and legitimate interests, participate in organizational, human resources and material support of judicial activities, reinforce the high standing of the judiciary, and ensure that judges follow the requirements of the Judicial Code of Ethics (Articles 3 and 4), operate on a collegiate basis and publicly, strictly adhering to the principles of judicial independence and non-interference with judicial activities (Section 1, Article 5). At the same time, judicial qualifications boards are not accountable for their decisions to bodies which elected them (Section 2, Article 5). According to Article 1 of the Regulation on the Operation of Qualifications Boards of Judges (adopted by the Supreme Judicial Qualifications Board of the Russian Federation on 22 March 2007) a judicial qualifications board is a body of the judicial community vested with state powers in order to carry out tasks set by federal constitutional laws and federal laws.

The cited provisions correspond to Sections 1.3 and 3.3 of the European Charter on the Statute for Judges of 10 July 1998, which describes the body authorized to decide on appointment to a judicial office (also when the procedure provides for a probationary period) as an authority independent of the executive and legislative branches and within which at least one half of those who sit are judges and an authority, which substantiates its decisions concerning either granting recommendation for the office, or refusing it.

By vesting judicial qualifications boards with public law powers to participate in the formation of the judicial corps, the federal legislator intended to secure the constitutional status of judges and achievement of the objectives put before the judiciary. Thus, it is presumed that judicial qualifications boards take lawful, reasonable and fair decisions conforming to the public interest of formation of the judicial corps, which meets high professional and ethical requirements, and that absence of accountability for their decisions, including recommendations for the judicial office, does not mean these decisions may be arbitrary.

5. As follows from Article 119 of the Constitution of the Russian Federation, a judge whose three-year term of office is about to expire and who seeks to be appointed to the office for an unlimited term must also meet the professional and other requirements set for judges of the Russian Federation by federal law. Taking into account the legal nature of the three-year term of office, which is basically an initial probationary period, it is not the expiry of the original term of a particular judicial office itself which is a ground for granting recommendation for the appointment to a judicial office for an unlimited term or refusal of such recommendation, but evaluation of his professional and moral merits. So, a judge who applies to the respective judicial qualifications board submits not only the documents on his education, health and income as prescribed by Article 5 of the Law of the Russian Federation “On the Status of Judges in the Russian Federation”, but also references reflecting his activities in the administration of justice, including information on a number of cases considered during the three years and quality of the decisions made.

Upon consideration of the submitted materials, the judicial qualifications board, in compliance with Section 1, Article 23, Federal Law “On the Bodies of the Judicial Community in the Russian Federation”, through a voting procedure, adopts a reasoned decision either to give or deny recommendation for appointment to a judicial office for an unlimited term (Section 8, Article 5, Law of the Russian Federation “On the Status of Judges in the Russian Federation”, Section 2, Article 19, Federal Law “On the Bodies of the Judicial Community in the Russian Federation”). And as is stipulated by the Regulation on the Operation of Judicial Qualifications Boards, the board may not be guided by hypothetical, unverified, or false information (Section 2, Article 19, Sections 11 and 12, Article 21).

Pursuant to the legal opinion of the Constitutional Court of the Russian Federation, the recommendation for appointment to a judicial office for an unlimited term may be denied reasonably only on the basis of certain objective circumstances preventing such appointment and discovered during the three-year term of the initially appointed judge. Consequently, the negative decision of the judicial qualifications board cannot be arbitrary or unreasonable, i.e. it must contain reasons and grounds which may be a subject of judicial review on the merits in the

future (Judgment No. 3-II of 28 February 2008, Decisions No. 210-O of 1 December 1999, No. 87-O of 19 April 2000, No. 272-O of 21 December 2000, No. 199-O of 5 October 2001, No. 263-O of 12 July 2006, and others).

Considering the cited legal opinions of the Constitutional Court of the Russian Federation, voting by members of the judicial qualifications board, being a procedural form of decision-making concerning recommendation for appointment to a judicial office for an unlimited term, cannot fail to be based on comprehensive evaluation of the candidate's professional and ethical merits and therefore cannot be unreasonable. The need for the decision to reflect not only the results of the vote of the board members, but also the grounds preventing appointment to a judicial office is stipulated by Section 8, Article 5 of the Law of the Russian Federation "On the Status of Judges in the Russian Federation", which specifies Section 1, Article 46 of the Constitution of the Russian Federation. There should be the right to appeal decisions of judicial qualifications boards to deny recommendation for appointment to a judicial office either on the basis of procedural violations in the selection of candidates to the judicial office or on the merits of the decision. Otherwise the constitutional right to judicial protection would be a mere formality since a court would not have an opportunity to review the reasonableness of the decision and to evaluate its reasons while considering the appeal, and, therefore, neither equality before the law and court nor independence of the judiciary in the administration of justice would be secured.

6. Thus, the provisions of Section 8, Article 5, Section 6, Article 6 of the Law of the Russian Federation "On the Status of Judges in the Russian Federation" and Section 1 of Article 23 of the Federal Law "On the Bodies of the Judicial Community in the Russian Federation" within their constitutional interpretation in the current legal regulation presume that the decision voted for by the judicial qualifications board, which denies recommendation for appointment to a judicial office for an unlimited term to a judge whose original three-year term of office has expired, must be reasonable, i.e. reflect the reasons which prevent his appointment to the office. Thus, it allows judicial review of lawfulness and reasonableness of the decision on the merits.

Otherwise, it would not conform to the requirement of prescribing by law of permissible grounds for denial of a recommendation for appointment to a judicial office for an unlimited term to a judge whose original three-year term of office has expired. Such regulation would not correspond to the principle of irremovability of judges stipulated by Article 121 of the Constitution of the Russian Federation. This would, in fact, lead to the termination of the status of a judge in an arbitrary manner, prevent equal access to the profession of a judge (violating Article 19 of the Constitution of the Russian Federation), and, finally, prevent proper

implementation of the principles of autonomy of the judiciary and independence of judges (Article 10 and 120 (Section 1) of the Constitution of the Russian Federation).

Relying on the constitutional responsibility of the State for the formation of the judicial corps intended to exercise judicial powers autonomously and independently, the federal legislator may, for the purposes of improving the legal regulation and within its discretionary powers, establish different procedure of appointing to a judicial office for an unlimited term. Such procedure must be based on the requirements of the Constitution of the Russian Federation and must take into the account the legal opinions of the Constitutional Court of the Russian Federation, including those expressed in the this Judgment.

Concluding from the above and pursuant to 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 provisions of Section 8, Article 5 and Section 6, Article 6 of the Law of the Russian Federation “On the Status of Judges in the Russian Federation” and Section 1, Article 23 of the Federal Law “On the Bodies of the Judicial Community in the Russian Federation” as conforming to the Constitution of the Russian Federation, because within their constitutional interpretation in the current legal regulation these provisions imply that the decision voted for by the judicial qualifications board which denies recommendation for appointment to a judicial office for an unlimited term to a judge whose original three-year term of office has expired, must be reasoned, i.e. reflect the reasons which prevent his appointment to the office and, consequently, may become subject to judicial review of lawfulness and reasonableness of the decision on the merits.

2. Pursuant to Article 6 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the constitutional interpretation of the provisions of Section 8, Article 5, Section 6, Article 6 of the Law of the Russian Federation “On the Status of Judges in the Russian Federation” and Section 1, Article 23 of the Federal Law “On the Bodies of the Judicial Community in the Russian Federation” elucidated in the present Judgment shall be generally binding and shall preclude any other interpretation in law-enforcement practice.

3. law-enforcement acts concerning V. N. Ragozin, which are based on the provisions of Section 8, Article 5, Section 6, Article 6 of the Law of the Russian Federation “On the Status of Judges in the Russian Federation” and Section 1, Article 23 of the Federal Law “On the Bodies of the Judicial Community in the Russian Federation” within their interpretation diverging from

the constitutional meaning elucidated in the present Judgment, are to be reconsidered according to the established procedure if there are no other obstacles.

4. This Judgment shall be final and shall not be subject to any appeal, it shall come into force immediately upon its pronouncement, shall be directly applicable, and shall not require confirmation by other authorities and state officials.

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