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THE THEORETICAL AND LEGAL ASPECTS OF ELIMINATING JUDICIAL ERRORS IN ENSURING HUMAN RIGHT

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Abstract:

This article examines the theoretical and legal aspects of correcting judicial errors in the realization of human rights. Focusing on key elements such as the presumption of innocence, appeal and cassation procedures, the application of international standards and legal accountability, the article analyzes the importance of correcting errors in judicial decisions. The article also emphasizes the need to respect universal human rights and ensure fairness in the judicial system. The importance of international norms in preventing judicial errors and establishing accountability mechanisms for them is discussed.

Keywords: Judicial error, judicial power, judicial act, judicial instance, justice, law enforcement act, qualities of judicial acts, defective judicial act, judicial discretion.

The constitutional right to judicial protection implies the right to a fair, public and competent trial by an independent and impartial court, in compliance with the principles of adversarial proceedings and equality of arms. This right can be realized only by the adoption of a judicial act, which, of course, implies the right to appeal to a higher court and to correct a judicial error, regardless of the level of the court instance that made it.

Judicial practice shows that courts make many mistakes when adopting judicial acts. Thus, in recent years, in connection with the fundamental revision of the system of elimination of judicial errors, there has been a trend of growth in the rates of revocation or modification of sentences in criminal proceedings: in 2016, sentences were modified or revoked in respect of 4.39% of convicted persons, in 2017 - 6.18%, and in 2018 - 9.76%.[1] Of course, this trend is based on different factors, but one thing is certain - behind any judicial error there are people, their rights, freedoms and legitimate interests. In general, a similar picture is observed in other types of legal proceedings.

The Convention for the Protection of Human Rights and Fundamental Freedoms (Article 3 of Protocol No. 7) explicitly states in this regard: if a person has been convicted of a criminal offense on the basis of a final judgment and his sentence is subsequently reversed, or he has been pardoned on the ground that a new or newly discovered circumstance shows conclusively that a judicial error has occurred, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or existing practice in accordance with the law or the practice in force[2].

The problem of identifying a judicial error and the responsibility of the state for the poor administration of justice represents one of the tasks of the theory of the legality of justice. Hence, the question arises about the need for a theoretical analysis of the essence and attributes of the mechanism of guarantees of the legality of the judiciary, its principles and instruments of implementation.

As noted by L.A.Terekhova, one of the mandatory components of the mechanism of judicial protection is the elimination of a judicial error by a higher court [3].

A judicial error as a particular case of violation of legality in the implementation of justice has specific properties: it can manifest itself only when making a final decision on the case. Often it is not obvious, more often it is assumed. Its establishment and subsequent elimination takes place as a consequence of actions of the subject authorized by law and occurs in the order established by the procedural law. The presence of an error is recorded regardless of the guilt of the judge who adopted the final judicial act.

The possibility to review the erroneous judicial act and to eliminate the violation of the law does not limit the right to judicial protection. In this connection, the Constitutional Court has repeatedly pointed out that judicial protection will be effective only when the State ensures the possibility of review of a case by a higher court and provides a mechanism (procedure) for correcting judicial errors. This guaranteed possibility is of fundamental importance, since the courts of first instance, according to official statistics, make many erroneous decisions.

Non-compliance with the requirements and rules generates legal errors. It is possible to identify this

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concept with the concept of offense, but in reality this phenomenon has different characteristics and reflects actions contrary to law and order, for example, manifested in arbitrary interpretation of the law. At the same time, situations of insignificance of actions and the choice of different ways of regulation are permissible. Actual measurable actions of this kind are allowed by law, when real errors in calculations serve as a reason for legal sanctions.

So, a legal error is a deviation from the established norms, entailing different consequences. What are they? From the point of view of human rights and freedoms - direct and indirect material damage, violation of rights, freedoms and legitimate interests, development of corruption, occurrence of legal conflicts and economic conflicts.

This allows us to distinguish the following typical legal errors:

a) Violation of human rights and freedoms expressed in illegal actions, exceeding and abuse of authority, official inaction;

b) Wrong choice of the form of legal acts contrary to their established hierarchy. These are subordinate acts that contradict the law, acts adopted outside the competence of the body, and arbitrary interpretation of legal norms;

c) Violation of the rules of preparation and adoption of legal acts, improper or incomplete use of legal means of implementation of laws and protection of human rights;

d) Improper discretion in the choice of grounds for decision-making;

e) Wrong choice of legal regulators, when peremptory norms suppress permissive and recommendatory norms, when "punitive" emphasis limits the scope of application of stimulating, encouraging and other norms. This is the case, for example, when the emphasis is on strengthening penalties for administrative offenses instead of emphasizing explanatory work;

f) Allowing legal risks and legal conflicts and not taking measures to prevent and eliminate them;

g) The gap between the rights, duties and responsibilities of subjects of law;

h) Misunderstanding of legal terms and violation of the rules of legal technique, reducing the quality of a legal act and making its application more difficult;

i) The adoption of a multitude of legal acts with obvious "legal redundancy";

j) Extra-legal use of force and coercive means.

We consider correct the position of Y.V.Shapovalova, who emphasizes the special relevance of "the problem of the quality of judicial acts, since it is in them that the main purpose of judicial power is realized - the protection of rights, freedoms and legitimate interests of individuals"[4]. Indeed, a poor-quality, defective judicial act instead of protecting rights and freedoms is itself capable of causing damage to human rights. The defect of a judicial act should be understood as existing shortcomings in the form and content of a law enforcement act, related to the violation by the court of procedural and substantive legal requirements in the consideration of a particular case, admitted due to a good faith mistake or intentionally, leading to an incorrect reflection of the result of the proceedings and contrary to the objectives of legal proceedings[4].

In principle, each erroneous court decision means that justice has not achieved its human rights goal, that violated or contested subjective rights and legitimate interests of a person remained unprotected. Moreover, by making a mistake, the court itself violates human rights, which negatively affects the authority of the judiciary. The concept of "judicial error" is used as an axiom when characterizing such an element of judicial protection as the revision of judicial acts. The purpose of the latter is precisely the elimination of a judicial error [5]. So, the judicial error is authorized to eliminate the relevant court instance, which carries out the official recognition of the existence of a judicial error and its qualification.

In this regard, we note the need for a comprehensive approach to the study of this issue. We are talking about the analysis of legal risks, the need to take into account the full range of legal consequences of the adoption of an erroneous court decision. Ensuring the validity and legality of a court decision should be properly combined with the use of risk-analysis of the consequences of the adopted judicial act. Despite the obvious complexity of this task, it is necessary to strive to develop a balanced judicial decision, taking into account the protection of the rights and freedoms of participants in the proceedings.

Therefore, the category of judicial discretion deserves special attention. The judge is given the opportunity in certain cases to act at his own discretion, thus realizing the law enforcement discretion. Under the law-enforcement discretion scientists understand "granted by the right, power, intellectual and volitional activity of the law enforcer on the choice of subjective-optimal decision"[6]. Law enforcement discretion in judicial activity acquires special significance. The essence of such discretion consists in the possibility for the judge in certain conditions (i.e. within the limits of granted powers) to choose a variant of legal dispute resolution, guided by his own opinion.

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Judicial discretion in relation to the principle of legality has its own independent meaning, because it is it that ensures the legal nature of the judicial decision to protect the right. Judicial discretion is a means of restoring the violated legality, conflict resolution. It gives a legitimate judicial decision (i.e. adopted within the law) more flexibility and specificity.

Legitimate judicial decision, adopted on the basis of discretion, has the following properties:

a) Quick response to the changing social conditions of society;

b) Overcoming the obliquity of the law and legal dogmatism;

c) Establishing the priority of law;

d) Recognizing the high role of the court in the protection of individual rights and moral values [7].

It should be noted that for a long time legal science and practice rejected the very fact of the need to apply discretion by courts [8]. This was due to the imperative legal regulation prevailing in the Soviet era: any legal problem has only one solution, clearly stated in a normative legal act. The formation of a new legal system and a new model of justice contributed to the transition to a dispositive legal regulation of judicial activity and the possibility of applying discretion in it.

Moreover, the existence of judicial discretion is objectively conditioned by the peculiarities of the norms of law in the Romano-Germanic legal family, their rather broad statement, within which the options of behavior are possible. The possibility of choosing the most appropriate option gives rise to the institution of judicial discretion. For example, it should be recognized that the norms granting the court some powers in determining the order of use of property in common share ownership do not contradict the legislation, because the variety of circumstances affecting the determination of the order of use of common property, makes it impossible to establish an exhaustive list of them in the law, and the use of legislative evaluative characteristics in this case pursues the purpose of effective implementation of norms depending on the objective features of the emerging relations. Therefore, applying the general legal prescription to the circumstances of the case, the judge makes a decision within the limits of discretion granted to him by the law. One more example: At application of conditional condemnation probation period is appointed, which is calculated from the day of the decision of the verdict. The law does not connect duration of probation period with the size of the appointed punishment. This question each time is decided by the court, proceeding from the nature of the committed crime and personality of the defendant [9].

Besides, speaking about realization of judicial discretion, it is necessary to keep in mind that application of discretion is not only the right, but also the duty of the court, as the possibility of application of discretion is fixed by the legal norm, and procedural rights of the court are at the same time its duties. Consequently, the power of the court to make reasoned decisions limits the possible options of discretion. The right to use the court's discretion should not be absolutized, since for its effective use there must be certain limits to the exercise of discretion. The establishment of reasonable limits to the court's discretion is a guarantee of the legality of its exercise. In this sense, the limits of judicial discretion are a necessary and indispensable feature of the court's discretion, the absence of which may turn into abuse of the right and lead to arbitrariness.

At the same time, judicial discretion, the existence and practical necessity of which is undoubted, provided that it is exercised within certain limits, can act as the basis of modern judicial proceedings. The complexity and debatability of the problem of discretion in law is due to the fact that, being a phenomenon of real reality, discretion sometimes contradicts the essence of law as a legitimate restriction of freedom. In the exercise of justice by discretion is allowed independent, relatively free adoption of judicial discretion, which is carried out on the basis and strictly within the limits of the law. Thus, judicial discretion is judicial activity carried out on the basis and strictly within the law, which implies the possibility of choosing the most optimal decision in a legal case.

The solution of the problem of ensuring and protecting human rights as the highest constitutional value largely depends on the optimal correlation between judicial discretion and legality in legal proceedings. A practically significant issue of their correlation is the limits of the exercise of judicial discretion. With the help of limits, judicial discretion is restricted by:

1) The necessity and possibility of interpreting the law;

2) The possibility of choosing between legal norms in case of competition of the law or dispositiveness of legal norms;

3) The factual circumstances of the case when determining compensation for moral harm;

4) The possibility of replenishing the law by analogy [10].

The limits of judicial discretion are seen in the following:

a) In the subject matter of judicial discretion. This means that the application of judicial discretion in the

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implementation of some procedural actions may not extend to others;
b) In the subjective expression of judicial discretion. This means that the discretion belongs only to the judge;
c) In the procedural form of the exercise of judicial discretion. This is the decision of the court or separately taken power of the judge [11].
Opponents of the application of the institute of judicial discretion refer to the possibility of manifestation of unlimited judicial freedom, the abuse of which entails arbitrariness and lawlessness [12]. Meanwhile, the right to use judicial discretion is not absolute and is not limited in any way. On the contrary, this institution presupposes the existence of clear limits on the use of discretion. Establishing the limits of the court's discretion is the most important guarantee of ensuring the legality of its exercise. In this context, we support the position of the Belarusian scientist A.A.Golovko, who states: "the content of the concept of "discretion" includes expediency and legality. Reasonable discretion does not contradict legality, on the contrary, it actually "creatively" ensures legality in complex social situations where it is impossible to foresee everything" [13].
The proper functioning of the institute of judicial discretion is possible with its complex limitation by both legal and moral-legal limits, which makes it possible to designate as clearly as possible the limits within which the choice of the court meets the requirements of legality and expediency [14]. However, it should not be forgotten that discretion can have a negative character, negative consequences. For example, if the prescriptions of the law are unjustifiably "vague" and do not contain clearly delineated, clear guidelines for the choice of a judicial decision, it creates favorable opportunities for various kinds of abuse and judicial errors.
So, the following author's definition of this concept is proposed: a judicial error is a fact of violation of legislation by the court, established by the authorized judicial instance, expressed in the adoption of an unlawful judicial act, infringing the rights of participants in the judicial process. Judicial error, by and large, is a negative result of cognitive and thinking activity of the judge, due to the failure to achieve the objective truth of the case, consisting in the incorrect reflection of factual circumstances, expressed in unlawful decisions of the court, resulting in failure to fulfill the tasks of justice and violation of the rights and legitimate interests of participants in the process.

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