Periódico do Núcleo de Estudos e Pesquisas sobre Gênero e Direito
Centro de Ciências Jurídicas - Universidade Federal da Paraíba
V. 9 - Nº 04 - Ano 2020
ISSN | 2179-7137 | http://periodicos.ufpb.br/ojs2/index.php/ged/index

MODELS OF THE ORGANIZATION OF THE JUDICIAL SYSTEM: THE EXPERIENCE OF RUSSIA AND FOREIGN COUNTRIES

Vladimir S. Sinenko[1]
Sul'eta G. Khasanova[2]
Aleksandr D. Khlebnikov[3]
Vyacheslav L. Rasskazov[4]
Elvira M. Vasekina[5]

Abstract: This article provides an overview of the organization of the judiciary in various countries. Firstly, attention is drawn to the legislative framework on the basis of which the system of courts in a particular state is built. Secondly, the conclusion is drawn that there are three models of the organization of the judiciary: decen-tralized; moderately centralized; strongly centralized bathroom. Examples of states in which distinguished models of the organization of the judiciary operate are given. Particular attention is paid to the place of the Russian model in the classification of judicial systems according to the degree of centralization of the judiciary.

Keywords: judicial system, models of organization of the judiciary, status of judges, princi-ples of administration of justice, specialized courts.

1. Introduction

As a rule, the constitutions of various states in force today contain a section on the formation and implementation of the judiciary, which is most often referred to as «the judiciary». Usually, such a section follows the provisions on the legis-lative and executive branches of government. At the same time, sections of con-stitutions that would regulate as much as possible the regulation of all institu-tions of the

Belgorod State University, 85 Pobedy Street, Belgorod, the Belgorod region, 308015, Russia[1]
Adyghe state University, 208, Pervomayskaya Street, Maikop, 385000, Russia[2]
Belgorod State University, 85 Pobedy Street, Belgorod, the Belgorod region, 308015, Russia[3]
Kuban state agrarian University named after I.T. Trubilin, 13, Kalinina Street, Krasnodar, 350044, Russia[4]
Belgorod State University, 85 Pobedy Street, Belgorod, the Belgorod region, 308015, Russia[5]

judiciary are rare. As a rule, the relevant sections are concise and con-tain a reference to the legislation on the judicial system. For example, in the Fed-eral Republic of Germany such a normative act is the Law on the Judiciary (as amended in 1975) [1], the French Judiciary Code of 1978 [2], and in the United States the Judiciary and Judicial Procedure, Sec. 28 US Code [3].

In this regard, you can pay attention to the fact that the above circumstance is characteristic not only for European and North American countries. So, for ex-ample, the structure of the constitutions of East Asian countries operating today contains the relevant sections on the judiciary. They are referred to in the Peo-ple's Republic of China as the People's Court and People's Procuratorate; in Ja-pan, the Judiciary; in the Republic of Korea «Courts», «Constitutional Court» [4]. The indicated sections of the constitutions are limited to a brief list of courts and judicial subsystems operating in the country, determine the status of the Su-preme Court or other courts, if there are several jurisdictions in the country.

The judicial systems of East Asian states - the People's Republic of China, the Republic of Korea and Japan - have features that are determined not only by the specifics of the activities of public power mechanisms, but also by the character-istics of ideologies characterizing the political role of justice. In each of these countries, the judicial system is a collection of courts operating in a certain hier-archical structure.

2. METHODS

Various general scientific methods and the methods of logical cognition are used in the work: analysis and synthesis, systemic, functional and formal-logical approaches. The development of conclusions was facilitated by the application of formal-legal and comparative-legal methods.

3. DISCUSSION AND RESULTS

The constitutional regulation everywhere in one way or another covers three as-pects: the organization of the judicial system, the constitutional status of judges, the basic principles of the administration of justice. Detailed regulation of the structure of the judicial system, the competence of the courts and other rather important constitutional issues are assigned to the relevant laws. In China, the PRC Law on Judges is in

force; in South Korea, the Law on the Organization of the Court; in Japan, the Law on the Courts [5].

In addition, the constitutions of various states often regulate in detail the compe-tence and procedure for the formation of constitutional courts. Sometimes the rules on the organization of constitutional justice are highlighted in a separate section of the constitution. So, for example, this is how the rules on the constitu-tional court in Italy, Spain, France and some other states are built. This is due to the fact that constitutional courts occupy a special position in the judicial system and this institution is relatively new in relation to traditional courts of general ju-risdiction. Obviously, under such conditions, the legal status of the constitutional court must be spelled out more clearly.

Thus, we can say that the establishment of the constitutional foundations of the judiciary and the judiciary as a whole is a global trend.

The current judicial system of every modern state is a logical result of its long historical development. The course of this development was influenced by both the practical experience of organizing state institutions and the attempts to theo-retically interpret and predict it.

The influence of irrational factors in the development of the judicial systems of European states cannot be excluded, since the judicial system was influenced by harmful and non-progressive ideas, directly dictated by the historical moment and the prevailing market conditions. As a rule, this happened during times of upheaval, revolution and war.

In these historical periods, attempts to reform judicial systems have not been de-veloped theoretically to the proper degree; there was a rejection of the recognized principles of organization of the judicial system and the achievements of philoso-phy and law [6].

Considering the experience of building judicial systems in different states, usually distinguish three models of organization:

- decentralized;
- moderately centralized;
- highly centralized.

1. A decentralized model is typical for countries with a federal structure. Under this model, only the highest courts are federal. States with a decentralized model for organizing the

judicial system include Switzerland, Germany, Canada, Aus-tria, etc. In these states, only the highest level courts are federal. As a rule, such courts in their activities can only apply federal law. Other courts that hear cases in the first instance, as well as in the appeal and cassation proceedings, are under the jurisdiction of the subject of the federation and are formed by them inde-pendently.

For example, the civil process in Austria is traditionally carried out by two types of courts: general and specialized. At the same time, the general courts (ordent-liche Gerichte) have the fullness of the judicial power, namely the right to consid-er and resolve civil and criminal cases, the right to enforce jurisdictional acts, and the right to take measures to ensure the established procedure for legal proceed-ings. Their structure includes four links.

The first two links act as the courts of first instance (Gerichtshofe erster Instanz). The lower link is the district courts (Bezirksgerichte). They are similar to the precinct courts of Germany, perform exclusively the functions of the court of first instance. Cases in them are considered solely by the judge. Second-tier courts are called differently: land courts (Landesgerichte), if they are in the capital of the earth; in other cases, the district courts (Kreisgerichte). They perform mainly the functions of the court of the first, as well as the second instance, checking the legality and validity of decisions of district courts. Single and collegial review of cases is used. The courts of the third link are the highest land courts (Oberlandesgerichte (OLG)). They perform the functions of a court of second instance.

There are four institutions of this type in Austria: Vienna (OLG Wien), Linz (OLG Linz), Graz (OLG Graz), Innsbruck (OLG Innsbruck). The jurisdiction of each extends to the territory of two or more lands. Collegiate production. Non-professional judges are involved in the consideration of commercial, labor or so-cial cases. As a court of first instance, they decide on the disciplinary liability of judges and notaries. The Supreme Court (der Oberste Gerichtshof) - the highest court. As a court of higher jurisdiction, he considers civil and commercial matters as part of professional judges [7].

General courts administer justice in all civil matters, unless they are referred to the competence of other

bodies by a special law. The concept of «civil cases» in this case also includes disputes in the field of entrepreneurial activity, in the field of labor relations and social security [8].

2. In states with a moderately centralized model of judicial system, there are two independent systems: the federal and the judicial system of the subjects of the federation. The most characteristic example in this regard is the United States of America. The federal judicial system of this state includes the US Supreme Court, appellate and district courts, and a number of special courts. The jurisdiction of these courts includes cases related to the application of federal law, as well as cases involving citizens residing in different states. US federal courts hear civil cases based on the federal rules of civil procedure.

The judicial systems of individual states may differ from each other, and some-times very significant. According to G.O. Abolonin, «US 50 state courts form 50 independent judiciary systems that administer civil justice based on the provi-sions of 50 special statutes passed by state legislatures. Most often, these norma-tive legal acts in the field of civil proceedings are in the nature of the rules of civil procedure or civil procedural codes» [9]. The judicial systems of individual states tend to be headed by the highest state courts. Also, courts of first instance exist in each state and, in addition, appeal courts are formed in states with significant territory. Describing the US judicial system, E. V. Miryasheva notes the follow-ing: «In the United States of America there are no two states with the same court system. Each state has the right to determine the most suitable organizational scheme, create the necessary number of courts, as well as give them names and establish their jurisdiction. Thus, the organization of state courts is not necessari-ly a clearly structured three-tier system, similar to the federal courts system. For example, in the federal system, courts of first instance are called district courts, and appeals tribunals are called district courts. However, in more than a dozen states, district courts are courts of first instance. In some other states, the name of the highest court uses the name of the highest court» [10].

Federal courts can only be contacted when the U.S. Constitution recognizes these courts as competent. Such cases are grouped according to the

following two crite-ria: due to the nature of the dispute (cases affecting the US Constitution or feder-al law); due to the identity of the plaintiff (cases of interest to the United States or to a foreign diplomat, disputes between citizens of different states). In both cases, the price of the claim should be at least 10 thousand dollars. If the case cannot be the subject of a federal court hearing, the decision of the trial court is final and cannot be appealed to the US Supreme Court. About 95% of cases are heard by state courts.

In the United States, as in England, even at a theoretical level, it is considered un-acceptable to leave the resolution of disputes outside the control of judicial deci-sions made by bodies representing the judicial branch of the state. This ensures the effective implementation of the principle of the inevitability of legal liability for a person who has committed a wrongful wrongful act. The implementation of this principle for a number of objective reasons in modern Russia cannot yet claim the same effectiveness.

In the United States, as in England, a jury is operating. This is reflected in the text of the US Constitution (VII amendment). Any citizen can demand a jury trial if the amount of claims exceeds $ 20.

The federal courts include the district, county (appeals) courts and the US Su-preme Court. All judges of this system are appointed by the President of the United States with the consent and approval of the Senate. Federal courts are very diverse, taking into account the specialization of the cases and territorial ju-risdiction.

In the USA there are about 100 district courts (they are also called federal courts of common law), the total staffing of which is about 500 judges. Their territorial jurisdiction does not coincide with the administrative borders of the states. This is one of the effective methods of ensuring independence in the work of judges and the difficulty in applying the «administrative resource» on the part of those in power in the Russian understanding.

Depending on the workload, the staffing of some of the district courts is about 20 judges. In most cases, cases are considered alone. The consideration of complex cases is carried out collegially as part of three judges. In populated districts, dis-trict magistrates are assisted by «US magistrates,» who can replace judges if nec-essary.

Clerks carry out the preparation of cases for hearing in district courts, i.e. recent-ly graduated young lawyers. At least once a year, the district court must consider cases in the format of an on-site court session in one of the districts of the served district.

In total, there are 13 courts of appeal in the United States (one of them is located in the federal district of Columbia, in which the capital of the United States is the city of Washington), which employs about 170 judges. As a rule, cases in these courts are examined collectively by 3 judges.

Special federal courts are established on the basis of various laws and are intend-ed to consider disputes arising in certain areas of the economy or social sphere (courts considering tax, customs and patent cases) and related to state responsi-bility (for example, the Claims Chamber). Some of them have exclusive compe-tence (for example, a foreign trade court). In some cases, legislation provides the plaintiff with the right to choose a court to consider his claims. Financial disputes in accordance with US law at the initiative of the taxpayer can be considered in a district court, in the Claims Chamber or in the Tax Court. Appeals against the decision of the Claims Chamber and the Foreign Trade Court may be considered in one of the 13 courts of appeal.

3. A highly centralized system is characteristic of states with a unitary form of organization. Such a model assumes a rigid vertically subordinate system of judi-cial authorities. However, according to this model, the courts of federations also line up. So, the majority of Russian jurists include the judicial system of the Rus-sian Federation in this form. The judicial model proposed by Russian law is un-precedented. It could be described as highly centralized as opposed to a decentral-ized and moderately centralized model, which is widespread among states with a federal form of organization. This is justified by the fact that all courts in the ter-ritory of the Russian Federation (with the exception of magistrates and constitu-tional courts of a constituent entity of the Russian Federation) are federal. More-over, in accordance with paragraph «o» Art. 71 of the Constitution of the Rus-sian Federation, the organization of the judicial system is the exclusive responsi-bility of the federal center. The normative basis for the construction of the judici-ary should be only federal law.

4. CONCLUSION

The judicial system of the Russian Federation is not a closed entity. It is devel-oped taking into account the values of the judicial system, embodied in the Con-stitution of the Russian Federation and disclosed in the legal positions of the highest judicial instances of Russia, as well as taking into account the legal posi-tions of international judicial bodies. The judicial system of Russia interacts with other judicial systems and adopts positive experience. This fact is proved by a single trend in the development of the judicial system - specialization of the judi-cial authorities (compositions), complication of the structure of the judicial sys-tem and attention to the infrastructure of the judicial system. However, the na-tional judicial system not only interacts, but also competes with other judicial systems, constantly increasing the efficiency of the entire system. It is indisputa-ble that the Russian judicial system and legal proceedings are similar to other jus-tice systems, but it is also certain that they form a purely Russian judicial system. In this regard, the experience of foreign doctrines should be studied, because comparative law allows, if necessary, to adapt it and thereby avoid the severity of the problems that arise [11].

The judicial system in Russia is highly centralized. The vast majority of courts are federal jurisdictions with a single subordination and financing. We believe that this is due to historical reasons. The inclusion of most Russian courts in the federal judicial system is explained by the desire for a single legal space, ex-pressed in the domestic legal system to a much greater extent than in foreign ones. The restriction of federal courts only to the highest echelon (the Constitu-tional and Supreme Courts) would lead to the collapse of the judicial and legal system of Russia in general.

CONFLICT OF INTEREST

The authors confirm that the information provided in the article does not contain a conflict of interest

References

Courts Constitution Act in the version published on 9 May 1975 // http://www.gesetze-im-internet.de/englisch_gvg/englisch_gvg.pdf

French Republic. Constitution and legislative acts: Per. with Fr., comp .:

V.V. Maklakov, V.L. Entin; M .: Progress, 1989. P. 310–333.

Mishin A.A. Constitutional (state) law of foreign countries. M., Statute, 2013.

The constitution of the states of Asia. In 3 t. T. 2: Central Asia and Hindustan / Otv. Ed .: Khabrieva T.Ya. M., Norma, 2010 .

Bevelikova N.M. The constitutional foundations of the judiciary in China, Korea and Japan // Legislation and Economics. 2011. No. 3. P. 49.

Danielyan D.R. Historical background of the formation of judicial systems in European states (on the example of Germany and France) // History of state and law. 2014. No 14. P. 42 - 45

Lukin Yu.M. The Austrian Statute of Civil Procedure in 1895 and the Austrian Judicial System: History and Conceptual Foundations // Bulletin of Civil Procedure. 2014. No. 6. P. 121 - 130.

The judicial systems of European countries. M.: International Relations, 2002.S. 15-30.

Abolonin G.O. About the US Judicial System // Bulletin of Civil Procedure. 2014. No. 1. P. 155.

Miryasheva E.V. The judicial system in a federal state (for example, USA): historical and legal excursion // Russian Justice. 2011. No. 9. P. 16.11.

Borisov G.A., Tsukanova E.Yu., Tonkov E.E., Sinenko V.S., Zinkovskiy M.A. The place of the Russian legislation in the modern legal systems // Revista Publicando. 2018. 5 № 16. (1): 822-828