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Facultad Experimental de Ciencias
Departamento de Ciencias Humanas
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The plenum of the Supreme Court

Doroshkov V.V.
Moscow State Institute of International Relations MSIIR-University of Ministry of Foreign Affairs of Russia, Russian Federation
doroshkov.vv@yandex.ru

Abstract

The subject of this study is evaluation of the correlation of the structure, the list of powers of the Plenum with the powers of the bodies of the judicial community, the leadership of the court, executive authorities, etc. The methodology is based on general scientific, interdisciplinary and specially-legal methods of cognition. As a conclusion, for finding the optimal model to build a judicial system, it seems important to find reasonable limits for the division of powers between the bodies of the judicial community and the Supreme Court Plenum which is part of the structure of the highest judicial instance.

Keywords: Plenum, powers, judicial, Judge, court.

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El pleno del Tribunal Supremo

Resumen

El tema de este estudio es evaluar la correlación de la estructura, la lista de poderes del Pleno junto con los poderes de los órganos de la comunidad judicial, la dirección del tribunal, las autoridades ejecutivas, etc. La metodología se basa en principios científicos generales, interdisciplinarios, especialmente en los métodos legales de cognición. Como conclusión, para alcanzar el modelo óptimo para construir un sistema judicial, parece importante encontrar límites razonables en la división de poderes entre los órganos del poder judicial y el Pleno del Tribunal Supremo, el cual hace parte de la estructura de la instancia judicial más alta.

Palabras clave: Pleno, poderes, judicial, juez, tribunal.

1. INTRODUCTION

In conditions of practical realization of the idea to separate powers, the material basis of the judiciary is self-governing state organizations in the form of judicial systems. In the modern world, there are many different models of judicial systems that have specific characteristics, an original structure. Such diversity is due to specific

features of state and legal development, dominant ideological attitudes and spiritual traditions, religions in each of the modern states that have passed their specific historical path of development. Regardless of the form of the government, territorial structure and political regime, the Supreme (Higher) Courts are declared by the highest judicial bodies in many countries. They are endowed with various powers, which are implemented with the help of relevant bodies and structural units created within these courts. One of the most important and original units in the structure of the Supreme Courts is the Plenum.

The Plenum of the Supreme Court of Cassation of France, which appeared after 1789 in connection with the proclamation of the principle of freedom and equality among the classes (political and before the law), can be recognized as a prototype of the existing Plenums of the Supreme Courts. Describing the situation that precedes the emergence of a new structural unit within the Supreme Court of the country, we should recall all three main stages of the Great French Revolution. The first stage (from July 14, 1789 to August 1792) was coming to power of the big bourgeoisie (Felians) and the establishment of a constitutional monarchy. The second stage (from August 1792 to June 1793) was coming to power of the Girondins thatare, representatives of the average commercial and industrial bourgeoisie and the proclamation of the republic. The third stage (from June 1793 to July 1794) - the dictatorship of the Jacobins –is representative of the petty bourgeoisie. However, after a short period of dictatorship, the power in France actually returned to the big bourgeoisie, although the

principle of equality of estates is still being proclaimed. All these periods of the revolution in France were accompanied by the improvement of the structure and powers of the Plenum of the Supreme Court.

If we analyze his personal composition as an independent form of the court, initially the plenum consisted of: the first president of the court, the chairmen and elders (duayenas) of the chambers and two representatives from each of the chambers. Consequently, not all high court judges were members of the Plenum of the Court of Cassation. Nevertheless, all chambers had their representatives in the Plenum. The principle of organizing the Plenum of the High Court in France was representative, not direct democracy. This is one of the distinguishing features of the Plenum of the highest court of the continental system of law after the bourgeois revolutions. In addition, the Plenum found a reasonable combination of the basis of democracy in decision-making and the basis of the aristocracy in its formation.

The plenum was assembled for the investigation of such cases, which contained questions of a fundamental nature, and, if necessary, a retrial of cases. The cases at the Plenum were transmitted by unmotivated definitions of the first chairman of the court or by a resolution of the chamber, and at the request of the attorney general. Over time, the Court of Cassation in the person of the Plenum was recognized as a certain scientific interpreter of law(Bibilo, 2012).

The Plenum of the Supreme Court in the domestic judicial system first appeared only after the revolution of 1917, which took place in two stages: 1) February 1917 - October 1917 - big and petty bourgeoisie come to power; 2) October 1917, when the representatives of the lower class, led by the vanguard of revolutionaries representing other estates, came to power. At the same time, at the first stage of the revolution, the issue of establishing a plenum in the highest court of Russia was not at all. Only during the period of the formation of Soviet power, including during the dictatorship of the proletariat which lasted much longer than the dictatorship of the Jacobins in France, the Plenum did appear and passed certain historical stages of its development. Characterizing the environment in which a new structural element in the form of the Plenum was created in the domestic Supreme Court, it should be noted that the state actively intervened in all spheres of society, leading to the gradual withering away of private law and the dominance of public legal institutions.

It is gratifying that after the radical reforms in the judiciary of Russia that took place at the end of the 20th century about the formation of an independent and independent judiciary in the country, this body, instead of disappearing, was refined with additional powers on the contrary. As noted in the legal literature, according to its decisions, often judged on the work of the entire Supreme Court, the Plenum became a structural unit, whose competence included not only the right of legislative initiative, giving guidance on judicial practice,

but solving organizational and personnel issues within the judicial system.

It seems that soon the question of the essence and the powers of the Plenum will again acquire its acuteness and urgency. The emerging reform of the domestic judicial system along the path to the creation of cassation courts in five districts of Russia and 5 courts of appeal of general jurisdiction will inevitably affect the structure of the Supreme Court of the Russian Federation, which will soon have to relocate to a new location in St. Petersburg. In connection with the limitation of the competence of the Supreme Court of the Russian Federation, which will be left with the right to review court decisions only in the order of supervision, in the order of new and newly discovered circumstances, the number of judges of the Supreme Court of the Russian Federation will be significantly reduced. There will be certain difficulties in the compilation and analysis of judicial practice in the same cassation courts of general jurisdiction and district arbitration courts. In addition, there is likely to remain a lack of clarification on the judicial practice of applying the law by magistrates, since the cases of their jurisdiction are practically not reviewed in the Supreme Court. Given the significant reduction in the number of judges and the Supreme Court of the Russian Federation, it will be difficult to prepare draft resolutions of the Plenum on topical issues of judicial practice, on resolving many organizational problems, and in drafting bills in the manner of legislative initiative. It may well be a matter of limiting the powers of the Plenum, transferring its individual powers to the Presidium of the

Supreme Court of the Russian Federation or to the bodies of the judicial community.

Probably, the question of introducing the chairpersons of the cassation courts in the Plenum of the Supreme Court of the Russian Federation will be discussed similarly to the Supreme Court of the Union of Soviet Socialist Republics (hereinafter USSR) which included the chairmen of the Supreme Courts of the Union republics. At the same time, the issue of clarifying individual types of proceedings by independent, specialized Plenums, as was the Plenum of the Supreme Arbitration Court of the Russian Federation, will become acuter.

Studying the era of the appearance of Plenums in the composition of the higher courts of different states, it can be concluded that the main reasons for the appearance of Plenums were: 1) centralization of the judiciary in the state; 2) democratization of the procedure to make managerial decisions. Practical implementation of the separation of powers principle and the formation of an independent judiciary inevitably entails the strengthening of its centralization, led by the country's highest court. For the society democratization and the adoption of wise, fair decisions, there is a real need to take into account the opinion of all members of the structural unit. It is for this purpose that complete assemblies of collectives of judges of the country’s highest court, called the Plenum, are held. In the Soviet period of history in the country, along with Plenums of the Central

Committee of parties and other important public bodies, plenums of the Supreme Court of the USSR and Union republics were created and successfully operated in the judicial system. Even in the Russian Orthodox Church (hereinafter ROC) there is now the Plenum of the Inter-Cathedral Presence of the ROC - an advisory body promoting the higher church in the preparation of the most important draft decisions, by adopting conclusions.

It should be noted that the Plenum of the Supreme Court is successfully operating not only in Russia, but also in several other states. Even in the newly formed state formations, especially in the territory of the former USSR, for example, in the Donetsk People's Republic, the plenum is envisaged in the structure of the Supreme Court. Legislation of many states constantly expands the list of powers of the Plenum of the Supreme Court, increasing the role of this body in the judicial system and in the field of judicial power. The experience of these structural units is very significant for understanding the essence of the judiciary.

In connection with the draft laws on the establishment of courts of appeal and cassation courts in the structure of courts, the reorganization of the Supreme Court of the Russian Federation (hereinafter RF), there were heated discussions about the place and role of the Plenum in the Supreme Court or Cassation Courts. These circumstances also indicate the need for a comprehensive scientific study of public relations connected with the organization and

functioning of the Plenum of the Supreme Court in the structure of the judicial system, clarifying the list of its powers. In order to improve the effectiveness of the judicial system management, the task arises of delineating the powers between various state bodies and officials within the judicial system (the Plenum, the Presidium, the Court's management), and between them and the judicial community (councils of judges, qualification and examination commissions), labor collectives of courts.

Many countries faced similar problems while reforming the judicial branch of power, regardless of the attribution of their national law to a legal family. But an analysis of the laws of many states makes it possible to make sure that Plenums of higher courts were more often created in countries whose legal systems are referred to a socialist or Romano-German legal family. Thus, Plenums of the Supreme Courts have so far remained in most former Soviet republics after the collapse of the USSR and they were created in other states. The competence of these Plenums is different and depends more on specific historical and legal factors. In addition, plenums (plenary sessions) in individual states operate in the Constitutional, Economic and other specialized Courts.

However, it should be emphasized that Plenums are absent in the Muslim system of law. Islam is alien to formal differences between people on social or ethnic grounds, property status, it does not recognize class divisions. Preference is given to those who are more

committed to the faith. Within the framework of Muslim law, as a variety of religious laws, the democratization of judicial procedures is difficult due to objective reasons. Therefore, the Supreme Court Shura, headed by the head of state, does not provide for the Plenum, although the projects on the appearance of such ones, including the Constitutional Shura, have already been discussed(Pashkov, 2017).

The degree of the topic elaboration regarding the structure and powers of the Plenums can be considered insufficient due to the relative novelty of the judiciary itself and the Plenum as a structural unit of the Supreme Court. The lack of appropriate attention to this topic is also since many powers of the judiciary were assigned simultaneously to the executive authorities and the higher courts before its allocation to an independent branch of power. The limits of power of the Plenum of the Russian Federation Supreme Court and other states, unfortunately, have not been fully reflected in domestic and foreign legal literature, and at the present stage of state construction and scientific and technological progress they need an additional scientific research.

Unfortunately, scientists have not yet managed to formulate clear answers to many topical issues that need to be solved. The reasons for the creation of the Plenum of the Supreme Court, the stages of its development in each of the states are not stipulated by. It is not determined what powers the Plenum should have at the present stage, how to delimit its powers from the powers of the head of the same

court or the bodies of the judicial community. The real potential of the Plenums was not properly evaluated and the possibility of forming a single international judicial body based on the Plenums of Supreme Courts was not discussed. Not an executive branch of power, but the judiciary should be formed by any international court. The problems of the judiciary at the national and at various international levels should also be decided not by the bodies of the judiciary community, but by the highest courts of the country represented by their Plenums. Consequently, the subject of this study is both the structure, the list of powers of the Plenum, and the issues of their correlation with the powers of the bodies of the judicial community, the leadership of the court, executive authorities, etc.

2. THEORETICAL GROUNDS FOR THE RESEARCH

Proceeding from the research objectives, this work uses the works of scientists from different branches of legal science who studied not only the judiciary, but the theory of law and legal proceedings. In addition, the state-power nature of judicial activity and its final decisions was developed by various sciences in connection with the problem of the implementation of legal norms and its necessary form, such as the application of law. It was the structural subdivisions of higher courts, along with the implementation of justice, that were responsible for ensuring the activities of the entire judicial

system of the state (giving explanations on judicial practice, selecting and arranging personnel, deciding on the responsibility of judges, etc.).

A significant place in the development of conceptual guidelines and principles of the theory of public administration as an independent field of research is occupied by the works of the German scientist M. Weber. He became the initiator and chief developer of the most important provisions of the concepts of the state as the main subject of politics and power, bureaucracy, state apparatus. Certain aspects of the powers of the judiciary were examined in the works of Alibayeva (2009) and Sirotova (2016).

The organization and peculiarities of the powers of the judicial community bodies were considered by Voermans (2003), Burdina (2016), and Lazareva (2012). Specialized courts, their supreme bodies and powers are reflected in the work of Urias et al. (1991).

The history of the appearance and development of the Plenum of the Supreme Court, the role of its decisions became the subject of scientific research in the works of Bratusi (1962) and Doroshkova (2013).

Since fundamental research of the specific features of the judicial power of individual states is only at the initial stage of its development, scientists actively use the results of scientific research in the sphere of executive branch administration, they borrow the

corresponding definitions. Thus, the question of the correlation of the categories "function" and "authority" regarding the judiciary, domestic and foreign scientists was considered in various aspects. Terminological differences in the definition of functions and forms of the implementation of judicial power are due not only to different views on these concepts, but also by different understandings of the judiciary itself. A view of the judiciary as a system of judicial bodies naturally leads to an unjustified identification of the functions and forms of activity of the judiciary with the functions and forms of exercising judicial power.

Unfortunately, the scientific legal literature does not fully clarify the list of functions of the judiciary about the existence of various legal systems, but there are also no clear criteria allowing certain types of judicial activity to be attributed to functions or powers. Both the functions and powers of the state and society are not delineated, and the functions and powers of state bodies of the judiciary and the bodies of the judicial community are not delineated. If initially the human rights function of the judiciary was considered by scientists primarily as a system of certain powers that distinguishes the judiciary from other forms of government,that over time, the value of this category has significantly expanded. As Sirotov rightly noted: "The functions of the judiciary began to be considered as directions of direct activity of the branch of management, within the framework of which separate tasks are realized and methods of legal regulation are applied"(Sirotov, 2016: 5).

The term "power" as an element of the content of the concept of "competence" by scientists is mainly considered as "a combination of certain rights and responsibilities of the management body" (Alibaeva, 2009: 7).

The term "Plenum of the Supreme Court", which designates the supreme body of the state judicial system and the composition of the court, requires clarification and specification. The National Plenum of the Supreme Court was represented by the state body of the judicial power immediately from the moment of its appearance, which not only carried out justice, but also fulfilled other organizational powers. In addition to the examination of specific cases, the cancellation and modification of sentences and rulings of the Judicial and Cassation Collegiums of the Supreme Court of the Russian Soviet Federative Socialist Republic (hereinafter referred to as the RSFSR) and any other RSFSR court, the powers of the Plenum of the Supreme Court were: 1) the correct interpretation of laws based on judicial practice; 2) holding the elections of the Disciplinary Collegium of the Supreme Court of the RSFSR; 3) consideration of other issues. As noted in the legal literature, "the first guidance clarification on judicial practice was adopted on November 3, 1924 at the 3rd Plenary Session of the Supreme Court of the USSR"(Doroshkov, 2013: 4).

The term "judicial community bodies" appeared and was actively used from the second half of the 20th century in Europe when the first judicial councils were created in France, Italy, Portugal and

Spain, independent bodies whose goal was to ensure a higher degree of courts independence from the executive. Their role gradually increased as the independent judiciary was formed. The bodies of the judicial community received the authority to appoint judges, although they included not only judges but also representatives of other branches of government. Nowadays the judicial community bodies are established and successfully operate in many states.

3. RESEARCHMAIN PART

Unfortunately, the scientific legal literature does not fully clarify the list of functions of the judiciary about the existence of various legal systems, but there are also no clear criteria allowing certain types of judicial activity to be attributed to functions or powers. How the functions and powers of the state and society are not delineated, and the functions and powers of state bodies of the judiciary and the bodies of the judicial community are not delineated. If initially the human rights function of the judiciary was considered by scientists primarily as a system of certain powers that distinguishes the judiciary from other forms of government. That over time, the value of this category has significantly expanded. As Sirotov rightly noted: "The functions of the judiciary began to be considered as directions of direct activity of the branch of management, within the framework of which separate tasks are realized and methods of legal regulation are applied"(Sirotov, 2016: 17).

Each of the links and structural units of the judicial system is vested with the specific powers of the judiciary. Certain activities of the judiciary are only indirectly related to the implementation of the judiciary, not directly related to the power to resolve social conflicts carried out by the court using a special procedure. Along with the fulfillment of the main function - the administration of justice, that is, the procedural law enforcement activity of the court for the consideration and resolution of civil, administrative and criminal cases, as well as economic disputes, the judiciary in the person of higher courts in many countries, is also endowed with other powers. Among them: 1) an explanation of the current legislation on judicial practice; 2) standard control; 3) realization of the right of legislative initiative; 4) directing the activities of lower courts; 5) judicial management; 6) the formation of the judiciary and others. These functions differ from each other in the purpose, content, implementation procedures used by the information, and often by the bodies implementing them.

In parallel with the process of the state legislative delimitation, executive and judicial branches of power in various countries, various public structures were created to express the interests of judges including bodies of the judicial community. Their appearance is largely due to the active role of the judges themselves in resolving corporate issues, which were often resolved by the leadership of the courts or by party bodies. States that for the first time created or have already reformed the bodies of the judicial community, as a rule, gave them a very wide range of powers, not only in the field of appointment,

training of judges, bringing them to disciplinary responsibility, but also in administering courts. To further enhance the effectiveness of judicial activity, it is necessary to find a reasonable balance of interests of the state and society, international and national legal systems.

4. METHODOLOGY

The methodology of the research is based on general scientific (dialectical, systemic (structural-functional), formal-logical), interdisciplinary (historical, statistical) and specially-legal (legal-dogmatic, comparative-legal) methods of cognition.

The dialectical method allows us to consider justice as a multifaceted activity of judicial authorities, organically combining law enforcement, law-making and organizational-legal elements, developing not always smoothly and accurately, sometimes spasmodically, unscientific, theoretically incorrect. The historical method is used to study the processes of formation and development of Plenums of higher courts. Comparative legal method helps to identify common and special features inherent in higher courts, their bodies and bodies of the judicial community of different states. Formally logical (analysis, synthesis, induction, deduction), as well as legal and dogmatic methods are used in the process of analysis of regulatory legal acts. Based on the system (structural-functional) method, the place and role of acts of higher courts is clarified.

To outline the direction of further improvement of the judicial system, first, one must turn to the historical materialistic theory of society, the state and law, to make sure that the determining role in the life of human society is played by the mode of production of material life which determines the social, political, legal, spiritual processes of life. Secondly, it is necessary to be guided by the provision on mutual influence on the production relations (basis) of the legal and political superstructure that is represented, among other things, by legal doctrines and views. After all, the basis of any scientific knowledge should lie the principle of historicism, through which all processes and phenomena are considered inextricably linked with the specific situation that gave rise to them and determined the further development. It is important to find out how and why a specific legal phenomenon has arisen, what major stages in its development have passed and what it has become at the present stage.

Only after the practical implementation of the separation of powers principle in the state life of many countries has the character and scope of the powers of the judiciary changed significantly, and their clarification was required. In recent years, especially domestic scientists studying the phenomenon of judicial power, have substantially expanded the vector of their scientific research, paying special attention to the knowledge of the essence of processes and phenomena, for the construction of a systematic theory. Due to this, the essence of the judiciary in many ways was determined by its specific place and role in the complex mechanism of public administration,

built on the principle of separation of powers, their interaction, checks and balances. Scientific research increasingly began to address the problems of the judiciary and the delineation of powers between various bodies and officials within the judicial system. When assessing the processes taking place in the country that determine the living conditions of people, domestic scientists rightly pay attention to the widespread "inadequate perception of Russian realities, the crisis of understanding life in Russia, which acquires not only dramatic, but clearly destructive for the country character"(Tishkov, 2006: 6).Therefore, for objective conclusions about the specific situation in Russia, one needs to look at realities without ideological colors.

The materials of this study were normative and legal acts regulating the activities of the Plenums of the Supreme Courts of the Russian Federation, the USSR and other states, both near and far abroad, as well as materials of the activities of the Plenums and the bodies of the judicial community.

5. PROCEDURE OF THE STUDY

It is a common knowledge that to implement the various functions of the judiciary in its structure, appropriate bodies are created and are functioning with a specific list of powers. In terms of its composition and decision-making procedure, the Plenum can be recognized as the most democratic and authoritative structural

subdivision of state bodies of the judiciary. First, as a rule, all judges of the supreme court are included in its composition, regardless of the positions held with the right of equal voice. Secondly, the highest court is represented by the most highly qualified judges with the most experience, a kind of "wise men". Thirdly, the decision-making procedures of the Plenum allow to involve not only scientific, but also the judicial potential of the country in its work. A study of the experience of the Plenums of the Supreme Courts leads to the conclusion that the Plenum is a universal form of organization of the judiciary not only at the level of higher courts but also for other levels of the judicial system. It is only necessary to clarify the powers of court leaders in the activities of the Plenum, with a view to preserving the tendency for the expansion of the powers of all participants in the Plenum by limiting the powers of the head of the Supreme Court.

The range of powers of the Plenum in each state is determined by various factors, including the specific role of the country's Supreme Court in the judicial system, its quantitative composition, the presence of judicial community bodies that differ in status, competence and authority. By democratic decision-making, the Plenum of the Supreme Court can be inferior only to the judicial community that appeared in several countries at the end of the 20th century. Separate powers of state bodies began to move to the judicial community, initially created in Europe, North and Latin America, Asia, Africa and the Middle East. The only exception is the countries of the Asia-Pacific region, which still have a vertical system of judicial power, headed by the Supreme

Courts (Japan, Singapore) or the political leadership of the country (China).

There are two main models of organization of the judicial community in the legal literature. According to the classification proposed by professors Voermans and Albers, there exists a southern European and northern European model of structuring the relationship between the bodies of the judiciary community, the executive power, and the courts(Voermans, 2003). The first model is characterized by a wide range of powers, including the area of training judges, construction, automation, information support. The second model of the judicial community bodies is represented by a rather narrow list of authorities when appointing judges and bringing them to disciplinary responsibility. The authority of the judicial community is not vested with the right of legislative initiative in any country.

Burdina in her thesis research substantiated the special originality of the judicial community created in Russia:

> Its distinctive features are determined by the specifics of the organization of the judicial system, the number of courts and the scope of tasks, subsystems due to functional and territorial differentiation, and the absence of a single supreme body. These bodies are entrusted with powers related to the status of judges and in the field of court management (2016: 114).

The highest body of the judiciary in Russia was the Council of Judges of the Russian Federation. Unfortunately, it included not so many judges as the leaders of the courts. But the bodies of the judicial community in Russia were created in place of the existing trade unions that stood for the protection of workers' rights, including from the leadership of the courts.

The supreme body of the judicial community in European states is the "Supreme Judicial Council" (in Bulgaria and Serbia); "Judicial Council" (in Slovakia, Slovenia, and Montenegro); "The Republican Judicial Council" (in Macedonia); "The All-Polish Judicial Council" (in Poland); "High Council of Justice" (in Albania); "Superior Council of Magistracy" (in France, Italy, Romania); "State Court Chamber" (in Croatia). On the contrary, the constitutions of some countries do not mention this body. In Slovakia, the Judicial Council was created, and in the Czech Republic, the Austrian-German experience was accepted, and these functions were assigned to the Ministry of Justice(Lazareva, 2012).

An activityanalysisof various judiciary bodies shows that they are to a greater extent an instrument for improving the judicial system and legal proceedings, ensuring the judicial system in terms of organizational and personnel. There is also a tendency to unite the national structures of the judicial community bodies in an international system. However, there are no corresponding international associations of state bodies of the judiciary, for example, various international

associations of plenums or other structural subdivisions of the supreme courts of the states with their Charter and governing bodies. The creation of international systems on the scale of various associations of states (for example, the CIS, BRICS, the European Union, etc.) based on Plenums of higher courts could help solve many problems of the judiciary, by analogy with international associations of executive bodies.

It is common knowledge that the judicial power in any state acquires independence and genuine independence from other branches of state power only if the courts have the status of state and constitute a single system of federal courts regardless of the form of legal proceedings (constitutional, administrative, criminal, and civil). The unity of the judiciary status means equality of all judges within the judicial community regardless of the types of legal proceedings that they carry out. It also implies equal protection by the federal law of their rights, as well as the imposition on them of the same duties and restrictions arising from the fact of belonging to the judicial community. In such circumstances, it is quite acceptable to create plenums of the Supreme Court in the judicial systems of many states as structural subdivisions and grant them many powers.

The specialization of courts and the formation of various subsystems in the judicial system of the state, headed by higher courts, create a certain threat to the law of the courts. To make uniform decisions, the country's highest courts are forced to find different forms

of interaction. For example, in the recent past of Russia, the joint sessions of the Plenums were held in the form of cooperation between the three higher courts during which joint unified decisions were adopted. The basis for the adoption of joint decisions was the Rules approved by the Plenums of both higher courts. There was no reason for conflicts between higher courts and the introduction of a draft law on the merger of courts while the practice of joint meetings of the Plenums was working and was applied. However, after the intensification of disputes over jurisdiction between the courts of general jurisdiction and arbitration courts, the Supreme Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation merged to ensure the unity of judicial practice. As a result of such a merger, the Supreme Arbitration Court and its Plenum ceased to exist.

Prior to the merger of the supreme courts, 26 joint resolutions of the Plenums of the Supreme and Supreme Arbitration Courts were adopted on judicial practice. In addition, in the history of Russia there was a joint meeting of the Plenums of all three higher courts that adopted on April 29, 1994 the joint Decree No. P-1/5/11. The need to introduce amendments and additions to this law is caused by the adoption of the new Constitution of the Russian Federation and the publication of a number of legal acts, in accordance with which it is necessary to bring this Law. The draft law was the subject of discussion at the third (extraordinary) All-Russian Congress of Judges, which appealed to the Constitutional Court of the Russian Federation,

the Supreme Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation with the request to exercise its right to initiate legislation and submit a revised bill to the State Duma of the Federal Assembly of the Russian Federation for consideration and it was done.

Therefore, when discussing the expediency of creating Plenums of the Supreme Court in other states where they do not already exist, it is necessary to consider the presence in the judicial systems of these countries, along with the courts of general jurisdiction, specialized state courts. Similar courts are created for consideration of cases in the sphere of: 1) trade (Denmark, Iceland); 2) administrative law (Great Britain, Germany, France, Sweden); 3) finance (Greece, Spain); 4) patent law (Austria). In some countries, there are special courts for cases of renting real estate (Switzerland) and insolvency (bankruptcy) of enterprises (Australia).

For example, in Germany, along with the general judicial system, there are four special systems - administrative, financial, labor, and constitutional (Urias et al., 1991). All the higher courts of the country have the Grand Senate, which includes a chairman and one of the judges from each senate. That is, the composition of the body of the supreme court of the country is formed on the principle of representative democracy. A similar situation arises in Russia about the creation in the structure of courts of general jurisdiction of appellate and cassation courts. It seems that for uniformity of judicial practice

the Plenum must remain in the Supreme Court of the Russian Federation, possibly in an enlarged composition with the participation of the chairmen of the cassation courts by analogy with the Plenum of the Supreme Court of the USSR. However, it is unacceptable to create a Plenum in each cassation district court. Otherwise, each district will have its own jurisprudence, which differs from the practice of other regions of the country.

Undoubtedly, the creation of the Plenum in the structure of the higher courts of other states will require clarification of its powers. The effectiveness of its activities will depend on the form of the territorial organization of the state (federal or unitary), on the classification of the legal system to a specific legal family (Anglo-Saxon or Romano-Germanic), and on the availability of specialized courts to the judiciary and the judiciary.

Legislation of different countries gives the Plenum of the Supreme Court as a composition of the court with the authority of one of the courts to verify and review specific cases, both in a federal and unitary state. For example, the Plenum of the Supreme Court of the USSR (considered cases in the manner of supervision). Similar powers are now possessed by: 1) the Plenum of the Supreme Court of the Republic of Belarus (considering civil and criminal cases within the limits of its competence in the order of supervision and on newly discovered circumstances); 2) Plenum of the Supreme Court of the Republic of Azerbaijan (considering cases on additional cassation or

on newly discovered circumstances); 3) Plenum of the Supreme Court of the Republic of Uzbekistan (reviewing cases in the order of supervision).

In modern conditions, the process of convergence of various legal systems is seen. The countries of the Romano-German legal tradition are gradually coming to recognize judicial law-making in one form or another. At the same time, there is a recognition that the need for lower-level courts to be guided by positions developed by the highest judicial bodies helps to ensure uniformity of understanding and application of the law which in turn leads to more effective protection of human rights and freedoms, stability and stability of law and order. An important task of the Plenum of the Supreme Court is to give judges a guideline so that they understand these norms of laws in the same way. A similar authority in the Muslim legal system is exercised by the Fatwa Commission, which solves questions of judicial interpretation of laws and generalization of judicial practice. Even the English law is now no longer actively created by the courts, as the role of statutory law increases, and case law is gradually becoming history.

In the absence of case law and detailed regulation of the activities of the Supreme Court of the Russian Federation, the Plenum is forced to go beyond its direct powers, rather broadly interpreting the possibility of considering other issues falling within its competence. However, the expansion of the powers of the Plenum does not contradict the essence of the judiciary. Insufficient development of the

legislation, its backlog from the requirements of life leads to the fact that often overdue clarifications, additions and even changes in legislation are enforced not through the issuance of relevant normative acts, official interpretation by legislative bodies, but through judicial practice.

Decisions of the Plenum of the Supreme Court, containing explanations on judicial practice, constitute a unique form of judicial lawmaking. Such an abstract interpretation of the legislation was born in the USSR and reflected the particularities of the notions of justice inherent in Soviet legal doctrine. In the light of the principle of division of branches between public authorities because of the interpretation of laws, new rules of law do not appear, since the interpretation is the disclosure of the contents of the legal norm. If the Constitutional Court of the Russian Federation formulates its legal position when considering a particular case, the Supreme Court of the Russian Federation summarizes the judicial practice, studying the problem comprehensively, and on the basis of in-depth analysis gives an appropriate explanation.

Depending on the nature of the provisions contained in the Plenum regulations, Professor SN. Bratus divided them into four groups:

1) reminders of the current regulations which for one reason or another are ignored or misused by the courts in cases; 2) clarification of the meaning of the current provisions, the

> formulation of the logical conclusions arising from them without any concretization of these provisions; 3) specification of the provisions, their detailing; 4) filling in the gaps in the law in those branches of law where the analogy of the law or the analogy of law is allowed (1962: 28).

Professor Hazard considered the decisions of the Plenum from the point of view of the legal scholar of the common law system as instructions. He noted that "Instructions are brief statements of the norm," distilled "from a specific situation, which does not reflect the facts of the case. Therefore, the instructions are for general use. It is not easy to determine to which situation they are applied, as in the case where there was a full set of facts for analysis"(Hazard, 1949: 11). Professor Marchenko believed that "the issue of the official recognition of judicial practice as a source of law is not only a question of theory, it is a question of practice"(Marchenko, 2005: 14).

Thus, judicial law-making is an essential element of the system of "checks and balances" designed to ensure the necessary balance between the powers of the different branches of government and their coordinated functioning. And the power to give explanations is rightly attributed to the competence of the Plenum of the Supreme Court.

The list of powers of the Plenums in other states of the former USSR, unlike Russia, is very different. Thus, the Plenum of the Supreme Court of the Republic of Belarus has the right: 1) to elect the qualification board of the Supreme Court judges from among the

members of the Plenum of the Supreme Court, as well as the chairman and deputy chairman of the Qualifications Collegium of the Supreme Court judges from among the members of this panel; 2) to hear information on the activities of the Qualification Board of the Supreme Court judges.

Plenum of the Supreme Court of the Republic of Tajikistan, has the right: 1) to approve the number and composition of the Presidium of the Supreme Court.

Plenum of the Supreme Court of Ukraine has the following powers: 1) to elect and dismiss the Chairman of the Supreme Court, his deputy; 2) to hear information from the Chairman of the Supreme Court, the Deputy Chairman of the Supreme Court on their activities; 3) to give opinions on draft legislative acts that relate to the judicial system and the activities of the Supreme Court; 4) to make a written presentation on the appeal of the Verkhovna Rada about the impossibility of the President of Ukraine fulfilling his powers for health reasons.

Plenum of the Supreme Court of Georgia: 1) determines the number of judges of the Supreme Court; 2) elects a large chamber; 3) elects the chairman and composition of the chambers of the Supreme Court; 4) elects the Chairman and the composition of the Qualifications Collegium of Judges; 5) appoints 3 judges of the Constitutional Court; 6) submits recommendations to the President on

concluding international treaties on issues within the competence of the Supreme Court; 7) creates an official press organ of the Supreme Court, appoints its editor and editorial board; 8) prepares and publishes an annual report on the state of justice in Georgia.

The Plenum of the Supreme Court of the Republic of Azerbaijan: 1) considers the request of the President on dismissal of judges; 2) considers complaints against decisions made by the Judicial-Legal Council.

The Plenum of the Supreme Court of the Republic of Uzbekistan has the right: 1) to review cases in the manner of supervision; 2) to review the materials of the synthesis and give explanations; 3) to approve of the composition of the Presidium of the Supreme Court.

The Plenum of the State Court in Estonia is the highest internal organizational body that: 1) submits Judges of the 1st and 2nd instances to appoint to the post to the President; 2) elects members of the self-governing bodies of judges. In exceptional cases, the Plenum may consider court cases, if there are contradictions and it is necessary to arrive at a uniform decision.

The plenum in the structure of the Supreme Court in Latvia accepts compulsory explanations for the application of laws to the courts and forms judicial chambers and departments of the Senate.

There is no Plenum in the structure of the Supreme Court of Spain. At the same time, the Plenum exists within the National Court, as well as the General Council. The bodies of the judiciary community in Spain are represented by the Plenum of the General Council of the Judiciary, which has the right to: 1) make proposals on the appointment of the Chairman of the Supreme Court; 2) make proposals on the appointment of members of the Constitutional Court; 3) appoint the chairman of the chamber, members of the Supreme Court and other officials; 4) make proposals on the appointment of the Chairmen of the Higher Courts of Justice of the Regional Autonomous Communities; 5) make proposals on the appointment of the Prosecutor General of the State; 6) take decisions on applications submitted to the decision of the standing commission or disciplinary section; 7) initiate an initiative, report or proposal, as well as to submit internal circulars and regulations, the publication of which is assigned to the General Council of the Judiciary; 8) accept, in cases stipulated by law, the resignation and approval of retirement of judges, members of the court and secretaries; 9) elect and appoint advisers who are members of the standing committee and sections of the Council; 10) approve of an annual memo on the state of affairs in the judicial administration, which the Chairman presents at the beginning of the year; 11) approve of and submit a preliminary draft budget of the General Council to the Government; 12) exercise any other functions that belong to the General Council of the Judiciary and are not transferred to its other bodies.

6. RESULTS

Authority as a content element of the concept of "competence" should be considered primarily as a set of certain rights and responsibilities of a particular body. The range of powers of the Plenum in each state is determined by various factors, including the specific role of the country's Supreme Court in the judiciary, and the activity of the judicial community. Nevertheless, the main activities of the Plenum are: 1) clarification of the current legislation on judicial practice; 2) realization of the right of legislative initiative; 3) judicial management; 4) the formation of the judiciary and others. They differ from each other in the purpose, content, implementation procedures used by the information, and often by the bodies implementing them.

The existing organization of the judicial system in Russia is built on the principles of external specialization. Such a structure is not consistent with the unified nature of activities related to the implementation of justice, which determines the need for a unified system of courts, despite the federal structure of the state. The differentiation of judicial activity depending on the kind of legal cases resolved, expressed in the specific features of constitutional, civil, administrative and criminal proceedings, objectively does not require the obligatory dismemberment of the judicial system to the appropriate subsystems of the judiciary. In this regard, the problem of delineation of powers between the Plenary Session of the Constitutional Court of the Russian Federation and the Plenum of the Supreme Court of the

Russian Federation, including the application of the provisions of the Constitution of the Russian Federation, is still relevant today. After all, the Constitutional Court of the Russian Federation formulates its legal position when considering a particular case, and the Supreme Court of the Russian Federation conducts a generalization of judicial practice, studying the problem comprehensively, and on the basis of its analysis gives appropriate explanations. I believe that the Plenum of the Supreme Court of the Russian Federation could well cope with the powers of the Constitutional Court of the Russian Federation.

The final target of any judiciary reform should be to ensure the true independence of the court and judges, the accessibility of justice, its fairness and unhindered. The creation in the higher courts of the Plenums and the granting of their respective powers will help to achieve this goal successfully.

Plenum of the Supreme Court of Russia passed several historical stages of development, significantly expanding its powers. With the formation of an independent judiciary in the country, this body of the Supreme Court is vested with broad powers, including the right to legislative initiative, the interpretation of laws based on the study of judicial practice, organizational and managerial powers in the judicial system of the country.

7. ANALYSES OF RESULTS

Scientific studies of the phenomenon of the judiciary make it possible to conclude that at the present stage of development of various judicial systems the Plenum needs additional powers to interact with other elements of the judicial system and the bodies of the judicial community. Along with carrying out the functions of administering justice, giving explanations on judicial practice, the judiciary in the person of higher courts in many countries lawfully acquires other powers, including administrative supervision of courts, the selection and placement of personnel, the prosecution of judges, and so on.

The powers of the bodies of the judicial system, their leaders and bodies of the judicial community are not clearly delineated. Therefore, it is necessary to limit the powers of the head of the Supreme Court in forming the agenda of the plenary meeting and in matters of an organizational nature, giving all the members of the Plenum with the appropriate powers, as well as the bodies of the judicial community. It is necessary to resolve the issue of making appropriate adjustments to the current legislation, specifying the role of the Plenum of the Supreme Court.

8. CONCLUSION

There is an objective need to consider the opinions of all members of the state body during the periods of society democratization, a departure from the methods of one-man management, with the simultaneous centralization of power in its higher echelons. For this purpose, complete meetings of collectives, called the Plenum, are held, at which appropriate collective decisions are made.

The diversity of judicial reforms in various countries demonstrates the difficulty of finding the optimal model to build a judicial system in order to achieve the ultimate goal - the effectiveness of the courts and the high quality of their judicial decisions. In this regard, it seems important to find reasonable limits for the division of powers between the bodies of the judicial community and the Supreme Court Plenum which is part of the structure of the highest judicial instance.

In the period of globalization and the crisis of international structures, it is advisable, based on the Plenums of the Supreme Courts, to form international bodies representing the judiciary of all states, with its Charter and governing bodies that decide questions of judicial power, not only at the national but also at the international level.

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