

GARIFULLINA ALSU RINATOVNA

**FORMATION AND DEVELOPMENT
OF MAGISTRATE COURTS IN THE RUSSIAN FEDERATION:
CONSTITUTIONAL AND LEGAL RESEARCH**

Specialty code 12.00.02
constitutional law; constitutional litigation;
municipal law

ABSTRACT
of dissertation submitted
for a degree of the candidate of juridical science

Kazan - 2015

The research has been carried out at federal state autonomous educational institution of higher professional education “Kazan (Volga region) federal university” at the sub-department of constitutional and administrative law

Scientific adviser: doctor of juridical science, docent, associate professor at the sub-department of constitutional and administrative law of federal state autonomous educational institution of higher professional education “Kazan (Volga region) federal university”

Kurmanov Midkhat Mazgutovich

Official opponents: doctor of juridical science, professor, deputy director for science of the Institute of lawmaking of federal state government-financed educational institution of higher professional education “Saratov state academy of law”

Lipchanskaya Maria Aleksandrovna

candidate of juridical science, deputy chief justice of the Constitutional court of the Republic of Tatarstan

Sakhieva Raisa Abdullova

Lead organization: federal state government-financed educational institution of higher professional education “South Ural state university” (National research university)

The thesis defense will take place on the 30th of October 2015 at 1 p.m. at the meeting of the Dissertation council Д 212.081.26 under federal state autonomous educational institution of higher professional education “Kazan (Volga region) federal university” at the following address: 420008, Kazan, Kremlyovskaya st. 18, auditorium 335.

The thesis is available at the scientific library named after N.I. Lobachevsky of federal state autonomous educational institution of higher professional education “Kazan (Volga region) federal university”.

The electronic version of the thesis is posted at the official website of Kazan (Volga region) federal university: <http://www.kpfu.ru>.

Mailing date 16th of September 2015.

Scientific secretary
of the dissertation council,
candidate of juridical science, docent

G.R. Khabibullina

I. General information

Relevance of the topic. Development in the Russian Federation can be characterized by implementation of the Federal target program “Development of the judicial system in Russia for a period of 2013-2020”. Magistrate courts are an integral component of the judicial system which is important for any legal state as soon as it ensures stability of the constitutional order, protection of interests and rights of its citizens and legal entities.

A definition of magistrate courts as a component of the judicial system given by the Federal law № 1-ФКЗ “On judicial system of the Russian Federation” of December 31, 1996, brings up a problem of magistrate courts as an independent institute.

The institute of magistrates is fundamental to embodiment of ideals of a democratic legal state. Magistrates in Russian regions contribute to strengthening of legitimacy, protection of human and civil rights and freedoms, formation of a common legal space. Thus the institute of magistrates supplements the activity of judicial authorities.

The institute of magistrates should receive an additional impetus to development under modern conditions. In order to make it possible we have to understand the processes of formation and current activity of magistrates in Russian regions, to identify the factors which have influence on these processes.

The most important factor which ensures access to justice is provision of maximum territorial proximity of these courts to citizens. Currently there are several problems associated with implementation of this constitutional principle of magistrates’ activity, which is, in particular, connected with definition of criteria for establishment and differentiation of judicial magistrates’ areas. Proper demarcation of such areas affects determination of jurisdiction and provides access to a constitutional right of citizens to judicial protection.

While implementing a constitutional principle of unity of state authorities of the Russian Federation with a court system and a status of judiciary there are practical problems caused by uneven development of the institute of magistrates in Russian regions and an unequal level of material and other support of magistrate courts.

Practice of magistrates has revealed problems of determining the legal nature of the institute of magistrates, constitutional and legal basis of their formation, characteristics of organizational support of magistrate courts activity. All these factors testify to imperfection of federal legislation and legislation of the federal subjects of Russia and require a detailed research.

The topic of our research allows solving practical law-enforcement problems based on existent scientific positions, helps to increase the efficiency of judiciary represented by magistrates and contributes to further development of the judicial system.

Scientific readiness. Some problems of formation and development of the institute of magistrates were considered by Russian jurists in the end of XIX – beginning of XX centuries (K. Antsiferov, V. Bochkarev, V.M. Gessen, P.I. Lyublinskiy, V. Nabokov and others), which in view of objective reasons were sidelined in a Soviet period.

Legal foundations of judicial power have been covered by E.B. Abrosimova, V.I. Anishina, S.L. Dyagterov, V.M. Lebedev, N.G. Muratova and others.

The problems of “justice of the peace” concept formation in the Russian Federation have been studied by I.V. Golovinskaya, A.A. Gros', V.V. Doroshkov, S.V. Lonskaya, V.V. Maksimov, S.G. Pavlikov, A.N. Sachkov, S.I. Potapov, E.V. Khamatova and others.

A.I. Biryukova, V.P. Bykov, A.M. Odintsov, M.M. Kurmanov, A.R. Mukhamadeev, Kh.Kh. Latypov and others devoted their studies to the problem of formation and development of “justice of peace concept” in subjects of the Russian Federation.

Organizational problems of magistrates' activity have been covered by S.V. Aleksandrov, E.V. Burdina, V.M. Lebedev, V.M. Nesterov, V.G. Yudin and others.

Researches by A.B. Vayman, A.G. Gataullin, V.M. Lebedev, A.F. Izvarina, S.G. Pavlikov, T.B. Trubnikova, Y.K. Yakimovich and other monographs were dedicated to problems of establishment of judicial authorities in Russia.

Some scholars examined the history of formation of the institute of magistrates in the Central industrial region of Russia in 1864-1889 (N.N. Trofimova), Nizhegorodsky province (I.I. Dunaev), and revealed the attitude of Kazan citizens to the judicial reform of 1864 (S.A. Frolov) and the historical aspect of justice of the peace formation in the Republic of Tatarstan (Kh.Kh. Latypov); considered a comparative legal study of magistrate courts in Russia (V.V. Gushev) and carried out the analysis of magistrate courts in the Russian Federation (A.A. Nelyubina); discussed various aspects of magistrates' activity, such as organizational, legal and criminal aspects of their activity (E.G. Scherbatykh), a criminal legal aspect of magistrate court formation (V.I. Kononenko), a historical aspect of establishment of magistrate courts in modern Russia (M.A. Chetyan), constitutional bases of the institute of magistrate courts (N.L. Markova), constitutional principles of judicial power in republics of the Russian Federation (A.B. Vayman); made attempts to determine the role of magistrates in a judicial system of the Russian Federation (N.V. Kupriyanovich), studied a theory of legal means and mechanisms for enforcement of rights (V.A. Sapun).

However, it should be stated that federal and regional aspects of formation and development of the institute of magistrates, as well as constitutional aspects of formation and development of the institute of magistrate courts in the Russian Federation have never studied in full; and the study of some elements of scientific, theoretical and practical presentation of the institute of magistrates as a constitutional and legal institute have not been completed. Thus, the interest in the issues analyzed in the dissertation thesis is based on the lack of scientific elaboration and controversial practice of their implementation.

The aim and objectives of the dissertation thesis. *The aim is* to form a complete scientific understanding of constitutional and legal nature of the institute of magistrates in the Russian Federation.

The aim mentioned above determined a need to form and solve the following *research objectives*:

- to define the essence of the institute of magistrates and its place in the system of constitutional law;

- to reveal such concepts as “justice of the peace”, “a magistrate court”, “organizational support of the magistrates’ activity”;
- to systemize periods of formation and development of the system of magistrates in Russia;
- to establish essential characteristics of a constitutional and legal status of magistrate courts and problems of its confirmation;
- to reveal the value of constitutional and legal bases of organizational support of magistrates’ activity;
- to define foundations and offer a classification of legal means for organizational support of magistrates’ activity;
- to formulate scientifically grounded suggestions and recommendations for filling the gaps and resolving contradictions in the legislation of the Russian Federation aimed at improving the efficiency of organization and activity of magistrate courts.

The subject of research. The subject of research is a body of social relations emerged in consequence of formation and activity of magistrates in the Russian Federation as a constituent element of the institute of magistrates.

The object of research. The object is based on provisions of the Constitution of the Russian Federation, international and other legal norms contained in federal legislation, laws and legal norms of Russian regions, decisions and rulings of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, which affect various aspects of magistrates’ activity and provisions of doctrines on trends of development and a mechanism of functioning of the institute, ideas and opinions on the constitutional and legal nature of the institute of magistrates and a place of magistrate courts in a judicial system of the Russian Federation.

Methodological framework of research. The methodological framework is represented by a set of general, philosophical methods, including the dialectical method, which involves consideration of social, economic, legal and political phenomena and their interconnection and development, as well as a number of general and particular scientific methods.

Application of the above-mentioned methods in combination with legal and social achievement allowed revealing and analyzing specific characteristics of the process of formation and development of the institute of magistrates and the organizational support of their activity on the territory of subjects of the Russian Federation.

When determining the legal nature of the institute of magistrates and formation of the institute in the subjects of the Russian Federation the author applied logical, comparative, historical and technical methods. The application of these methods assisted in determination of necessary preconditions for detection of imperfection of existent legislation and possible solutions of such problems.

Systematic, statistical, sociological and other methods have been applied along with the general scientific methods. It helped to reveal trends and regularities of formation and development of the institute of magistrates in Russia not only at a modern stage but also in the past.

One of the key methods applied to study the problems of the magistrate court system is an instrumental approach, which is a basis for investigation of effectiveness of

certain legal categories such as organizational provisions of the magistrates' activity and revision of their ability to solve various problems.

A legal simulation method has been used to develop certain proposals and recommendations for improvement of legislation and organizational activity of magistrates.

Application of such methods as analysis, synthesis, generalization, systematization, induction, deduction provided an opportunity to compare legal norms, which increased a scientific validity, logicity and consistency.

Theoretical basis of research. A theoretical basis is represented by fundamental studies of E.B. Abrosimova, S.S. Alekseev, O.A. Baboshin, A.G. Gataullin, I.V. Golovinskaya, S.L. Degtyaryov, D.M. Demichev, V.V. Doroshkov, M.M. Kurmanov, N.V. Kupriyanovich, V.V. Lazarev, V.M. Lebedev, S.V. Lonskaya, M.F. Malikov, N.L. Markova, A.V. Mal'ko, A.A. Nelyubina, S.G. Pavlikov, P.V. Popinov, V.A. Sapun, A.N. Sachkov, T.V. Trubnikova, S.A. Frolov, E.G. Scherbatykh, V.G. Yudin, Y.K. Yakimovich and others.

The empirical basis of research includes decisions and resolutions of the Constitutional Court of the Russian Federation, decisions and rulings of the Supreme Court of the Russian Federation and the Judicial Panel of the Supreme Court of the Russian Federation for civil affairs, data of statistical reports on magistrates' activity in regions of the Russian Federation related to the research problem.

The novelty of the dissertation research consists in scientific understanding of the constitutional and legal nature of the institute of judicial system and the institute of magistrate courts as its constituent elements, generated by the author; additional theoretical provisions for understanding of such definitions as "a magistrate", "a magistrate court", "justice of the peace", "organizational support of magistrates' activity" and classification of legal means and various grounds for organization of magistrates' activity, enriching the scientific concept of the institute.

Thus, the author:

- revealed a constitutional and legal concept of the institute of magistrates;
- provided author definitions of "a magistrate", "a magistrate court", "justice of the peace", "organizational support of the magistrates' activity", which are related to legal regulation of magistrates' activity;
- offered periodization of development of justice of the peace in Russia;
- established essential characteristics of the constitutional and legal status of magistrates and problems of its implementation; provided additional arguments for the necessity to include magistrates among the number of federal judges;
- proposed an author approach to solution of problems of organizational support of magistrates' activity, which consists in transfer of organizational provisions for their activity to the federal level;
- introduced a concept of "organizational support of magistrates' activity" developed in consideration of the theory of legal remedies;
- revealed the value of constitutional and legal bases of organizational support of magistrates' activity and gave a comprehensive description of organizational support of magistrates' activity, manifested in analysis of legislative regulation peculiarities and consideration of various legal means, used in this field;

- classified the legal means of organizational support of magistrates' activity based on various grounds (depending on the type of legal means used to ensure professional skills of magistrates, the regional composition and the type of functions);
- suggested offers and recommendations for legislation improvement in the Russian Federation and the subjects of the Russian Federation, aimed at improving the effectiveness of the magistrates' activity.

Scientific novelty of the research is concretized and manifested in the following **provisions submitted to thesis defense:**

1. Constitutional and legal norms, judicial powers, a procedure for appointment (election) of judges in the Russian Federation and organizational support of their professional activity are the basis of the institute of magistrates, which is an element of the constitutional and legal institute of the judicial power.

Formation of an independent constitutional and legal institute of magistrates in the system of constitutional law is confirmed by the presence of specific grounds:

- a specific character of public relations that arise in connection with professional activity of magistrates aimed at peaceful resolution of conflicts;
- presence of a separate law on magistrate courts;
- particular significance of the institute which is manifested in formation of conditions for easy access of citizens to justice.

2. In order to ensure the unity of the judicial system, improve the legal status of magistrates and strengthen the authority of judicial power the author provides additional arguments on inclusion of magistrates in a number of federal judges:

- in fact magistrates are the first unit of the federal system of courts of general jurisdiction (decisions made by magistrates may be appealed at district (town) courts);
- in accordance with article 77 of the Constitution of the Russian Federation a system of state authorities of subjects of the Russian Federation is established by the subjects independently in compliance with the grounds of the constitutional structure of the Russian Federation and general principles of organization of representative and executive bodies of state power as it is provided by Russian legislation. Thus, the subjects of the Russian Federation do not have a right to establish their own state authorities, namely judicial bodies;

- a principle difference of the magistrates' legal status from the federal judges' status is a procedure for appointment (election) to a position;

- a complete transfer of organizational support of magistrates' activity at the federal level can ensure the equal level of organizational, material and technical provisions of regular courts' activity, including magistrates.

3. A constitutional provision under Article 124 of the Constitution of the Russian Federation on establishment of possibilities for full and independent administration of justice can be ensured by development of federal standards that stipulate for financial, material, personnel and other support of magistrates' activity, as they can contribute to sustainable and unified development of magistrate courts system.

4. Based on positions, developed in a theory of legal remedies and provisions of article 118 of the Constitution of the Russian Federation it was proposed to introduce a definition of "a system of legal remedies for provision of magistrates' activity" into

scientific use as it represents a set of regulative complex measures for establishment of conditions for effective activity of magistrates.

5. Due to the differences of legal remedies for organizational support of magistrates' activity the author has developed their classification:

- depending on the nature of functions the system of legal remedies for organizational support of magistrates' activity can be subdivided into two groups: legal remedies for organizational support of magistrates' activity in administration of justice and legal remedies for organizational support of magistrates' activity during organization of activity at judicial districts;

- depending on the nature of participation of legal measures in provision of professional skills of magistrates we distinguished those which ensure professional skills needed for administration of justice and professional skills required to be elected for a magistrate office;

- depending on a subject composition there can be procedural remedies for activity of state authorities of the subjects of the Russian Federation in the field of appointment and election of magistrates, establishment of judicial districts, activity of magistrates at the stage of their authorization and at the stage of administration of justice.

6. According to the principle of jurisdiction provided by the article 47 paragraph 1 of the Constitution of the Russian Federation a case must be considered only at a certain court and by a certain judge. To follow the above-mentioned principle it is needed to make a provision for implementation of the right to fair court with participation of two magistrates at the same judicial district which ensures a constitutional right to judicial defense, as well as independence and objectivity of court.

7. Based on the results of the study the author substantiates proposals that can improve federal legislation and legislation of the Russian subjects:

- it is proposed to establish additional judicial districts when the number of residents of a certain judicial district exceeds 23 thousand people (a fixed norm) regardless of total population. All judicial districts should get equal number of cases;

- it is needed to organize continuous training of magistrates and employees of magistrate courts at federal state government-financed educational institution of higher professional education "Russian state university of justice" and its regional branches, as the aims of establishment and activity of the above-mentioned university were implementation of professional and additional training programs for federal judges, magistrates and employees of courts, judicial bodies and the Judicial Panel of the Supreme Court of the Russian Federation.

Theoretical significance of the research consists in extension of scientific knowledge of the institute of judicial power, as soon as one of its constituent elements is the institute of magistrates; clarification of such concepts as "a magistrate", "a magistrate court", "justice of the peace", "organizational support of magistrates' activity". Theoretical conclusions contained herein contribute to objective and full understanding of the essence of the legal institute of magistrates and complement the constitutional and legal provisions of two-level judicial system of the Russian Federation and a status of judges in the Russian Federation, implementation of the right

of citizens to judicial protection, the right to access to justice, instrumental theory of development of judicial remedies and definition of judicial remedies.

The research reveals additional theoretical grounds for establishment of the institute of judicial power in a system of constitutional law, as soon as the institute of magistrates is a constituent element of this system; and substantiates preconditions for the establishment of this institute; defines peculiarities of its legal nature and content; examines federal and regional grounds for formation of the institute of magistrates in Russia.

Statements provided by the author have already been mentioned in three dissertation researches submitted for a degree of candidate of juridical science (R.I. Abushev, Kh.Kh. Latypov, R.A. Ryabzin), a monograph “The judicial system of Russia (conceptual bases of organization, development and improvement)” (edited by A.F. Izvarina, 2014), 4 journal articles of various authors (E.V. Beregovaya, T.A. Vladykina, S.A. Semeykina).

Practical significance of the research consists in an opportunity to use the results for improvement of federal and regional legislation related to magistrate courts, in particular, amendments to the federal law “On magistrates in the Russian Federation”, laws and state regulations in Russian regions.

Conclusions and suggestions made by the author can be used in further research, when developing guidelines for organization of the magistrates’ activity on the territory of Russian subjects.

The results can become useful information and supplement such educational courses as “Constitutional law”, “Law-enforcement authorities”, other special courses (such as “Justice of the Peace” and etc.), as well as appropriate educational literature, lecturing materials, teaching and methodical manuals.

Approbation of the results. The main results of the research have been presented in 11 journal articles (4 articles in scientific journals from the list approved by the State Commission for Academic Degrees and Titles), in federal and regional journals, legal information systems “Garant” and “Consultant Plus” and materials of theoretical and practical conferences.

The author repeatedly presented the results at the final theoretical and practical conferences for professor and employees of Kazan branch of federal state government-financed educational institution of higher professional education “Russian state university of justice” (Kazan) in 2006, 2008, 2011, 2012, 2013, 2014, 2015, took part in a Federal annual scientific conference “Relevant problems of jurisprudence and judicial practice” (March 15, 2013), international scientific conference “Trends in development of law enforcement at the present stage” (October 25, 2013), all-Russian scientific conference “Justice today: relevant problems of theory and practice” (October 23, 2014), round table discussions on “Constitutional justice and development of legislation in Russia: theoretical, legislative and enforcement issues” (March 23, 2011), “Judicial system and legal proceedings in Germany” (November 20, 2012), “The importance of legal theory and practice” (February 27-28, 2013), “Legal norms: general and particular characteristics” (April 10, 2013), meetings of the Board of the Ministry of justice of the Republic of Tatarstan dedicated to “Legal provisions of magistrates’ activity” (2013).

Research structure. The research consists of an introduction, two chapters including 5 paragraphs, conclusions, a list of cited legal acts and bibliography, enclosures. Conclusions and recommendations are included in each paragraph.

II. Main contents

In the **Introduction** the author substantiates relevance of the topic, indicates the level of scientific readiness, defines aims, objectives, a subject and an object of research, formulates scientific novelty and main provisions, as well as conclusions and recommendations for improvement of legislation, characterizes theoretical and practical significance, describes approbation and application of the results.

The first chapter “The institute of magistrates: constitutional and legal bases for formation and development in the Russian Federation” consists of two paragraphs, which reveal a constitutional and legal nature of the institute of magistrates and analyze historic and legal aspects of formation of the institute of magistrates in Russia.

In the first paragraph **“Constitutional and legal nature of the institute of magistrates”** the author analyzes constitutional and legal grounds for activity of magistrates and pays attention to a number of principle provisions of the Constitution of the Russian Federation, which determine the principle of separation of powers and define judicial power as an independent branch of state power; and also distinguishes fundamental footings for establishment and activity of courts in a separate paragraph **“Judicial power and public prosecutors”** (chapter 7 of the Constitution of the Russian Federation).

One of the key researches dedicated to the legal nature of the institute of magistrates is the analysis of preconditions for establishment of the institute, its structure and values. In author’s opinion it is important to identify the role of the legal institute of magistrates in Russian judicial system, as it can help to distinguish the essential characteristics of the institute of magistrates and determine principle directions of interaction between the institute of magistrates and other components of the judicial system of the Russian Federation. The author believes that the most important criterion for establishment of the legal institute is existence of specific, detached aims, objectives and functions of the institute.

The author analyzed existent scientific approaches to definition of the concept of **“the institute of magistrates”**. The first approach lets distinguish not the concept of the institute itself (as it is related to detachment of legal norms regulating any relations) but the peculiarities of a legal status of magistrates as a subject of relevant relations. This approach is traced in a number of scientific researches, it helps to explore the history and origins of formation of the institute of magistrates, determine the role of this institute in a process of civil society development, and provide comparative analysis of the institute in Russia and abroad. The second approach is based on analysis of individual elements of the institute.

When identifying a role and a place of the institute of magistrates in the Russian legislation system the author pays attention to a number of significant methodological problems. One of them concerns the use of legal terminology in scientific literature in order to define the institute of magistrates. It is noted that at present such terms as **“a**

magistrate”, “a magistrate court”, “justice of the peace” are not considered as uniform definitions and the term of “justice of the peace” is a broader concept than the terms of “a magistrate” and “a magistrate court”.

The research substantiates the relevance of its topic not only for the whole judicial system, but also for some of its elements, such as the key components like legal sectors and legal institutes. The importance of studying the legal institutes is caused by its theoretical and practical significance that is based on peculiarities of the subject, methods and functions of the legal sector used to identify the legal institute. However, the author draws attention to the fact that modern jurisprudence does not provide us with a single approach to definition of criteria for systematization of constitutional and legal norms, as well as the number and names of structural components of this system. The author shares the opinion existing in science that a subject of constitutional and legal regulation is a leading criterion for systematization of the constitutional law institute.

The author considers it appropriate to use the above-mentioned criterion in order to substantiate that the constitutional and legal institute of magistrates is independent. The most striking indicator of its independence is a particular subject composition, manifested in public relations regulated by the institute of magistrates, when a key subject having a legal status is represented by a magistrate.

According to the author a set of legal norms regulating the legal nature and legal status of magistrates in the judicial system, as well as their competences and methods of their election, the order of authorization and other organizational issues of their activity should be considered as the single legal institute. The institute of magistrates, in her opinion, is an element of a compound constitutional and legal institute of judicial system. The core element of the institute of magistrates is a set of constitutional and legal norms related to the judicial system, its authority and the order of election in the Russian Federation, as well as organizational provisions of their activity, etc.

In a context of the institute of magistrates the traditional bases such as the homogeneity of content, the unity of legal norms, the isolation of regulations, the absolute nature of regulated relations should be supplemented with such criteria as peculiarities of social relations that arise from the activity of magistrates; a social significance of this institute which is manifested in conditions developed for access of citizens to justice.

The legal nature of the institute of magistrates is revealed in the Constitution of the Russian Federation, the Federal law “On judicial system in the Russian Federation”, the Federal constitutional law “On judicial system in the Russian Federation”, the Federal constitutional law “On courts of general jurisdiction in the Russian Federation”, the Federal law “On magistrates in the Russian Federation”, the Federal law “On the status of judges in the Russian Federation”, the legislation of the subjects of the Russian Federation.

By analyzing the federal legislation we can conclude that establishment of the institute of magistrates did not aim at formation of a subordinate element of the judicial system only, but creation of new structures that can improve the quality of the judicial system, efficiency of legal proceedings, ensure the access to justice for citizens and

create a possibility for peaceful settlement of conflicts that can reduce the working load of regional (and municipal) courts of general jurisdiction.

The institute of magistrates has a complex nature, specified by the ambivalent status of magistrates that causes difficulties in resolving the problem of legal classification of magistrates – either a magistrate is a public office of the Russian Federation or one of the subjects of the Russian Federation. The author insists that a position of “a magistrate” meets all criteria to be classified as the public office of the Russian Federation.

The author offers to supplement the Federal law “On magistrates in the Russian Federation” with a paragraph revealing the content of the principle concepts such as “justice of the peace”, “a magistrate court”, “a magistrate”; and the bases for classifying the position of “a magistrate” as a public office of the Russian Federation which should be regulated at the legislative level by supplementing the Consolidated list of public offices in the Russian Federation; and amending the Federal constitutional law “On the judicial system”, the Federal constitutional law “On courts of general jurisdiction in the Russian Federation”, the Federal law “On magistrates in the Russian Federation”, classifying magistrates as federal judges.

In the second paragraph “Formation of the institute of magistrates in Russia” the author estimates the main historic periods of formation of the institute. It is noted that in Russia magistrate courts were established as a result of the Judicial reform of 1864, which played an important role in development of the judicial system of the state. Before the reform courts were based on social class system. There was the system of courts on the territory of the Russian Empire, but it was too complicated and confusing. Legal proceeding was too bureaucratic. Courts were under the pressure of administrative bodies: investigations and sentence were carried out by police, who also performed judicial functions on insignificant cases.

Right after Aleksandr II approved the judicial charter on November 20, 1864, judiciary was separated from executive and administrative bodies, and magistrate courts became an independent element of the judicial system, separated from the courts of general jurisdiction, which were subordinate to the cassation instance represented by Senate. Based on the judicial charter magistrate courts, as opposed to district courts, judicial chambers and the Senate were originally established as a judicial authority. A court of magistrates was supposed to become a court for representatives of any class, free of formalities and customs, but with all necessary judicial procedures, close to population.

A magistrate office was elective. Magistrates were elected for three years with no restrictions related to the number of terms of offices. Magistrates were elected not by population but by a district or a country assembly, in capital cities – by the State Duma. A qualification and requirement system (gender qualification, age requirement, educational qualification, residential qualification) was an inevitable element of the judicial system. Magistrates in the Russian Empire were divided into two groups: district magistrates and magistrates of honor. Later there was the third group – alternate (reserve) magistrates.

When Aleksandr II signed the Decree “On introduction of magistrate courts in Vyatka, Kazan, Kostroma, Olonets, Penza, Samara, Saratov, Smolensk, Tambov and

Chernigov provinces” a number of judicial areas, magistrate districts and magistrate offices was established based on a density of population criterion. Later based on the Law on chiefs of counties of July 12, 1889 and the Regulations of legal proceeding under jurisdiction of county chiefs and municipal judges of December 29, 1889, magistrates were abolished on the whole territory of the Russian Empire, excluding several major cities. The institute of magistrates was again established in 1912 on the territory of Russia, though with some modifications. Finally magistrate courts were abolished in accordance with the Decree no.1 of November 24, 1917.

The revival of the institute of magistrates in all regions of the Russian Federation in the end of the 20th century was caused by a necessity to solve important social problems by means of judicial mechanisms. The adoption of laws “On magistrates...” (literally “On election and activity of magistrates...”) and “On establishment of magistrate districts and magistrate offices...” played an important role in guaranteeing the legal defense for population. Regional laws on magistrates determined the order of establishment and abolition of magistrate districts and magistrate offices, regulated replacement of magistrates, the term of office, the order of approval of the structure and staff members of a magistrate court, financing and technical provisions of magistrates’ activity. In contrast with the Constitution of the Russian Federation constitutional acts of some Russian regions (as the Constitution of the Republic of Tatarstan) contain a direct reference to magistrate courts.

The author proposes a following periodization of the development of justice of the peace in Russia:

1. A period of formation of justice of the peace in the Russian Empire (1864-1917), included several stages:

1) 1864 -1889 – adoption of legal regulations and decrees on introduction of the judicial system in Russian provinces,

2) 1889 – 1912 – adoption of the law on country chiefs and Regulations of legal proceeding under jurisdiction of county chiefs and municipal judges; in accordance with these legal acts the judicial functions were entrusted to country chiefs and municipal judges, along with their administrative functions,

3) 1912 – 1917 – adoption of the law on modification of district courts, which recreated the institute of magistrates.

2. Soviet period (1917-1991) can be characterized by abolition of the judicial system that had been formed in a period of the Russian Empire, and liquidation of magistrate courts.

3. Transition period (1991 – 1998) is associated with adoption of the Concept of the judicial reform of 1991, the Law on the status of judges in the Russian Federation, the Constitution of the Russian Federation and the Federal law on the judicial system.

4. Modern period (1998 – up to date) includes several stages:

1) 1998 – 1999 – adoption of the Federal law on magistrates and the Federal law “On the number of magistrates and magistrate districts in the Russian Federation”;

2) 1999 – 2002 – adoption of regional legal acts on magistrates;

3) 2002 – up to date - development of Justice of the peace concept in regions of the Russian Federation.

The second chapter “Constitutional and legal bases of organizational support of magistrates’ activity in Russian regions” consists of three paragraphs, which reveal a concept and a system of organizational support of the magistrates’ activity, examine the constitutional and legal bases of appointment (election) of magistrates and requirements for candidates, analyze the legal basis and the procedures for establishment of the number of magistrates and demarcation of judicial districts.

In the first paragraph “A concept and a system of legal means for organization of magistrates’ activity” the author points to the absence of the definition of “organizational support of magistrates’ activity”. For example, the Federal law “On magistrates in the Russian Federation” contains only one article related to financing of salaries, social payments, material and technical support of magistrates’ activity.

Based on the analysis of legislation and a significant number of special literature the author concludes that the most appropriate method to study the category of “organizational support of magistrates’ activity” is the theory of legal means (instrumental approach), which can help to reveal the value and the efficiency of each element of the legal categories. The author proves significance of legal means which consists in the fact that a correct choice of legal means can help to achieve the objectives of legal regulation and legal effectiveness in general.

The author comes to the conclusion that the system of legal means for provision of magistrates’ activity is represented by a set of regulative mechanisms, used together and aimed at arrangement of conditions for effective activity of magistrates. These legal means are different in their nature and belong to different industry sectors. These mechanisms include legal constitutional, administrative, financial mechanisms and etc. A special group contains organizational legal means which include assignment of premises for magistrate courts, material and technical support, supply necessary equipment and utilities.

Among the legal means which ensure the implementation of the institute of magistrates it is necessary to allocate procedures related to the activity of state authorities of the Russian Federation, responsible for appointment of magistrates and establishment of magistrate courts.

The system of legal means for organizational support of magistrates’ activity can be divided in two groups: legal means for organizational support of magistrates’ activity in organization of justice and legal means for organizational support of magistrates’ activity for establishment of magistrate courts. The study of each of the above-mentioned groups of legal means is of great theoretical and practical significance.

At the same time the author draws attention that in legislation and modern scientific literature along with the definition of “organizational support of magistrates’ activity” another non-identical definition of “the organizational activity of courts” is widely used. The main difference between these two definitions lies in a fact that the first definition is focused on organizational and legal means which provide the activity of magistrates, including clarification of their legal nature and possible ways to solve the existing problems. The second definition covers, in the first place, the system of offices and units of a magistrate court, referred to as the court administration, and, in the

second place, the problems of organization of the administration activity and interaction of its units.

The author considers that material and technical support of magistrates' activity should be examined based on the theory of legal means. In this regard timely identification of administrative bodies responsible for organization of magistrates' activity and attribution of such responsibilities to them take special significance. The author pays attention to the existing problem of effectiveness of certain legal and civil means in a process of organization of magistrates' activity. As soon as legislation does not stipulate for establishment of magistrate courts as independent legal entities and consequently does not make any provisions related to the legal form of their activity, respectively it remains unclear what legal basis provides a magistrate (and a magistrate court) with a right to use the property (for example, premises).

In the absence of a legal definition of "material and technical organization of magistrates' activity" the author considers appropriate to attribute the activity of administrative bodies responsible to provide magistrate courts with premises, equipment, consumables and other property (services). One of the legal means is a requirement for a workplace of a magistrate and his employees. The author suggests that at the federal level it is necessary to establish minimum standards in order to achieve the equal level of material and technical support of magistrates' activity.

The essential characteristic of magistrates' activity is the fact that operation of justice of the peace concept involves not only legal means of various industries but a set of such legal means. A court district is one of the examples as soon as its activity is provided by financial (allocation of appropriate assets, needed for formation and activity of the district), civil (allocation of premises, consumption of utilities, preparation, conclusion and performance of contracts (for repairing and maintenance works, purchase and supply and etc.)), administrative (relations with authorities responsible for material and technical support of magistrate courts) labor (formation of personnel needs) and others. The study of the above-mentioned legal means and identification of principle directions of interaction with them is of great scientific interest.

The author considers that those legal means which provide information openness of justice of the peace (as recorded hearings, information boards with relevant information such as magistrates' names, reception hours, categories of cases and etc.) are of great significance.

The special group consists of the legal means, provided by legislation on magistrates and special laws on education, which relate to training and retraining of magistrates and court administration. Magistrates and court employees usually go through special training courses in a specialized educational institution – federal state government-financed educational institution of higher professional education "Russian state university of justice" and its branches.

The study of issues mentioned herein resulted in recommendations, developed for improvement of legislation regarding the transfer of organization of magistrates' activity to the federal level; introduction of assistant magistrates in the system of court administrations; continuous training and retraining of magistrates and court employees at federal state government-financed educational institution of higher professional education "Russian state university of justice" and its branches, which were created for

implementation of additional educational programs of training, developed for federal judges, magistrates, court employees and employees of the Judicial Department of the Supreme Court of the Russian Federation.

In the second paragraph “Constitutional and legal bases of appointment (election) of magistrates. Requirements for candidates for the office of magistrate.” the author studied the requirements, provided by the constitutional legislation for candidates for the office of magistrate and the order of their appointment. These requirements relate to citizenship, age and work experience. As it is stated in the Constitution of the Russian Federation any additional requirements may be established in accordance with the federal law.

It is mentioned that in accordance with the federal legislation the issues related to appointment and election of magistrates may be resolved by regional authorities: magistrates may be either appointed by an administrative body of the region of the Russian Federation or elected by residents of a certain judicial district as it is stipulated by the legislation of this region. At the same time appointment of a magistrate by the responsible administrative body is considered as a form of elections but an indirect form of elections.

The federal legislation determines a certain procedure for appointment of magistrates, while a procedure of election of magistrates by citizens either the order of appointment of magistrates by a legislative (executive) authority, which is a required order of appointment of magistrates according to the federal law “On magistrates in the Russian Federation” is not stipulated. The subjects of the Russian Federation have a right to determine these procedures by their regional laws.

The author considers that the order of appointment of magistrates stipulated by regional legislation in accordance with article 6 of the Federal law “On magistrates in the Russian Federation” is a component of the unified procedure for appointment of magistrates and cannot contradict the federal legislation on the status of judges. The Federal law no.20-Φ3 “On amendments to legislative acts of the Russian Federation” of March 4, 2013 established a new order of appointment of magistrates in relation with a judicial district. Thus, it is required to indicate a judicial area and a judicial district in appointment of magistrates act.

The author gives an opinion that it is impossible to reduce age requirements for magistrates. A requirement that a magistrate must own a degree in legal studies is obligatory. According to the system of qualifications a degree of a “bachelor” is not considered as sufficient. Thus in accordance with the requirements established by the Constitution of the Russian Federation a magistrate must hold a degree of a “specialist” or a “master”.

The study resulted in recommendations developed by the author on improvement of legislation related to a mechanism of preparation of candidates for office of magistrate.

The third paragraph “Legal basis, procedures for establishing the number of magistrates and demarcation of judicial districts” is dedicated to analysis of regional legislation of the Russian Federation related to demarcation of judicial districts and recommendations provided in scientific literature for modification of norms related to establishment of judicial districts based on the number of citizens.

On the grounds of the analysis of the Federal law “On magistrates in the Russian Federation” the author concludes that a quantitative and territorial criterion is the most appropriate principle developed for demarcation of judicial areas and establishment of judicial districts as soon as it is based on the number of residents of a certain region of the Russian Federation.

The author believes that proper demarcation of judicial districts helps to determine jurisdiction of magistrates and provides free access to justice. One of the methods used to determine the borders of judicial districts is to indicate all settlements and streets with building numbers. The other method is based on description of geographical borders and objects. The author supposes that geographical indication of objects should become a priority method; when using other methods of demarcation we face a problem of so-called neglected areas and objects which were not included in any judicial district.

As a result the author proposes recommendations for improvement of legislation related to amendments to the law “On magistrates in the Russian Federation” as follows: in case the number of residents of a certain judicial district exceeds the established standards (23 thousand people) it is required to establish an additional district without regard to the share of exceeding population and the total number must be distributed evenly to all judicial districts.

In order to comply with constitutional rights and guarantees the author proposes to appoint two magistrates for one judicial district.

A geographical method should be a priority method of demarcation as it provides demarcation of geographical, not residential areas. The subjects of the Russian Federation may use any method of demarcation under the condition that such methods are stipulated by legislation of the Russian Federation: they ensure coincidence of judicial districts borders with administrative borders of regions and exclude the so-called neglected areas.

In **Conclusion** the author summarizes main results and findings of the research and lists proposals and recommendations related to improvements of legislation.

The bibliography list contains a number of regulations, periodicals, academic literature, monographs, dissertations and abstracts of dissertations.

III. Academic journal articles relevant to the subject of thesis

1. Articles published in leading peer-reviewed academic journals from the list approved by the State Commission for Academic Degrees and Titles of the Ministry of education and science of the Russian Federation:

1. Garifullina A.R. Aspects of organizational provisions of magistrates' activity // Rossiyskiy sud'ya – 2012 - №6 – p. 5-10 (0,8 p.s.).
2. Garifullina A.R. On the legal institute of magistrates // О правовом институте мировых судей // Vestnik ekonomiki, prava i sotsiologii – 2013 - №4 - p.116-120 (0,7 p.s.)

3. Garifullina A.R. Definition and system of legal measures for organizational provision of magistrates' activity // *Pravo I gosudarstvo: teoriya i prakrika* - 2013 - № 12 – p. 105-108 (0,5 p.s.).

4. Garifullina A.R. Definition and legal nature of organizational provision of magistrates' activity // *Rossiyskiy sud'ya* – 2014 - № 2 – p. 28-31 (0,5 p.s.).

2. Articles in other journals:

5. Garifullina A.R. Constitutional and legal grounds for formation and development of the institute of magistrates in subjects of the Russian Federation (Volga region) // *Uchenye zapiski. Vol.II. The collection of articles of professors of Kazan branch of state educational institution of higher professional education Russian academy of justice* – Kazan - 2006- p.76-84 (0,5 p.s.).

6. Garifullina A.R. Revival of the institute of justice of the peace in the Russian Federation // *Pravo i jizn'* - 2006 - № 4/39 - p. 22-23(0,3 p.s.).

7. Kurmanov M.M., Garifullina A.R. Estimation of regional legislation of the Russian Federation on magistrate courts // *Mirovoy sud'ya* – 2007 - № 2 – p. 7-10 (0,6 p.s.)

8. Kurmanov M.M., Garifullina A.R. Estimation of regional legislation of the Russian Federation on magistrate courts // *Mirovoy sud'ya* – 2007 - № 3 - p. 2-4 (0,6 p.s.)

9. Garifullina A.R. Problems of modification of number of magistrates and demarcation of judicial districts // *Uchenye zapiski. Vol.VII. The collection of articles of professors of Kazan branch of the state educational institution of higher professional education Russian academy of justice* – Kazan - 2008. – p. 137-150. (0,9 p.s.)

10. Garifullina A.R. Constitutional and legal grounds for formation of the institute of magistrates in the Republic of Tatarstan // *Uchenye zapiski. Vol.VII. The collection of articles of professors of Kazan branch of the state educational institution of higher professional education Russian academy of justice* – Kazan – 2011. - p. 135-144. (0,6 p.s.)

11. Garifullina A.R. On the requirements submitted for magistrates // *Uchenye zapiski. Vol.VIII. The collection of articles of professors of Kazan branch of the state educational institution of higher professional education Russian academy of justice* - Kazan - 2012. – p. 370-379. (0,7 p.s.)

12. Garifullina A.R. To the question of material and technical support of magistrates' court activity. *Uchenye zapiski. Vol.IX. The collection of articles of professors of Kazan branch of the state educational institution of higher professional education Russian academy of justice* – Kazan - 2013. – p. 3-9. (0,5 p.s.).