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# **PROPOSALS FOR IMPROVING THE JUDICIAL SYSTEM**

IN THE RUSSIAN FEDERATION  
AND AMENDING LEGISLATIVE  
ACTS FOR THEIR  
IMPLEMENTATION



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## **LIST OF ACRONYMS USED IN THIS REPORT**

ComPC — Commercial Procedure Code of the Russian Federation

SC — Supreme Court of the Russian Federation

HQBJ — High Qualification Board of Judges of the Russian Federation

CPC — Civil Procedure Code of the Russian Federation

SLD of the President of the Russian Federation — State-Legal Directorate of the President of the Russian Federation

ECHR — European Convention on Human Rights

CAJP — Code of Administrative Judicial Procedure of the Russian Federation

CSCFJ — Presidential Commission for Screening Candidates for Federal Judges

QBJ — Qualification Board of Judges

TC — Tax Code of the Russian Federation

PF — Pension Fund of the Russian Federation

CrPC — Criminal Procedure Code of the Russian Federation

FZ — Federal Law

FKZ — Federal Constitutional Law

## BRIEF LIST OF MEASURES FOR IMPROVING THE JUDICIAL SYSTEM CONTAINED IN THIS DOCUMENT

A diagnostic assessment of the work of the judicial system of the Russian Federation preliminarily conducted through a series of empirical studies revealed a number of issues that need to be addressed. These include:

- The heavy workload for judges leads to a significant decrease in the quality of the judicial system, the adoption of “one-size-fits-all” decisions and the erosion of the essence of justice.
- The poor quality of the system for selecting candidates to the judiciary and the procedure for appointing judges, which is not transparent and is not reflected in the relevant laws.
- The excessive influence of court presidents and the organizational dependence of judges.
- The vagueness of grounds for determining the disciplinary liability of judges, which opens the door to the use of disciplinary responsibility as a way to exert influence on judges.
- The excessive repressiveness of and poor control over criminal charges (put more radically, the existence of accusatory bias).

Accordingly, the proposed measures have been divided into three blocks: improving the quality of personnel; removing organizational restrictions and giving judges greater independence and the judicial system greater autonomy; and reducing the workload and simplifying the judicial process.

Measures to improve the quality of judicial personnel and the procedures for selecting and appointing judges:

1. Create a unified, permanent and impartial Federal Centre for training judges that is independent from government agencies. Appoint judges on the basis of coursework and examination results.

2. Abolish the requirement for courtroom secretaries and clerks to have a degree in law. At the same time, these posts should be removed from the list of professions that count towards legal experience.
3. Invest judicial assistants with procedural functions (preparation of draft decisions, clarification of the parties' rights and obligations, mediation, disclosure of evidence).
4. Double the salaries of court clerks or increase them to the average level for the respective region.
5. Introduce a universal status for all judges and simplify the procedure for the movement of judges inside the judicial system.
6. Simplify the procedure for screening of candidates by the Presidential Commission for Screening Candidates for Federal Judges, limiting it to the initial appointment of judges only, while keeping decisions on the transfer of judges to different courts and conferring powers to court presidents in the hands of the Chief Justice of the Supreme Court, which are to be made on the basis of recommendations of qualification boards of judges.
7. Make the grounds for the President of the Russian Federation to reject a candidate for the judiciary more transparent, public and predictable.
8. Change the composition of the Presidential Commission for Screening Candidates for Federal Judges, replacing the representatives of the law enforcement agencies with members of the community of judges.

Measures to reduce organizational constraints on and strengthen the independence of judges:

1. Change the procedures for appointing court presidents — introduce a procedure for selecting and nominating candidates for the post of court president by the court members on the basis of a ranked vote.
2. Limit the term in office of a court president to four years, with a maximum of two terms.
3. Reduce the role of court presidents and increase the role of the Qualification Board of Judges in the appointment of judges.
4. Abolish the institution of allocating bonuses upon the recommendation of court presidents.

5. Transfer the economic and organizational powers of court presidents to court administrators.
6. Introduce an automated procedure for allocating cases among judges on the basis of their areas of specialization.
7. Introduce a new measure of disciplinary responsibility of judges by reducing the judge qualification class. At the same time, ensure the exceptional nature of such punitive measures as the revocation of powers, which shall not be applicable to any violations committed in the process, except for systematic and gross violations, provided there were earlier penalties and only upon the request of the participants in the process.
8. Introduce clear criteria that distinguish between miscarriages of justice and disciplinary offences.

Measures to reduce the workload and simplify the judicial process:

1. Increase the thresholds for civil claims by state authorities (the Federal Tax Service, the Pension Fund of the Russian Federation, from 3000 to 10,000 roubles)
2. Increase the state duty for legal entities; differentiate duties depending on the court instance.
3. Introduce mandatory internal departmental appeal claim before a lawsuit can be filed.
4. Remove obstacles to the termination of criminal cases at the investigation stage on non-exculpatory grounds.
5. Introduce mandatory audio recording of court hearings and make this the primary means of recording judicial proceedings and evidence.
6. Expand the use of the rule regarding the production of a rationale at the request of the party only; disclose the introductory part and operative provisions of the sentence in a criminal case.

# INTRODUCTION

Courts are an institution of the modern state that resolves economic, civil, administrative, criminal and other disputes in accordance with the adopted legal norms. To the extent that it creates a predictable and fair legal environment and ensures the protection of the rights of citizens and organizations, including the right to own property, the judiciary promotes economic growth. The need for renewed economic growth and long-stability in Russia raises the issue of improving the judicial system and increasing the authority of judicial power.

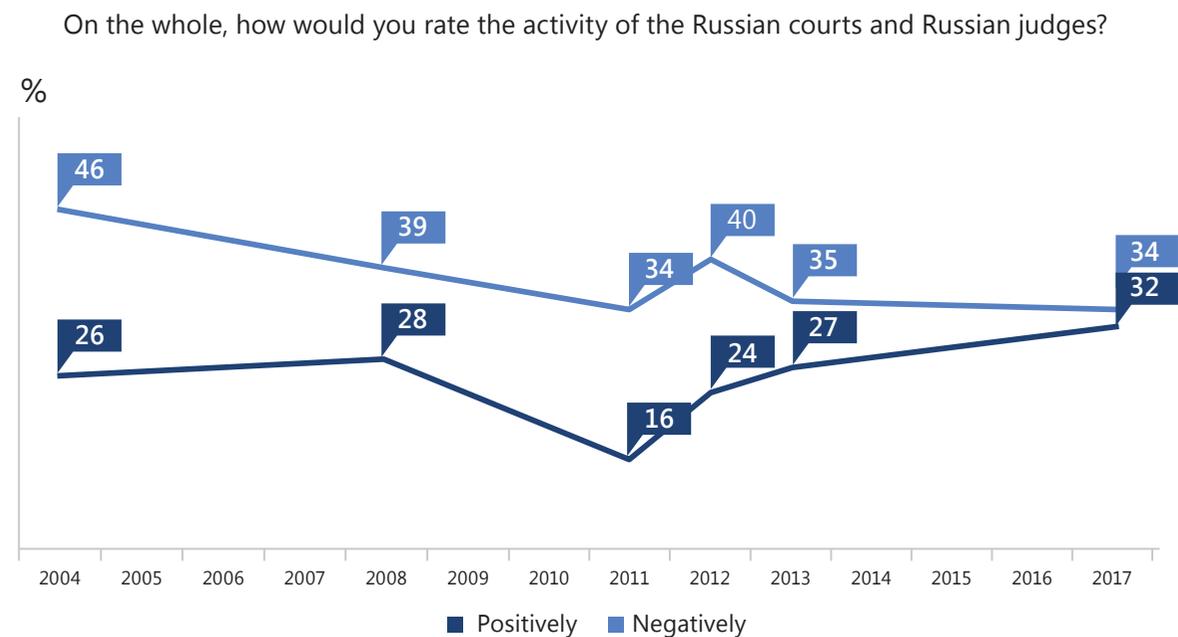
Sources of growth in Russia today include both state and private investments, the ideas and energy of the business community. The potential of private business and innovation was not fully realized during the previous decade. Perhaps the most important reason for this was the people's distrust in the law enforcement and judicial systems and the concern that their property and investments would not be protected. The investment climate — that is, the population's inclination to make long-term productive investments with their money, creative energy and physical and spiritual efforts in a given country — depends on the expectations of the people, the level of the perceived risks related to the infringement of their rights, and their faith in the judicial system. A market economy cannot flourish if there is no faith in the judicial system.

The people cannot be coaxed into trusting the judicial system by simply calling for them to do so or coming up with various legislative innovations. The judicial system needs to be modernized in such a way as to ensure the progressive and persistent qualitative improvement of the due process of law and the possibility to constantly monitor judicial practices for the timely adoption of organizational, personnel, financial and technical development measures and the establishment of an independent and impartial judiciary. Speaking at the IX All-Russian Congress of Judges on December 6, 2016, President of the Russian Federation Vladimir Putin singled a number of areas in which the judicial system could be improved, including: reducing the burden on the courts; strengthening the status of judges and guaranteeing their independence; streamlining the judiciary; and increasing the openness and transparency of the justice system.<sup>1</sup>

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<sup>1</sup> *Speech of Vladimir Putin at the IX All-Russian Congress of Judges on December 6, 2016. Transcript published on the website <http://www.kremlin.ru/events/president/news/53419>*

Fig. 1. Public Opinion of the Activity of the Courts and Judges



Source: Public Opinion Foundation. "Dominants" Project, N = 1500

In practice, the improvement of the judicial system should ensure a balance between public and private interests in all forms of judicial proceedings. The right to judicial protection is a fundamental human right and is written into the Constitution of the Russian Federation under Article 46. It is the judiciary, more than any other body, that has been entrusted with the implementation of this right. The state of the judicial system is determined by the degree to which principles such as the independence and irremovability of judges, the adversarial nature and legal equality of the parties (articles 120, 122 and 123 of the Constitution of the Russian Federation) and the entitlement of the individual to a fair hearing in the event that a dispute arises regarding his or her civil rights and obligations or any criminal charge is brought against him or her (Article 6 of the European Convention on Human Rights) have been implemented.

It is assumed that the high remuneration and social guarantees afforded to judges are an important assurance of independence in the decision-making process. However, this can only be the case if a range of other guarantees are also provided. In the absence of other components that ensure the independence of the courts (for example, clear definitions of the types of cases that involve liability, the opportunity to study the law as a science, the qualification and high pay of the judge's administration and independence from the court presidents when making decisions), the high salary that judges receive serves to accelerate the process of their becoming dependent on the state, as it is the state that finances judges and provides social guarantees.

Is each and every Russian citizen afforded the right to a fair, impartial and lawful resolution of their case in a court of law that is delivered within a reasonable time? Can each and every Russian citizen rely on the courts to defend their rights in the event that government bodies or officials act unreasonably towards them? The Constitution of the Russian Federation unequivocally gives people the right to believe that the answer to both these questions is “yes.” However, the real question, of course, is: What is the actual state of affairs in the country? And how does the Russian judicial system work in practice?

A diagnostic assessment of the work of the judicial system in the Russian Federation conducted by the Institute for the Rule of Law at the European University in St. Petersburg involving a series of empirical studies revealed a number of issues that need to be addressed.<sup>2</sup> These include:

- The heavy workload for judges, including bureaucratic obligations, which leads to a significant decrease in the quality of the judicial system, the adoption of “one-size-fits-all” decisions and in some cases the erosion of the essence of justice.
- The poor quality of the system for selecting candidates to the judiciary and the procedure for appointing judges, which is not transparent and is not reflected in the relevant laws.
- The influence of court presidents and the organizational dependence of judges.
- The vagueness of grounds for determining the disciplinary liability of judges, which opens the door to the use of disciplinary responsibility as a way to exert influence on judges.
- The excessive repressiveness of and poor control over criminal charges (put more radically, the existence of accusatory bias).

These problems will be analysed in greater detail in this report, and the analysis will serve as the basis for proposals to rectify the situation. Certain problems that the judiciary faces are linked with the high workload of judges or the practice of selecting and appointing them, which are inherent in both the commercial courts and courts of general jurisdiction, regardless of the type of hearing. Others, such as accusatory bias or inequality of the parties to the process, only apply to criminal proceedings.

In terms of volume, criminal proceedings account for a small part of the overall workload of the judicial system in Russia: around 967,000 cases per year, or less than 4% of all cases heard

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<sup>2</sup> For more, see: *Diagnostic Assessment of the Work of Judicial System with Respect to Criminal Proceedings and Proposals for Reform. A Research-Based Report. St. Petersburg: Institute for the Rule of Law, 2016. [http://enforce.spb.ru/images/Issledovanya/court\\_reform\\_IRL\\_4\\_KGI\\_web.pdf](http://enforce.spb.ru/images/Issledovanya/court_reform_IRL_4_KGI_web.pdf)*

at courts of general jurisdiction in the first instance in 2016. Yet it is precisely this component that is the most problematic, and the public's perception thereof determines the level of trust the people have in the judicial system and bears strongly on the reputation of the Russian courts.

Not all experts share the opinion that an accusatory bias exists in criminal proceedings. As an argument that such a bias is not evident data on the share of criminal cases that are dismissed in court on non-exculpatory grounds (22–24% of all outcomes) is often presented. Moreover, statistics on the number of acquittals as a proportion of all sentences (2–2.4%) is frequently used to back up this position.

On the other hand, the weak judicial control over the investigation process and the presence of an accusatory bias are evidenced by the following data, which was collected over the course of the past five years:

- In 91% of cases, the court grants the requests of the investigative authorities to remand the accused in custody (until 2002 this kind of decision was made by the prosecutor's office and the number of granted requests was around 80%).
- The average judge delivers an acquittal once every seven years.
- The absolute majority of acquittals occur in criminal proceedings initiated by private persons, which are investigated without the participation of a prosecutor (the number of acquittals in this case is around 30%).
- The proportion of acquittals in public and public-private cases (which together make up 93% of all criminal cases) is 0.13%, or 0.7% when special procedure cases are not counted.
- The share of acquittals in jury trial cases is 15–16%.

Criminal prosecution continues to be used as an instrument for resolving economic disputes and in cases of property redistribution and political persecution.<sup>5</sup> In general, people have no idea about the majority of defendants in criminal cases, the details of trials and the sentences handed out. However, high-profile cases that have an economic or political connotation are covered extensively by various media outlets. As far as the general public is concerned, these are the cases that serve as indicators of the state of the judicial system

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<sup>5</sup> For more, see: Titaev, K. and Chetverikova, I. *Excessive Criminalization of Economic Activity in Russia. Executive Summary*. Moscow, St. Petersburg: Center for Strategic Research, Institute for the Rule of Law at the European University in St. Petersburg, 2017; Chetverikova, I. (with Titaev K.). *The Structure and Main Features of Economic Crimes in Russia (Based on Data for 2013–2016). Executive Summary*. Moscow: Center for Strategic Research, 2017; Titaev, K. (with Chetverikova, I., Shepeleva, O. and Shklyaruk, M.). *The Problem of Law Enforcement Agencies Applying Pressure on Businesses: False Premises and Futile Proposals*. Moscow: Center for Strategic Research, 2017.

and its shortcomings. Judicial proceedings that deal with administrative offences replicate many of the problems inherent in the criminal justice system.

The strategy for the improvement of the judicial system should not be built on the basis of an ideal, nor should it borrow from abroad. Rather, it should proceed primarily from the existing state of affairs in the judicial system and the problems that in practice hinder citizens from exercising their right to judicial protection, as well as from the constitutional principles of independent judges and the autonomy of the judiciary from other branches of government. In other words, both the problems and their solutions should be rooted in the actual context of the work that the judicial system currently performs. This approach does not discount the importance of the fundamental values of justice and the equality of all under the law, nor does it ignore the importance of the best practices developed around the world. But abstract values and the organizational and legal solutions that are characteristic of other national jurisdictions are always transformed by the local context, which is why applying them perfunctorily often brings about unexpected and unforeseen results. Conversely, a problem-oriented approach that involves diagnosing specific problems, understanding where they came from and how they are connected, and finding solutions to these problems provides us with a safety net if we underestimate the national context.

Another important principle that underlies the proposals contained in this report is the great amount of attention paid to the organizational, institutional and sociocultural aspects of the work of the judicial system. Despite the importance of formal normative regulation, it should be kept in mind that the courts are not merely legally defined participants in the judicial process that have been endowed with certain rights and responsibilities; they are also very real organizations in which people work and interact with one another in order to achieve specific results.

Accordingly, the behaviour of participants in the judicial process is subject to the influence of a number of factors that exist outside formal legal regulation. Among these are: the distribution of centres of administrative power in the organization; the goals and constraints that are determined by the organization's interests; the norms of the professional environment; interests connected with career progression and avoiding certain risks; as well as various restrictions, from the interests of other participants to physical limitations that dictate the need to curtail one's efforts. We proceed from the premise that these factors determine the quality of the due process of law and its capacity for protecting citizens just as much as, and even to a greater degree than, the norms of the existing legislation. And the improvement of the judicial system must primarily affect its organizational and institutional aspects.

The initiative of the Supreme Court of the Russian Federation on the introduction of interregional courts of appeal and cassation, which was supported by the IX All-Russian

Congress of Judges, could serve as an example of an important organizational reform<sup>4</sup>. The project envisages the creation of nine cassations and five appeals districts at the inter-regional level. The courts of the constituent entities of the Russian Federation will retain their importance as an appellate instance for reviewing the decisions of district courts of general jurisdiction, while the five newly created courts of appeal will only review cases that a court of a given constituent entity of the Russian Federation has considered in the first instance (at present, appeals against these decisions go to the Supreme Court of the Russian Federation). The courts of cassation will review, in accordance with the cassation procedure, appeals against the decisions of the district courts and those made by the newly created courts of appeal.

Strengthening cassation in the courts of general jurisdiction and bringing it to the inter-regional level will lead to cassation judges having greater freedom and impartiality when reviewing the decisions of their colleagues in the lower courts, as well as greater independence from the influence of the regional elites. In the event that the new cassation courts start to actively create legal precedents (which is what happens now with the system of commercial courts), this will make the process more stable and predictable for the sides in the courts of the first instance as well.

The measures to improve the judicial system set forth in this document are divided into three parts and correlate with the groups of problems we have identified in various aspects of judicial proceedings:

- Improving the judiciary through the development of the mechanisms for the training, selection and appointment of judges.
- Overcoming organizational constraints on the independence of judges.
- Reducing the workload of judges and streamlining judicial proceedings.

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<sup>4</sup> *Resolution No. 1 of the IX All-Russian Congress of Judges "On the Main Results of the Functioning of the Judicial System of the Russian Federation and Priority Areas for its Development at the Present Stage" dated 08.12.2016.*  
<http://www.ssrj.ru/page/22596/detail/>



**MEASURES  
FOR IMPROVING**  
THE JUDICIAL SYSTEM

# 1. THE QUALITY OF PERSONNEL FOR THE JUDICIAL SYSTEM: SELECTION, TRAINING AND APPOINTMENT

## PROBLEMS THAT THE PROPOSED MEASURES AIM TO ADDRESS

The current system for selecting, training and appointing judges needs to be corrected. At present, judges are appointed from among existing lawyers whose only relevant experience until that point has been working within the court administration (as judicial assistants or courtroom secretaries). These are primarily young women, a large proportion of whom (compared to graduates working in other legal professions) have received their legal education through correspondence courses. In 2001, only 19% of newly appointed judges came from within the court administration; by 2013, that number had risen to 58%. A consequence of this is that 32% of the judiciary today is made up of former employees in the court administration (compared to 11% in 2001). The increase in the percentage of judges who had arrived at their position by moving through the ranks of the court administration has been accompanied by a drop-off in the number of people moving to that position from the bar, corporate law and, in recent years, the investigative bodies and the prosecutor's office. If this trend continues until 2020, then the proportion of judges whose primary legal experience is within the court administration will reach 42%.<sup>5</sup>

The reasons for this personnel policy can be found in the organization of the courts and the specific features of their work. The ever-increasing workload combined with the high volume of paperwork and the pressure of meeting procedural deadlines has made judges dependent on the court administration. And while the reform of the courts in 2000–2001 may have increased the salaries of judges threefold so that they now significantly exceed the regional

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<sup>5</sup> This data was obtained as a result of a survey of judges conducted in 2012–2014 by the Institute for the Rule of Law at the European University in St. Petersburg. For more detail on the methodology used and the results obtained, see Volkov, V., Dmitrieva, A., Pozdnyakov, M. and Titaev, K. *Russian Courts: A Sociological Study of the Profession*. Moscow: Norma, 2015.

average, the salaries of court staff (between 12,000 and 15,000 roubles per month) do not provide any long-term incentives for work. In response, court presidents have been forced to come up with additional incentives in order to recruit and hold on to employees in these positions. One of these incentives is the possibility of moving up the ranks to the position of a judge after five to seven years of service within the court administration. An additional argument used by court presidents for appointing judges from the court administration is the fact that these employees are better able to withstand the workload, are familiar with the formal and bureaucratic aspects of the job and are more predictable and disciplined than those who come to the profession from outside the judicial service.

What are the consequences of such a personnel policy for the judiciary and the judicial system? The positive implications include the fact that these judges are highly prepared to work in the current conditions of excessive workload, they have a practical knowledge of the formal aspects of judicial proceedings and can be more easily integrated into the community of judges. The negative implications include limited legal experience (and, more broadly speaking, life experience) and less legal training both in terms of basic legal education and in terms of practice in other legal areas. The nature of work in the court administration creates a habit of subordination to superiors and does not facilitate the development of the requisite skills for making independent decisions. However, any professional experience, no matter how limited, be it in the prosecutor's office, the bar or the court administration creates prerequisites for professional deformation, which could influence the further work of the person in question as a judge.

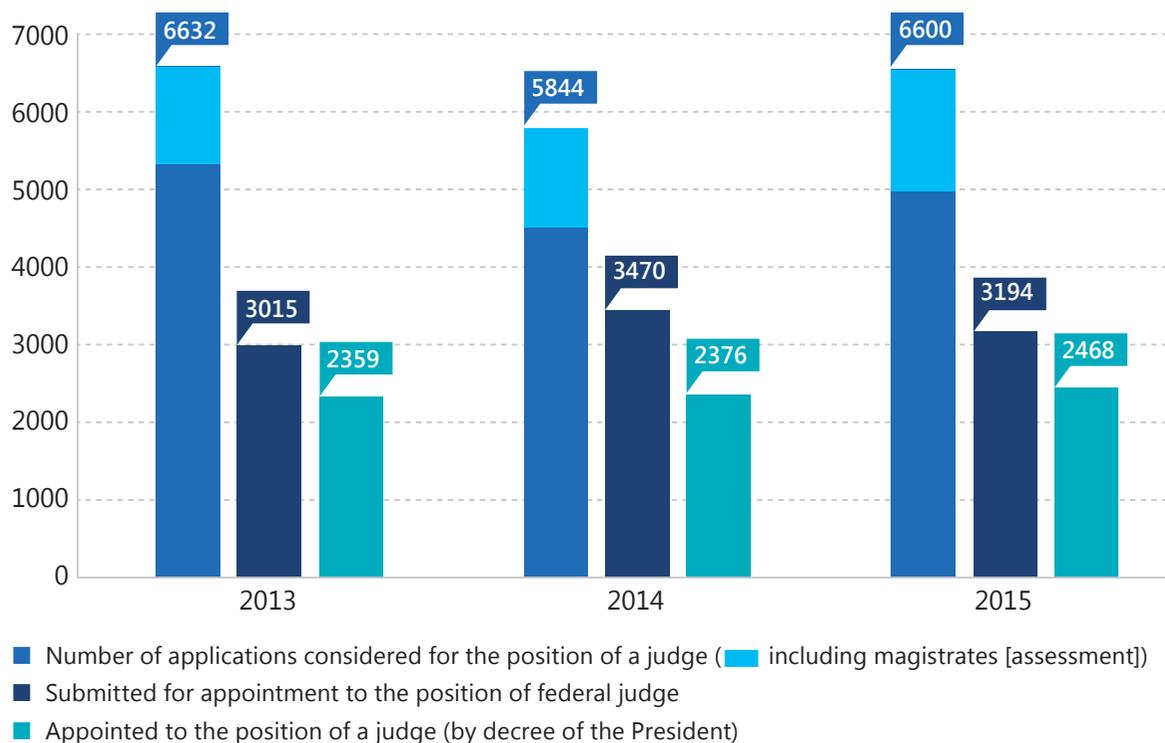
The current practice of appointing judges assumes that the court president plays a decisive role in the nomination of, and the CSCFJ in advising the President on, candidates to the position of a judge.<sup>6</sup> The CSCFJ includes representatives of the Presidential Administration of Russia, law enforcement agencies and the Office of the Prosecutor General at the level of deputy heads of departments. It is these agencies that carry out multi-stage checks of the personal and employment history of candidates for the presence of compromising data. Verification of the personal history of judges is stipulated by law; however, the participation of high-ranking representatives of the law enforcement agencies in the process of selecting judges at the final and most important stage goes against the principle of the autonomy of judicial power and does nothing to increase the public's trust in the courts.

In recent years, between 30% and 40% of candidates have been eliminated at the pre-CSCFJ stage (up to 50% if magistrates are included), and between 20% and 30% at the CSCFJ stage (see Fig. 2). At the same time, the period 2014–2016 saw a strengthening of the “presidential filter” compared to the period 2010–2013, when the President rejected around 5% of candidates on the recommendation of the CSCFJ.

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<sup>6</sup> Full name — Presidential Commission for Screening Candidates for Federal Judges. See: <http://www.kremlin.ru/structure/commissions#institution-2>

Figure 2. Statistics on the Appointment of Judges to Courts of General Jurisdiction



Source: Presidential Administration of Russia

The activities of the law enforcement agencies and the Office of the Prosecutor General are important for identifying, in a timely manner, candidates who, due to circumstances that compromise their candidacy, cannot be recommended for appointment to the position of a judge by decree of the President. However, in order to ensure objectivity and impartiality, the representatives of these agencies who performed the background check should not be involved in the discussion of candidates or take part in the decision-making process on whether or not to recommend a particular candidate for appointment to the position of a judge. The criteria for the positive or negative recommendations of the CSCFJ are not listed in the texts of the legal acts, but they can be established once these texts are properly interpreted. Similarly, the reasons for rejecting candidates are not formally enshrined anywhere. For example, the interpretation of the notion of “conflict of interests” as used by the CSCFJ does not have a formal definition, and its arbitrary application thins out the pool of potential candidates for the position of a judge, eliminating a large number of qualified employees for no substantial reason. The CSCFJ is not obliged to publish the reasons for rejecting a candidate, which creates the impression of secrecy and bias in the decision-making process and shakes confidence in the selection procedure as a whole.

At the same time, the existing procedure for nominating and appointing judges minimizes the geographic mobility (or job rotation) of the judiciary. Seventy percent of judges continue

to work in the same place where they were born, grew up and went to university. The current policy of appointing judges places an emphasis on avoiding risks associated with judges' familial ties but ignores their long-term presence in local social networks and groups of interest resulting from the current appointment practice. The appointment of judges to other regions (that is, to places where they have not previously lived or worked) and the possibility of geographic rotation without having to be re-appointed (or, in some cases, appointed for the third, fourth, etc., time) by decree of the President would help solve the problem of severing undesirable ties or strengthening (improving) the quality of judges in individual Russian regions, while at the same time simplifying the process of their appointment to the position.

The currently established procedure for appointing judges does not fully ensure the selection of people who are the best candidates for the relevant judicial position in terms of their professional experience and personal qualities. The position of power that the judge holds in judicial proceedings places special demands on those who wish to achieve the status of judge, meaning that they have to undergo specialized legal, ethical and psychological training in addition to the usual legal education. The personification of the judiciary (when it is represented by every judge as an individual) creates special demands with regard to personal qualities when selecting candidates for judicial positions, which is also not provided by the current system. The problem does not arise during the selection of candidates, but rather before. To solve this, specialized training is required – training that should complement the general legal education and be made compulsory for any lawyer wishing to apply for the post of judge for the first time.

A specialized system for the preparation of lawyers for work in the judiciary has yet to be developed, and the training system that currently exists has a number of fundamental shortcomings:

1. In 2013, the Law “On the Status of Judges” paved the way for the creation of a programme of professional retraining for first-time judges. This fact confirms that persons appointed by judges to work in the courts, no matter what legal position they are coming from, need this kind of retraining. In other words, it suggests that the past legal experience of candidates is clearly insufficient or needs to be substantially redressed.
2. Retraining of judges appointed to their first post should last no more than six months and should be paid for out of the federal budget (for federal court judges) or the budgets of the constituent entities of the Russian Federation (for magistrates) (Article 20.1 of the Law “On the Status of Judges”). However, this legislative innovation did not solve the problem of selecting the most deserving candidates. In practice, the retraining period for newly appointed judges lasts just three to four weeks; the results cannot be properly assessed.
3. None of the candidates, including those from the court administration, possesses the requisite skills to carry out proper judicial work.

4. Qualification exams cannot properly test whether or not the applicant possesses the requisite skills for judicial work: rather, such exams are aimed at testing the applicant's ability to operate on knowledge acquired in textbooks or in the law. Judicial work requires the ability to apply legal knowledge not only in simple disputes, but also in non-standard situations — in truly contentious cases with strong sides. This work involves dealing with serious conflicts of interest between parties, which requires special psychological training on the part of judges. The judge is also responsible for organizing the court proceedings, meaning that he or she must possess good people management skills and the ability to coordinate his or her work under heavy and extremely heavy workloads, etc. However, law schools do not provide this kind of training as a matter of course, and other legal professions do not nurture these skills to the extent that a judge needs them.

To improve the quality of the judiciary and address the issues outlined above, measures need to be taken in the following areas:

1. The system of selecting and training of judges needs to be changed.
2. The qualification requirements for candidates seeking to become judges need to be altered, as does the list of posts requiring a legal education.
3. The incentives for working in the court administration need to be changed.
4. The procedure for appointing judges needs to be more transparent.

## **BASIC MEASURES FOR IMPROVING THE PROCEDURE FOR SELECTING, TRAINING AND APPOINTING JUDGES**

### **CREATING A FEDERAL CENTRE FOR TRAINING JUDGES**

To improve the quality of the judiciary in the long term, the system of training and the subsequent appointment of judges needs to be overhauled completely.

The existing system of training judges at the Russian Academy of Justice lasts three weeks (plus practice in court) and is carried out after candidates have already been appointed to the post of judge. What is more, training judges is not the primary area of this law school's activities, as it is mainly focused on delivering bachelor's programmes.

The motivation to train to become a judge should come before the candidate is appointed to the position, rather than afterwards. Potential judges should first complete a specialized

training programme, and their future appointment should be based on the results of examinations. And this training programme should last at least 12 months.

A permanent, unified and impartial **Federal Centre for Training Judges** that is independent from government agencies (hereinafter “the Centre”) should be set up for the selection and professional training of judges. The Centre should specialize exclusively in the professional training of candidates, as well as their continuous professional development in order to help them move up the career ladder. The Centre’s work will help increase the prestige of judges in society and ensure that the judiciary slowly but surely acquires greater independence thanks to the improved quality of the work performed by representatives of the profession.

The Government of the Russian Federation can act as the founder of the Centre, and the Supreme Court of the Russian Federation, the Constitutional Court of the Russian Federation, as well as the most respected representatives of the expert legal community, should play an active role in its creation. While the participation of the higher courts in setting up the Centre seems justified, it is nevertheless necessary to ensure that the Centre enjoys a high degree of independence from the executive bodies, including the judiciary, as close supervision on the part of the judiciary will only lead to the preservation of the current state of affairs rather than change the situation. And the very purpose of the Centre’s creation is to bring about change.

Initially, a main campus of the Centre should be set up, where all the organizational aspects and methods can be worked out. The main campus will be in St. Petersburg. After all the organizational and methodological aspects of the Centre’s work have been developed, additional campuses can be established in Yekaterinburg and Vladivostok that follow the same curriculum and observe the same strict standards under the supervision of the main campus.

Instruction at the Centre should be free of charge, and students should receive a stipend for the duration of their studies, plus a housing allowance for non-residents (alternatively, the Centre could provide accommodation).

Possible sources of financing studies at the Centre:

- The Federal budget of the Russian Federation.
- Loan funds. The state will refinance or repay the loans of candidates who successfully pass their final exams and are appointed judges. Candidates who fail their final exams will be responsible for repaying their loans themselves, with interest.

Upon admission, students sign an agreement stating that they are obliged to work for a minimum of five years in a judicial position after graduation. In the event that a graduate

of the Centre chooses to pursue a different profession, then he or she must return the money spent on their education or repay the loan themselves.

For the first few years, two mechanisms for appointing judges will be in effect: the mechanism that is currently in place and the new mechanism that involves mandatory training at the Centre. As the flow of students increases, the second mechanism will gradually replace the first. At the same time, in the future, the procedure for selecting and appointing judges who have received training at the Centre will gradually transform the mechanism of selecting judges.

One of the prerequisites for admission to study at the Centre should be a recommendation from the Qualification Board of Judges subject to an interview and a background check to ensure that there are no facts that would impede the applicant from taking up a position as a judge. The background check includes making enquiries at the candidate's previous places of employment and the police department in the jurisdiction where they permanently reside and are registered.

Entrance exams should be highly complex in nature and require careful preparation beforehand. Because the Centre will not teach the substantive aspects of the law, but rather how to interpret and apply it and the practical aspects of being a judge, the entrance exam should be designed in such a way as to ensure that potential students have a solid understanding of all aspects of the law.

Students will be trained in the specific skills of implementing judicial power (managing the trial process, writing and justifying decisions, etc.), applying legal norms, communicating with different audiences, judicial administration, practical ethics, economics, society and international standards of judicial procedure. Classes should take place in small groups under the guidance of a curator in an interactive format.

Future judges should have a sound understanding of other professional roles and the work of related institutions. In addition to training judges, the Centre should provide practical experience in related organizations that interact with the judicial system on a permanent basis:

- The prosecutor's office.
- The investigative authorities.
- The bar.
- The penal system (the Federal Penitentiary Service).

Under the supervision of the curator — the head of a legal practice, deputy district attorney, head of an investigative body, deputy head of a penal colony or detention facility —

students should be given the opportunity to observe the immediate work of these institutions, gain an understanding of the features of various professional roles and the specifics of working in these organizations.

The majority of the instructors at the Centre should be current or former judges in the higher courts or courts of the constituent entities of the Russian Federation. The rest should be made up of the best legal professors and practicing lawyers, as well as experts in ethics, psychology, rhetoric, sociology and economics.

To ensure that the instruction at the Centre is of the highest quality, a system of an “instructorship leave” could be implemented for judges at the level of the constituent entities of the Russian Federation for a period of two or three years, during which the judge would continue to receive his or her regular salary.

The Centre makes decisions on whether or not to recommend a candidate for a position as a federal (commercial court) judge based on the candidate’s performance during the training programme (including tests determining his or her professional suitability and mid-term and final examinations).

Candidates who did not pass individual modules or failed the examinations will be given the chance to retake the module and re-sit the exam, once only. However, they will not be covered by the stipend in this case and will be responsible for all expenses connected with retaking a class and re-sitting an exam.

Every year, as students complete the training course at the Centre, the Judicial Department of the Supreme Court of the Russian Federation must provide information on vacancies for judges in the district courts and the commercial courts of the first instance. The top-performing graduates should be given preference when choosing a place of work (court), before those who finished below them in the graduating class. Graduates are allocated to federal district courts and commercial courts of the first instance

Graduates of the Centre who have been recommended for the posts of federal judges will have their candidacy put forward for consideration by the President of the Russian Federation, who will make the final decision on whether or not to grant them the status of federal (commercial court) judge.

On the one hand, the management structure of the Centre should ensure its accountability to the state in matters of spending funds and the compliance of its work with the goals and statutory objectives it has set for itself. On the other hand, it should guarantee its autonomy in issues of hiring staff, developing training programmes, deciding on admission procedures and designing final examinations.

## REMOVING THE REQUIREMENT FOR COURTROOM SECRETARIES TO HAVE A LEGAL EDUCATION

As the next measure, we propose abolishing the requirement for courtroom secretaries and clerks to have a degree in law. At the same time, these posts should be removed from the list of professions that count towards legal experience, while the requirement that they have a higher or incomplete higher education (at least two years of university education) should be retained.

Once this measure is put into place, the courts will be free to hire any person with a university degree or an incomplete higher education for the position of courtroom secretary or clerk. Newly appointed courtroom secretaries will have to complete a professional re-training course before they can begin their duties (which is the case now). At present, court presidents are forced to choose from a small pool of lawyers and law students who are prepared to work for a low salary to fill these positions. Opening these positions to people with other specializations will make it possible to recruit more qualified candidates. What is more, if court presidents are apprehensive about dismissing secretaries who inadequately perform their duties (because they understand the difficulties of hiring people to replace them), then this new situation will be conducive to high quality work with staff.

The argument is often put forward that the professional duties of a courtroom secretary are complex and require legal skills. But this is not the case. In practice, judges rarely trust courtroom secretaries with legal work (preparing draft decisions or analysing legislation). The day-to-day work of courtroom secretaries involves such a high volume of office work (sending out agendas, registering and handing over documents, taking minutes) that there would simply be no time for them to perform additional “legal” tasks. With the introduction of mandatory audio recording of court sessions as the main means of documenting the process (leaving written minutes an auxiliary role), there will no longer be an objective basis for the requirement that courtroom secretaries have a legal education.

## INVESTING JUDICIAL ASSISTANTS WITH PROCEDURAL FUNCTIONS

Draft rulings of the court are often prepared by judicial assistants. Judicial assistants are required to have a degree in law. This is no accident, as they play a rather significant role in court proceedings. As one of the judges who took part in the expert survey conducted by the Institute for the Rule of Law commented, judicial assistants can be regarded as “judge number two.” They are responsible for communicating with the parties on various procedural issues (for example, presence in court, or acquaintance with the case materials), analysing legislation and court rulings that are relevant to the case being contested. However, one of the most important functions of the judicial assistant is to draft the text of the official ruling (or another judicial act), which the judge then reads, edits and signs. With the heavy work-

load that judges are currently under, judicial assistants significantly reduce the time that they spend on paperwork, especially if these are standard cases that do not require special intellectual investments: for example, outstanding debts on utility payments, non-payment of wages, etc. In addition to reducing the workload, writing draft rulings has a social function inasmuch as it prepares the assistant for their future role as a judge.

Legalizing the procedural functions of assistants and clearly distinguishing them from the purely technical functions that are performed by courtroom secretaries is also logical in light of the fact that the experience gained by judicial assistants allows them to qualify as judges. These functions could include preparing draft rulings, explaining to parties their rights and duties, mediation in the peaceful settlement of disputes, requesting access to evidence, etc. The salaries of judicial assistants should be increased in connection with the growing complexity of the tasks they perform and the blossoming prestige of their profession.

## INCREASING SALARIES FOR COURT ADMINISTRATION STAFF

We propose doubling the salaries of court employees or increasing them to the average for the respective region. Around 25 billion roubles, or 14.7% of the total funding of the judicial system from the federal budget, should be spent on paying court employees (taking the tax burden on the labour compensation fund into account).

Increasing salaries will:

- increase competition for these positions and reduce the current shortage;
- improve the overall quality of staff;
- eliminate the need to introduce the artificial incentive to continue working on the possibility of becoming a judge in the future;
- provide for the eventual establishment of a corps of professional courtroom clerks with many years of experience.

## INCREASING THE PREDICTABILITY AND TRANSPARENCY OF THE WORK OF THE PRESIDENTIAL COMMISSION FOR SCREENING CANDIDATES FOR FEDERAL JUDGES

The work of the Presidential Commission for Screening Candidates for Federal Judges should be simplified and made more transparent. Specifically, the CSCFJ should only be involved in the process of conferring the status of judge upon a person, that is, for their first appointment. The further appointment of existing judges to different courts should be carried out upon the recommendation of the Chief Justice of the Supreme Court on the basis of a decision

by qualification boards of judges. We believe that this is an important step in securing the constitutional principle of the independence of judicial power.

It is also necessary to provide an unambiguous interpretation of the notion of “conflict of interests” and draw up a formal, exhaustive list of reasons for denying a judge an appointment.<sup>7</sup>

Representatives of the law enforcement agencies and prosecutor’s office should be removed from the CSCFJ, and the principles of forming the commission should be changed. This measure is dictated by the need to separate the functions of screening candidates for judicial positions and adopting decisions on the basis of the information obtained as a result of these screenings. At present, the law enforcement agencies are involved in the performance of both functions, which significantly affects the objectivity of the selection process. What is more, the participation of high-ranking representatives of the law enforcement agencies in the procedure for approving judges is in conflict with the modern function of the judiciary to exercise judicial control over the legality of the actions, inaction and decisions of the executive authorities, which does nothing to increase the public’s trust in the courts.

It would be advisable that the CSCFJ should include the representatives of:

- The Administration of the President of the Russian Federation.
- The High Qualification Board of Judges of the Russian Federation.
- A council of judges (or puisne judges).
- The public and the legal or expert community.

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<sup>7</sup> For example, the “Methodological Recommendations for the Implementation by Boards of Judges of the Norms of the Legislation of the Russian Federation on Combatting Corruption” have been developed for qualification boards of judges. These recommendations clarify issues of conflicts of interest in great detail and with reference to existing laws (in particular, Article 3, Paragraph 2 of Law No. 3132-I of the Russian Federation “On the Status of Judges in the Russian Federation” dated 26.06.1992; articles 21–26 of the Commercial Procedure Code of the Russian Federation, articles 19–21 of the Civil Procedure Code of the Russian Federation, articles 61 and 62 of the Code of Administrative Judicial Procedure of the Russian Federation; articles 2, 8 and 9, and Article 14, and Paragraph 3 of the Code of Judicial Ethics). The document also explains: “If a judge is experiencing difficulties in determining whether his or her behaviour in the administration of justice or in his or her extrajudicial activities meets the requirements of professional ethics and conforms to the status of judge, or if a judge is unsure about how to proceed in a complex ethical situation, then, in order to maintain independence and impartiality, he or she has the right to file a request with the Ethics Commission of the Council of Judges of the Russian Federation for clarification, which must be provided.”

## 2. ORGANIZATIONAL LIMITATIONS ON THE INDEPENDENCE OF JUDGES: MONITORING ON THE PART OF COURT PRESIDENTS AND DISCIPLINARY RESPONSIBILITY

### PROBLEMS THAT THE PROPOSED MEASURES AIM TO ADDRESS

Modern justice requires the proper organization of judicial activities. However, organizations invariably impose restrictions on their members that are connected to a hierarchical structure, subordinate relationships, the division of functions, and reporting systems. One of the main tasks facing the judicial system today is to find a balance between objectively necessary organizational constraints and the practical implementation of the principle of the independence of judges when making rulings.

A diagnostic assessment of the modern Russian judicial system reveals a number of undesirable restrictions on the independence and irremovability of judges arising from the specifics of the judicial system and the judicial hierarchy. These restrictions are primarily associated with two aspects of the work of the judicial system:

- The specifics of the functioning of the system of court presidents;
- The practice of holding judges liable, including through reversing judgments of the courts of higher instance.

In accordance with Article 6.2 of the Law “On the Status of Judges,” court presidents have the following powers: 1) the power of a judge in the respective court; 2) procedural powers established specially for court presidents; and 3) the power to organize the work of the

court. Introduced in the late 1990s, the role of court administrators was supposed to free court presidents from a range of organizational, personnel and economic functions. This did not work in practice, however. De facto, the court president organizes and controls almost all the economic activities of the court, especially the larger projects (for example, renovations or the construction of a court building). The court president is also in charge of hiring court administration staff.

There are a number of areas in which the existing powers of court presidents can be used to limit the independence of judges.

First, court presidents play a key role in the process of appointing judges to their posts. A co-option model of forming the judiciary has appeared in Russia, in which court presidents effectively become employers of regular judges.<sup>8</sup>

While the formal procedure assumes that the decision of the QBJ plays the main role in the recommendation of candidates to judicial posts, the commission requires the consent of the president of the court to which the applicant seeks appointment. What is more, in practice, the decision to recommend a candidate for appointment is taken after the court president of the given constituent entity of the Russian Federation has indicated his or her informal agreement. Not only do court presidents take part in the selection of candidates to their court, but they also provide recommendations on the appointment of magistrates.

Second, in most Russian courts, the court president is directly or indirectly involved in allocating and distributing the workload of judges. While cases must be distributed evenly among judges, with due account of the complexity of the case and the judges' specializations, the practice of the court president personally allocating cases creates the potential for exerting influence over judges. A computerized system of allocating cases on the basis of probability has been introduced in commercial courts; in courts of general jurisdiction, however, this practice has only been introduced in certain regions. The majority of courts continue to rely on the court president to allocate cases.

At present, district court presidents have the opportunity to influence magistrates. In accordance with the Law of the Russian Federation "On the Status of Judges," since 2013, district court presidents have been able to transfer criminal, civil and administrative cases from one magistrate to another. On the one hand, bestowing such powers on district court presidents was intended to reduce the burden on magistrates and ease their work. At the

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<sup>8</sup> *The role of court president as an employer is reflected, for example, in Decree No. 101 of the Judicial Council of the Russian Federation "On Approving the Standard Regulations for the Internal Regulations of Courts" dated 18.04.2003. In particular, Article 3.2. states: "Judges, court employees and court administrator are obliged: to ensure compliance with the Constitution of the Russian Federation, regulatory legal acts of the Russian Federation, decrees, orders, warrants, instructions and mandates of the court president and his or her deputies and heads of the structural subdivisions of the court given within the powers granted to them."*

same time, this provision comes under criticism in the procedural literature, as arbitrarily transferring cases from one magistrate to another without taking the opinions of the parties into account is a violation of the right of citizens to have their case considered in the court to which it is subject by law. What the district court president is effectively doing is changing the jurisdiction of a magistrate in a given judicial district, at his or her own discretion and with no apparent reason. In addition, the powers of the court president to transfer cases from one magistrate to another threatens the independence of magistrates, as it provides court presidents with a mechanism for manipulating the workload of “inconvenient” or, on the contrary, “convenient” judges.

Third, the existing system for awarding bonuses gives court presidents the opportunity to influence judges. There are currently two types of bonus: one-time bonuses that are given to judges at the discretion of the court president to acknowledge the receipt of a state award, an anniversary, the achievement of a certain term of service, etc.; and regular bonuses, again awarded at the discretion of the court president, “on the basis of decrees of the heads of the judicial departments of the constituent entities of the Russian Federation and approved by the councils of judges (presidiums of councils of judges) of the constituent entities of the Russian Federation, issued in accordance with the recommendations of the presidents of these courts.”<sup>9</sup>

Fourth, court presidents play an important role in the career progression of judges. The leadership of the courts (presidents of district courts and the courts of the constituent entities of the Russian Federation) evaluate judges on the basis of the indicators set out in Paragraph 2.2 of the Decree of the Judicial Department of the Supreme Court of the Russian Federation: “Intensity of work and outstanding professional performance; time taken to consider and review cases; carrying out particularly important and complicated tasks; quality of work performed; introduction of progressive forms of judicial activity; active participation in the work of the bodies of the judiciary.” In addition to unambiguous indicators that can be determined and expressed in a clear and formal manner (for example, intensity of work can be expressed by the number of cases that a given judge has presided over in a certain period of time — a month, a quarter, a year; the time taken to consider and review cases is prescribed by law and is recorded in formal judicial statistics), the system for assessing the performance of judges also includes rather vague criteria that are open to interpretation by the court president during the evaluation. These include, for instance, “outstanding professional performance,” “carrying out particularly important and complicated tasks,” “introduction of progressive forms of judicial activity” and “quality of work performed.”

“Quality of work performed” is perhaps the most open to arbitrary interpretation (and thus scoring). The job of a judge is to administer justice. The quality of their work can be assessed

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<sup>9</sup> Decree No. 116 of the Judicial Department of the Supreme Court of the Russian Federation “On Approving the Regulations for Awarding Bonuses and Providing Material Assistance to Judges Working in Courts of General Jurisdiction and Federal Commercial Courts” dated June 5, 2013.

on the basis of the following criteria: the extent to which the trials over which they preside are fair (Article 6 of the European Convention on Human Rights); the justness of verdicts delivered by them (the absence of grounds for reversing or amending a judgement); observance of the time limits for considering a case, which is determined more by the meaningful practice of the European Court of Human Rights than it is by regulatory norms (and is objectively determined by the complexity of the case and the behaviour of the parties involved).

In practice, court presidents evaluate the performance of judges primarily on the basis of two formal indicators: the percentage of cases reviewed within the established timeframes; and the “stability of court decisions.” This is calculated as the number of reversed decisions compared to the total number of cases heard (or the total number of appeals). A judge that receives a “poor” evaluation, particularly with regard to the number of reversed decisions, may be formally disciplined by the court president or brought before the qualification board for a review of their case and possible sanctions. This could prove to be an obstacle to further career development of the judge in question and negatively impact their ability to make independent judgments on cases.

The current practice of using reversals of court judgements as a basis for taking disciplinary action provides court presidents with a means to potentially exert pressure on judges, which is in violation of the provision set forth in Article 10 of the Law “On the Status of Judges” that prohibits court presidents from interfering in the activities of judges. Puisne judges are well aware of the risks associated with a decision being overturned and the consequences that it carries (the initiation of disciplinary proceedings), and they take this into account when making rulings. This particularly concerns acquittals in criminal cases, which are always appealed by the prosecution and reviewed thoroughly in the higher courts.

Article 11 of the Law “On the Status of Judges” stipulates that the powers of a judge in federal court are not limited to a set term, and the mandatory retirement age is 70, unless otherwise stipulated by law. A judge can only be stripped of their powers if they have committed serious violations in the performance of their duties or have acted in a manner outside of their professional activities that compromises their authority as a judge. Grounds for disciplining judges include non-compliance with the requirements of the Law “On the Status of Judges” and violations of the norms of the Code of Judicial Ethics. The right of the court president to initiate disciplinary actions against any of the judges that have been the subject of complaints or who have had their judgements reversed by a higher court is discretionary. This right can be used selectively: that is, the court president may choose to initiate disciplinary procedures only against judges that he or she considers unworthy of the status of judge. This makes all judges subject to the whims of the court president, as no judge is immune from committing a judicial error.

The formal criteria that form the basis for bringing a judge to disciplinary responsibility are often supplemented by informal practice. For example, character references for judg-

es that the court president presents to the QBJ may be drawn up on the basis of the total number of complaints that have been filed against a particular judge. As a rule, a single complaint does not warrant extensive investigation; however, every complaint sets forth a concrete fact (for example, the applicant noted gross conduct on the part of the judge or a violation of procedural norms), which forms the basis for the creation of a “case” (dossier) against the judge, to which the court president can refer if the need arises. In addition, there are no criteria for assessing the quality of the judge’s performance in the sense that no rules exist which would determine how many reversals of the rulings or how many complaints are “acceptable” or “inacceptable”.

However, many experts and academics argue that the criteria used by the QBJ when evaluating a particular circumstance should be publicly available and understandable.<sup>10</sup> Moreover, they should be applied equally whenever there is a violation, although the type of disciplinary liability should be selected and applied, taking the specific circumstances of the event in question and the characteristics of the judge into account.

Thus, the existing system of disciplinary liability can be used by court presidents as an instrument for applying pressure on a judge. A poor evaluation of a judge’s performance on the part of the court president can serve as the basis for initiating disciplinary proceedings against them or prematurely stripping them of their powers. The threat of this happening affects the judge’s independence when delivering rulings. The absence of clear criteria for bringing a judge to disciplinary responsibility and the arbitrary and selective manner in which disciplinary proceedings are launched leads to a lack of initiative on the part of judges, who find themselves relying far too heavily on the court leadership. In a situation where disciplinary liability is doled out primarily at the discretion of court presidents, judges seek to avoid making independent rulings on complex issues.

In order to eliminate the abovementioned organizational restrictions on the independence of judges, we propose adopting a number of measures in the following areas:

- Introduce a system of electing district court presidents or a procedure whereby the court association nominates candidates for subsequent appointment as court president.
- Alter the powers of court presidents with regard to participation in the process of appointing judges, allocating cases and awarding bonuses.
- Clarify the conditions for the disciplinary liability of judges.

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<sup>10</sup> Kolokolov, N. A., *Disciplinary Liability of Judges: Initial Results of Scientific Interpretation* // *Russian Judge*. 2005. No. 5; Petukov, N. A. and Mamykin, A. S. *Disciplining Should Not be Arbitrary. On the Grounds and Procedural Foundations of the Disciplinary Liability of Judges* // *Qualification Board of Judges: Yesterday, Today, Tomorrow: Collected Papers*. Moscow: High Qualification Board of Judges of the Russian Federation, 2012, pp. 224–225; Radutnaya, N., *Attempt on Judicial Immunity* // *Russian Justice*. 2001. No. 12, p. 12.

## PROPOSALS ON CHANGING THE PROCEDURE FOR APPOINTING COURT PRESIDENTS AND LIMITING THEIR POWERS

The main purpose of changing the procedure for appointing district court presidents is to take the opinion of the court members regarding the candidates into account and strengthen the rotation system of court presidents, setting limitations on their term. Either of the following options can be used:

- Introducing a system whereby the court association elects the court president.
- Introducing a procedure whereby the court association nominates candidates on the basis of a ranked vote.

### OPTION 1: ELECTING COURT PRESIDENTS

This involves introducing a procedure for electing district court presidents, which will consist of: **a)** nominating a candidate or candidates; **b)** preliminary screening of candidates by the Qualification Board of Judges; **c)** voting; and **d)** approval of the winning candidate by the Chief Justice of the Supreme Court. The term for court presidents should be limited to three (or four) years, with the maximum number of consecutive terms being set at two.

The procedure for nominating candidates begins when a vacancy for the post is announced in accordance with the current legislation. Judges serving in the court in question can nominate themselves for candidacy by submitting an application form and the relevant supporting documentation to the QBJ. Alternatively, they can be nominated by any of the judges or group of judges serving in the court in question, who must also submit the relevant documents to the QBJ. In the latter case, the consent of the nominated judge is required.

The QBJ collects and checks all the documents as provided by the law, including the results of any confidential audits. If circumstances that prevent the candidate from being appointed court president are discovered, then the QBJ is obliged to notify the judges of the district court, and the process for nominating candidates starts over. If no such circumstances are found to exist, the QBJ sets a date for the elections to be held and organizes a secret ballot and vote counting procedure. A simple majority is required for the judge to be elected court president.

Following the election, the QBJ must confirm compliance with the procedure for nominating candidates, balloting and vote counting and at a public meeting take the decision to approve the results and submit the president elect for approval by the Chief Justice of the Supreme Court of the Russian Federation.

Since the newly elected district court president has already had the status of judge conferred on him or her by Presidential Decree, and since the position of district court president is simply a matter of entrusting them with additional organizational responsibilities at the same court level, the process of the Presidential Commission for Screening Candidates for Federal Judges reviewing their candidacy and the subsequent appointment to the role by Presidential Decree is redundant.

## OPTION 2: NOMINATING CANDIDATES ON THE BASIS OF A RANKED VOTE

This option involves the following procedure for nominating and appointing court presidents. Only acting judges in the court in question can be named court president. This is to prevent the practice that has emerged of transferring court presidents who have served out their term at one court to the same position in a neighbouring court.

Approximately one month before the current court president's term in office comes to an end and the vacant position opens up, or within a month of a vacancy opening up unexpectedly, the qualification board sets a date on which a secret ballot ranking the judges for the open position of court president will take place. All the court's judges take part in the voting. Specially prepared ballot papers are drawn up that include the names of all the judges serving at the court, and judges put a mark against the name of the candidate they consider to be most suited for the position of court president. The judge with the most votes is the one put forward for candidacy. If two or more judges receive the same number of votes, then additional, formally established criteria may be used: for example, record of service in the court in question, age, qualification class, etc. The qualification board can then take all this information into account when deciding upon which judge to appoint to the post of court president.

Judges have the right to refuse the post of court president upon presentation of compelling reasons. If a judge refuses the post for valid reasons, then the judge who received the second highest number of votes is put forward for the position of court president.

The results of a ranked vote can also be used for the subsequent appointment of a deputy court president. The candidate for this position may be the judge who received the second highest number of votes for the post of court president.

The candidacy of the judge who has received the most votes and agreed to fill the vacant position of court president is put to the QBJ for appointment (approval) to the post by the Chief Justice of the Supreme Court of the Russian Federation. A similar procedure may be followed when announcing vacancies for the position of deputy court president (or deputy court presidents).

In the event that the QBJ discovers circumstances that would prevent the judge who received the highest number of votes from occupying the position of court president, then the qualification board is obliged to bring this to the attention of the court association and put the candidacy of the judge who came second in the ranked vote forward for consideration.

## LIMITING THE ORGANIZATIONAL POWERS OF COURT PRESIDENTS

**First**, it is necessary to exclude court presidents from the process of appointing judge, or reduce their participation in that process significantly, in order to reduce their role as “employers.” Court presidents should only exercise those powers as provided by law that are procedurally necessary for organizing and ensuring that incoming cases are examined and reviewed in an effective manner. If a Federal Centre for Training Judges is set up and a procedure for appointing judges on the basis of the results of the training received there (examinations) is introduced, then the only involvement of court judges in the appointment of judges will be in the form of organizing internships for students at the Centre and being present at interviews with candidates (graduates of the Centre) for possible vacancies in their court.

**Second**, it is necessary to change the system of awarding bonuses to judges from the labour compensation fund and, at the same time, the corresponding powers of court presidents. The money saved from over the course of the calendar year should be distributed among all judges who have served in the court for the entire period, either equally or according to a formally established rule that is not subject to the discretion of a particular individual (and which allows for bonuses to be awarded pro rata for the reporting period, or proportionate to the volume of work carried out as a consequence of unfilled vacancies for the period).

**Third**, it is necessary to replace the practice of court presidents “manually” allocating cases with a computerized system. Such systems already exist in several European countries. The following main procedural codes of the Russian Federation allow for the use of an electronic system for allocating cases among judges: Article 18 of the Commercial Procedure Code of the Russian Federation; Article 14 of the Civil Procedure Code of the Russian Federation; Article 30 of the Commercial Procedure Code of the Russian Federation; Article 28 of the Code of Administrative Judicial Procedure of the Russian Federation; and Article 30 of the Criminal Procedure Code of the Russian Federation. However, the wording of these provisions (“taking the workload and specialization of judges into account in a procedure that removes the influence of persons with a vested interest in the outcome of a court trial, including with the use of an automated information system”) still allow court presidents to take part in the selection of the method for allocating cases.

Article 3.4 of the Instructions on Records Management in District Courts of General Jurisdiction and Article 22.1 of the Instructions on Records Management in Commercial

Courts contain provisions that allow for the use of automated systems for assigning cases to judges (if the court has the relevant software), while at the same time allowing court presidents to carry out this function. Commercial courts use the “Judicial Procedure Automation System” software package to allocate cases, while courts of general jurisdiction use the GAS Pravosudie “Module for Allocating Cases.” However, despite the existence of a regulatory base and software programs, the issue rests on the practical implementation of the electronic systems for allocating cases in the work of courts, primarily the courts of general jurisdiction.

The most frequently mentioned obstacle to the full transition to an automated system is the fact that these programs cannot take the specifics of a case and the judge’s specialization into account when allocating cases. To be sure, the Russian courts are developing towards the narrow specialization of judges, so that they are equipped to deal with certain categories of cases. These difficulties can be overcome rather easily, however. The computer program can allocate cases on the basis of an algorithm that includes information on the category of the given case, the judge’s specialization and their workload and schedule. At present, the software used by the commercial courts is coping with this task — both in terms of the automatic allocation of cases to judges, and in terms of setting dates for hearings, fitting them into judges’ existing schedules.<sup>11</sup>

The model experience of the Moscow Regional Court, where the electronic allocation of cases has been successfully introduced and is governed by internal regulations, is worth exporting to other Russian regions. According to these regulations, incoming cases are allocated among the judges by the method of random sampling, which is carried out electronically.<sup>12</sup> Cases can only be transferred to another judge if the presiding judge is absent on the day of the hearing, or if there is a malfunction in the automated system of allocating cases. Such instances are recorded in the electronic case file as a matter of protocol.

**Fourth**, the main load of the organizational work of the court administration, and of the court in general, should be entrusted to court administrators. Accordingly, court presidents should be relieved of the relevant organizational and economic powers, which should be transferred to the court administrators.

To achieve this, it is first necessary to rid the Judicial Department of the position of court administrator and instate it as a full-fledged post within the composition of the court. This move was proposed as part of a recent package of bills on the state judicial service introduced to parliament by the Chief Justice of the Supreme Court of the Russian

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<sup>11</sup> *Basaev, D. V. Automatic Records Management Systems in Commercial Courts // Commercial and Civil Procedure. 2012. No. 7, pp. 32–34.*

<sup>12</sup> *Regulations of the Moscow Regional Court (approved by Decree No. 35 of the President of the Moscow Regional Court dated 14.02.2013). [http://www.mosoblsud.ru/ss\\_detale.php?id=144624](http://www.mosoblsud.ru/ss_detale.php?id=144624)*

Federation.<sup>13</sup> In accordance with these projects, court administrators will head up the court administration (the plan is to rename the post “Head of the Court Administration — Court Administrator”) and assume all the economic and organizational functions of the court, while the court president will be responsible primarily for the administration of justice in court.

Despite the fact that these reforms are mostly compromise solutions (it is assumed that the court president will nevertheless continue to carry out the “general” management of the court administration, while the court administrator will be responsible for “direct” management tasks; moreover, these innovations only apply to courts of general jurisdiction at the level of constituent entities of the Russian Federation and commercial courts). These measures will, in conjunction with the proposed changes to the system for appointing judges and limiting the scope of their powers, contribute to the clearer division of management functions in the organizational and economic activities of the courts, as well as of the legal process itself, thus eliminating the possibility of extra-judicial pressure being placed on judges.

## PROPOSALS ON IMPROVING THE MECHANISM OF DISCIPLINARY LIABILITY OF JUDGES

The disciplinary liability of judges requires more precise legal regulation, so that the decision to initiate disciplinary proceedings against a judge is taken out of the hands of court presidents (as much as possible) and the discretionary approaches taken by the qualifying boards to resolving the issue of whether or not there are grounds to strip a judge of his or her powers are all but eliminated. Inconsistency and insufficient clarity of the existing regulation are shown by the following.

Article 16 of the Law “On the Status of Judges” stipulates: “A judge, even after he or she has been stripped of their powers, cannot be brought to disciplinary responsibility of any kind for opinions expressed when administering justice and for the rulings made, unless and to the extent that the final and binding decision establishes that the judge is guilty of criminal misconduct or knowingly passes an unjust verdict, ruling or other judicial act.” However, Part 5, Article 12.1 of the very same law (introduced by Federal Law No. 179-FZ dated 02.07.2013)

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<sup>13</sup> Draft Federal Law “On the State Judicial Service of the Russian Federation.” [http://asozd2.duma.gov.ru/addwork/scans.nsf/ID/B9D095F234AFD238432580C700542F9A/\\$File/1023417\\_14022017\\_102341-7.PDF?OpenElement](http://asozd2.duma.gov.ru/addwork/scans.nsf/ID/B9D095F234AFD238432580C700542F9A/$File/1023417_14022017_102341-7.PDF?OpenElement)

Draft Federal Law “On Amending Certain Legislative Acts of the Russian Federation in Connection with the Introduction of the State Judicial Service of the Russian Federation.” [http://asozd2.duma.gov.ru/addwork/scans.nsf/ID/F9149B6646354E3B432580C700542F9A/\\$File/102355-7.PDF?OpenElement](http://asozd2.duma.gov.ru/addwork/scans.nsf/ID/F9149B6646354E3B432580C700542F9A/$File/102355-7.PDF?OpenElement)

Draft Federal Law “On Amending the Federal Constitutional Laws in Connection with the Introduction of the State Judicial Service of the Russian Federation.” [http://asozd2.duma.gov.ru/addwork/scans.nsf/ID/FCB4DE9F86122AD-8432580C700514197/\\$File/102332-7.PDF?OpenElement](http://asozd2.duma.gov.ru/addwork/scans.nsf/ID/FCB4DE9F86122AD-8432580C700514197/$File/102332-7.PDF?OpenElement)

provides for the following: “Disciplinary action in the form of the early termination of a judge’s powers can be brought against a judge in exceptional cases for substantial and culpable violations of the provisions of the present Law and (or) Code of Judicial Ethics and which are incompatible with the high rank of court judge, **including for violations of these provisions in the administration of justice**, if such a violation entails the distortion of the principles of judicial proceedings or the gross violation of the rights of the participants in the process, serves as grounds for concluding that that the judge is unable to continue to exercise his or her powers, and is established by a final and binding judicial act passed by a court of higher instance or by a judicial act adopted as a result of an application on the accelerated review of a case or on the awarding of compensation for violating the right to a trial within a reasonable time.”

These contradictory provisions have given rise to the practice of court presidents introducing the idea of bringing a judge to disciplinary responsibility for the sole reason that he or she may have had a verdict or ruling reversed by a court of higher instance.

Reversing a judicial act becomes the basis for the Qualification Board of Judges to deprive a judge of his or her status and strip them of their powers when the distinction between an unjust ruling and unlawful behaviour is not made; no line is drawn between offences for which a judge deserves to be reprimanded and judicial errors that do not carry disciplinary liability. The uncertainty of the regulation of the concept of a disciplinary offence on the part of a judge and the understanding of what exactly constitutes a disciplinary offence has been reviewed on multiple occasions by the Constitutional Court.

The Constitutional Court of the Russian Federation has set out a number of positions that clarify when and in what conditions these provisions can be applied, although they have not yet been clearly fixed in legislation and are not always observed in practice when the issue of bringing a judge to disciplinary liability and having the Qualification Board of Judges carry out an investigation comes up, and when deciding upon a type of disciplinary measure that is commensurate to the offence.

The most salient positions on the disciplinary liability of judges formulated by the Constitutional Court of the Russian Federation in their decisions include:<sup>14</sup>

1. The disciplinary measure must be commensurate with the offence committed by the judge, and punishment in the form of the early termination of the judge’s powers should be a last resort.<sup>15</sup>

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<sup>14</sup> *Decisions of the Constitutional Court of the Russian Federation dated 25.01.2001; Decision No. 3-P of the Constitutional Court of the Russian Federation dated 28.02.2008; Decision No. 19-P of the Constitutional Court of the Russian Federation dated 20.07.2011.*

<sup>15</sup> *Paragraph 8 of Plenary Session No. 13 of the Supreme Court of the Russian Federation “On the Judicial Practice of Implementing Legislation Regulating the Disciplinary Liability of Judges” dated 14.04.2016 also draws attention to this.*

2. In the opinion of the Constitutional Court of the Russian Federation, the decision to strip a judge of their powers can only be taken if the judge has committed an offence that discredits the honour and dignity of the judge, undermines trust in the judiciary and is not befitting of the status of judge. Moreover, the offence committed “gives no grounds for believing that the judge will be able to carry out his or her duties in a responsible and professional manner in the future.

This kind of punishment is clearly necessary in cases where the judge has committed a crime, including in the course of the administration of justice, and his or her guilt has been established in a court of law and the verdict has entered into force. However, in accordance with the Law “On the Status of Judges,” as well as the established practice in applying the law, committing a crime is not the only reason for stripping judges of their powers, as disciplinary offences can carry the same punishment, even though the grounds for choosing to strip a judge of their powers from all the available disciplinary measures are not clearly differentiated. The abovementioned positions of the Constitutional Court of the Russian Federation, as well as the “Basic Principles of the Independence of the Judiciary,” according to which judges may be dismissed either due to the inability to perform their functions or because their behaviour is not befitting of a person of their position (Paragraph 18) can be used as a guideline here.<sup>16</sup>

3. To differentiate disciplinary liability in legal regulation, it is necessary to draw a distinction between a *disciplinary offence and a judicial error*. The Constitutional Court of the Russian Federation ruled in Decision No.3-P dated 28.02.2008 that “a judge cannot be brought to disciplinary responsibility in the form of the early termination of his or her powers for a judicial error, unless the unjust nature of the ruling was the result of behaviour of the judge that is incompatible with the high rank of judge and its public purpose.”

As a rule, judicial errors occur as a result of the judge’s discretion in the selection and application of the rule of law and his or her inner conviction in the assessment of the evidence; the judge’s opinion on the appropriateness of certain procedural actions and the legal significance of certain circumstances of the case, etc. In this connection, under no circumstances can disciplinary liability be based on judicial decisions or the opinions expressed by the judge during the administration of justice. Acknowledgement of an incorrect ruling and having it reversed or amended by a higher court is not itself a reason for bringing a judge to disciplinary responsibility, much less for stripping him or her of his or her judicial powers.

According to the Constitutional Court of the Russian Federation, the grounds for bringing a judge to disciplinary responsibility include minor offences committed in the

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<sup>16</sup> Approved by Resolution No. 40/32 of the UN General Assembly dated 29.11.1985 and Resolution No. 40/146 of the UN General Assembly dated 13.12.1985.

administration of justice, as well as conduct outside of his or her professional activities “which have had a negative effect on the public’s respect for and trust in judges and the judicial system and which create a real threat of diminishing the authority of the judiciary.” The overturning of a decision by a higher court does not automatically lead to disciplinary liability if the judge acted within the limits of judicial discretion but committed a gross error in the application of the provisions of substantive and/or procedural law.<sup>17</sup>

4. What is more, the Constitutional Court of the Russian Federation has indicated that the grounds for terminating the powers of a judge are contained in Article 12.1, Paragraph 1 of the Law “On the Status of Judges” “in a general form and refer to other provisions, as well as the Code of Judicial Ethics, to define the specific content of disciplinary offences, i.e. they do not provide an exhaustive list of behaviours that could be considered incompatible with the title of judge or unbecoming of the status it affords.” Accordingly, these norms should be clarified.

However, in practice, the positions of the Constitutional Court of the Russian Federation are rarely applied, which makes the mechanism of disciplinary liability a potential instrument for exerting pressure on judges. At present, court presidents can raise the issue of stripping a judge of their powers selectively and their own discretion for the sole reason that he or she may have had a ruling reversed by a court of higher instance. The constant threat of punishment for an unjust decision helps create a corps of timid and easy-to-control judges who are terrified of making a judicial error and are thus incapable of demonstrating any kind of independence or impartiality in their rulings. The arbitrary nature of punishments handed out to certain judges leads to an increase in the overall “manageability” of judges, in spite of the principle of independent judges and the autonomy of the judiciary.

In this regard, to ensure the independence of judges, it would be a good idea to remove all powers of court presidents to initiate disciplinary proceedings against judges and reserve this function for the bodies of the judiciary, as well as to organizations and citizens. In addition, the qualification board should not be able to send complaints filed by organizations and citizens that contain information on disciplinary offences to the court president for investigation.

In cases where the actions of judges are found to be in gross violation of procedural law, demonstrate a critical lack of the knowledge and skills required to carry out judicial work and undermine confidence in the judiciary, and where the characteristics and personal qualities of the judge give no grounds for believing that the situation will change in the future, the issue of disciplinary liability should be initiated only on the basis of appeals from the participants in the court proceedings during which the violations were committed.

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<sup>17</sup> Paragraph 2 of Plenary Session No. 13 of the Supreme Court of the Russian Federation “On the Judicial Practice of Implementing Legislation Regulating the Disciplinary Liability of Judges” dated 14.04.2016 also draws attention to this.

In addition to these areas, the **disciplinary measures** themselves need to be clarified and differentiated. At present, disciplinary measures include a verbal warning, a written warning and the removal of the status of judge. It would seem that another type of disciplinary liability needs to be introduced: lowering the qualification class of the judge. This is an adequate measure for cases where the judge is guilty of misconduct in the administration of justice that clearly points to negligence, ignorance of the requirements of the law, or an inadequate level of professional training or a clear reduction of a previously higher level as a result of noncompliance with the rules for continuing professional development. This disciplinary measure should not be applied in cases where a judge has committed a violation outside of his or her professional capacities. In terms of severity, this measure could occupy a midpoint between a written warning and removal of the status of judge. Introducing such a measure will ensure that the decision to remove the status of judge from an individual will be used as a last resort in administering disciplinary liability.

In addition, for a more objective examination of the disciplinary cases initiated against judges, certain changes to the organizational structure of the QBJ are required. The QBJ currently carries out two functions simultaneously:

- a) It conducts investigations into the causes of disciplinary violations and establishes the facts of the case.
- b) It decides whether or not the judge should be brought to disciplinary responsibility and which category of penalty should apply in the given case.

These functions should be apportioned appropriately — that is, the person who establishes the facts of a case should not be the one to decide whether or not the judge is guilty and what penalties should be applied. Accordingly, disciplinary commissions should be established within the QBJs that should be engaged exclusively in establishing the facts of a case, collecting and systematizing evidence that either confirms or refutes the claim that a judge acted in an unlawful manner. A final document should then be drawn up describing the established facts and material evidence collected.

The members of these commissions cannot take part in the decision-making process. This should be the exclusive prerogative of the QBJ, which should be guided by the principles of judicial procedure when considering the materials presented by the disciplinary commission: the adversarial nature of the claim; the presumption of innocence and honesty on the part of the judge in question; the right to defend against the charges brought against them; and the right to representation. The principles of independence and immunity of judges together with the principles of the due process of law, proportionality and reasonableness should be protected when deciding on a disciplinary measure to be applied.

# 3. REDUCING THE WORKLOAD AND SIMPLIFYING THE JUDICIAL PROCESS

## PROBLEMS THAT THE PROPOSED MEASURES AIM TO ADDRESS

Most judges in Russia are constantly overworked. Over three-quarters of judges surveyed said that they are held up after work every day or several times a week.<sup>18</sup> According to data from the Judicial Department of the Supreme Court of the Russian Federation, the workload on judges of various levels and specializations is distributed as follows. On average, in 2015, magistrates were allocated 5.7 criminal cases, 141.4 civil cases and 73.2 cases on administrative offences per month. This works out at more than 10 cases per working day (not counting materials admitted into evidence, amendments regarding open vacancies, vacations and sick leave).

The average workload for district court judges totalled 2.7 criminal cases, 24.8 administrative and civil cases and 4.3 cases related to administrative offences examined in the first instance; 0.2 criminal cases, 0.7 administrative and civil case hearings in the appellate instance; and 2.6 cases regarding administrative offences examined as a result of complaints and protests. This amounts to 1.7 cases per day (also excluding materials admitted into evidence, open vacancies, vacations and sick leave).

The average annual workload of judges in the supreme and regional courts amounted to 0.3 criminal cases and 2.1 administrative and civil cases in the first instance; 48.1 criminal and 103.6 administrative and civil cases in the appellate instance; 22.9 cassation complaints and petitions on criminal cases and 26.6 cassation complaints and appeals on administrative and civil cases; 1.6 criminal cassation cases and 0.9 administrative and civil cassation cases; and 27.3 cases related to administrative offences. This works out to approximately one case per day, not counting vacations, vacancies, other judicial responsibilities, etc.

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<sup>18</sup> The data presented here was obtained as a result of a survey of judges conducted in 2012 and 2014 by the Institute for the Rule of Law at the European University in St. Petersburg. For more detail on the methodology used, see: Volkov, V., Dmitrieva, A., Pozdnyakov, M. and Titaev, K. *Russian Judges: A Sociological Study of the Profession*. Moscow: Norma, 2015.

The average workload for commercial courts in 2015 is approximately two cases per day (not counting vacancies, vacations, etc.), although the high level of technical and informational support makes the load far more manageable than in civil proceedings, with the exception of federal cities, which have a higher level of business activity.<sup>19</sup>

The question of the need to introduce standards on the workload of judges has been brought up on several occasions by the community of judges, but the initiatives have never materialized in the form of normative resolutions. In 2004, the VI All-Russian Congress of Judges noted that the problem of the high workload of judges could not be solved without the approval of scientifically backed standards on the workload and the appointment of staffing plans on the basis of this work.<sup>20</sup> The Congress resolved to ask the president to instruct the Government of the Russian Federation to develop the relevant standards. However, work on the issue was only carried out four years later by the Research Institute of Labour and Social Insurance, the results of which were presented at the VII All-Russian Congress of Judges in 2008.

In 2010, the Council of Judges called for the regulation of the issue at the legislative level and resolved to draft a federal law on workload standards for judges working in courts of general jurisdiction and judges working in commercial courts.<sup>21</sup> The deadline for execution of the law was set for Q3 2010 and its implementation was entrusted to the Supreme Commercial Court of the Russian Federation and the Judicial Department of the Supreme Court of the Russian Federation. As a result, a working group was set up to develop a bill “On the Workload Standards of Commercial and General Jurisdiction Court Judges and Court Administration Staff.”<sup>22</sup> However, the bill was never submitted to the State Duma, in large part because of the negative stance taken by the Ministry of Finance of the Russian Federation on the issue.<sup>23</sup> Attempts by the community of judges itself (in the form of the Council of Judges) to formalize the possibility of establishing workload standards were also unsuccessful, and the initiative never went further than the discussion of a draft law.<sup>24</sup>

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<sup>19</sup> *The average caseload in the Moscow Commercial Court, for example, is 13 cases per day. This problem needs to be addressed separately through the targeted adjustment of the number of judges serving in individual courts.*

<sup>20</sup> *Resolution of the VI All-Russian Congress of Judges dated 02.12.2004.*

<sup>21</sup> *Resolution No. 259 of the Council of Judges of the Russian Federation “On the Need to Legislatively Regulate the Workload Standards of Judges Working in Courts of General Jurisdiction and Commercial Courts and the Workload Standards of Employees in the Court Administration” dated 20.05.2010.*

<sup>22</sup> *Order No. 184 of the Judicial Department dated August 27, 2010.*

<sup>23</sup> *Kornya, A. Dispute at the Top // Vedomosti. No. 2861 dated 27.05.2011 [https://www.vedomosti.ru/newspaper/articles/2011/05/27/spor\\_vysshih](https://www.vedomosti.ru/newspaper/articles/2011/05/27/spor_vysshih)*

<sup>24</sup> *Article 6 of the Draft Federal Law “On Introducing Amendments to Certain Legislative Acts of the Russian Federation in Connection with the Need to Optimize the Workload of Judges in the Russian Federation” introduced a mechanism for the Council of Judges to approve workload standards in accordance with the recommendations of the Chairman of the Supreme Commercial Court of the Russian Federation and the Chief Justice of the Supreme Court of the Russian Federation. [http://www.arbitr.ru/upimg/FCEDA0A98AA3194D7D0312FFBF929A1B\\_vas\\_pr\\_2011-05-12\\_proj.pdf](http://www.arbitr.ru/upimg/FCEDA0A98AA3194D7D0312FFBF929A1B_vas_pr_2011-05-12_proj.pdf)*

The speech given by the Chief Justice of the Supreme Court of the Russian Federation at the All-Russian Congress of Judges in December 2016 would suggest that the Judicial Department of the Supreme Court of the Russian Federation and the Russian Academy of Justice are continuing work on the development of workload standards at the behest of the Supreme Court. However, no officially established and constantly applied standards on the workloads of judges of different levels have emerged thus far. In reality, the current workload considerably exceeds the objective possibilities for the cases to be examined and resolved in a qualitative manner, within the established procedural timeframes and in the allotted working hours. Consequently, a considerable portion of cases has to be moved to out-of-work hours.

Since there is no accepted standard of workload for judges in Russia that could serve as a benchmark for regulation, it is difficult to state unequivocally that judges are overworked in the current situation. A comparison of the average workload of Russian judges with their counterparts in continental Europe suggests that, on a per-judge basis, it roughly corresponds with the average (median). Meanwhile, Russian judges are among the best in Europe in terms of the speed with which they examine cases and their ability to cope with the incoming workflow.<sup>25</sup> However, an analysis of the distribution of the workload across the different levels of the judicial system and the different categories of cases, as well as of judges' perceptions of their workload and the consequences it can have, speak to the existence of a serious problem in the process of the courts.

While the issue of workload may appear to be a purely technical matter, it affects the nature of the work of judges, as well as the quality of the administration of justice and the specifics of the judicial profession itself.

First, high workloads force judges to formalize their work as much as possible. Surveys of judges reveal that high workloads force them to rely more on case materials and documents than on the speeches of the parties in the process, and they are the ones asking most of the questions in order to get the information needed to make a ruling. When presenting their reasons for judgement, judges often use templates, simply substituting the necessary names and circumstances. The practice of delivering verdicts on criminal cases that are slightly modified versions of the indictment (the fact can easily be established using modern methods of comparing texts) is especially harmful and is frowned upon by the Supreme Court of the Russian Federation.

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<sup>25</sup> Russian judges deal with 820 cases per year on average. This is close to the median figure. The workload of judges in Norway (152 cases per year) and Sweden (365 cases per year) is relatively light. The average workload in France (676 cases per year) and the Netherlands (689 cases per year) is slightly lower than the median. However, there are jurisdictions where judges examine over 1000 cases per year, namely Poland (1164) and Italy (1014). Finally, in Ireland, 140 judges deal with almost 700,000 cases per year, which equals 4931 cases for every judge. The data here is taken from *European Judicial Systems: Efficiency and QUALITY of Justice*. European Commission for the Efficiency of Justice. Brussels, 2016.

Second, the high workload means that judges have practically no time for anything except the immediate resolution of cases. This leads to the social isolation of judges and their removal from the educated and professional part of the society to which they nominally belong. Over three-quarters of judges are held up after work every day or several times a week, and many have to work weekends. Not only does work prevent judges from engaging in pastimes (this is particularly true of magistrates and district court judges), but it also turns into the main value of their existence, while interests (values) for the educated segment of Russian society are distributed more evenly between work, family, friends, politics and leisure time.<sup>26</sup> At the same time, professional work requires both studying the relevant literature and taking part in specialist events, and so on. By way of exaggeration, we can say that judges transform into cogs in the judicial machine, cut off from the outside world.

Third, due to the heavy workload and overabundance of paperwork, the work of a judge has started to resemble that of a government official or bureaucrat. This is not in line with the creative nature of this particular law enforcement activity, which requires the judge to pay attention to the details and specifics of each and every case, as well as to the rights of all the parties in the process, nor does it contribute to the prestige of the profession. This, in turn, exacerbates the problem of staff recruitment and leads to representatives of other segments of the legal profession not wanting to become judges. As a result, the judiciary is primarily made up of former employees of the court administration, who are used to heavy loads of routine work – the judicial “conveyor belt,” as judges themselves informally describe their work.

The workload issue requires an immediate solution. This could come in the following areas:

- Changing the flow of incoming cases and changing the costs of legal proceedings for participants in the process.
- Streamlining the judicial process and proceedings.

## REDUCING THE FLOW OF INCOMING CASES

The following calculations of the components of the workload of judges (by category of case) are based on the data published by the Judicial Department for 2015. We are talking here about courts of general jurisdiction, and the figures are for first instance hearings. The key measures proposed are related to the flow of civil cases. Measures in criminal proceedings and hearings on cases relating to administrative offences are also important, but their overall effect on reducing the workload is more modest.

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<sup>26</sup> For comparison, we used the results of the survey of Russian judges and data from the World Values Survey (a representative survey conducted in over 100 countries using a unified methodology), both of which are publicly available. For a description of the project and its methodology, see: World Values Survey Association et al. *World Values Survey // Ann Arbor: University of Michigan, 2008.*

The main measure on which hopes of reducing the workload on the judicial system have been pinned in recent years is the introduction of summary and simplified procedures for dealing with cases that do not actually involve a dispute. Two observations must be made here. Work in this area most certainly is important, but it has exhausted its capabilities as a measure for further increasing the efficiency of the judicial system. First, the limits of expanding the use of simplified procedural arrangements and summary procedures have effectively been reached, already accounting for over half of all cases. Second, summary procedures only reduce the workload to a certain limit. The court administration still accepts the application, registers it, verifies its formal validity, its court jurisdiction, etc. The court order is prepared, communications on the case are carried out, the civil case is developed and archived, and so on. All these procedures eat up time and resources. This is why, acknowledging the importance of summary procedures and other forms of process optimization, we believe that this should not be the only – or even the main – path today. Below we present alternative methods for reducing the workload on judges.

## CIVIL CASES AND CASES ARISING FROM ADMINISTRATIVE AND OTHER PUBLIC LEGAL RELATIONS, EXCLUDING CASES INVOLVING ADMINISTRATIVE OFFENCES

The workload of judges is mainly taken up by civil cases. In 2015, the courts in Russia examined 15.8 million civil cases and admitted almost 2 million documents into evidence. Substantive rulings were made on 14.5 million cases, with the courts satisfying the plaintiffs' (appellants') complaints in 13.9 million cases (96% of the time). This suggests that judges often have to deal with cases that do not actually involve a dispute. Essentially, the parties turn to the courts because they require confirmation of obvious facts (the existence of debts, for example) and documents to initiate enforcement proceedings. In normal situations, it stands to reason that the plaintiff should lose more often in civil cases, as it is the plaintiff who bears the burden of proof. The defendant is thus in the better position. Having said that, simplified procedures are widely used in civil legal proceedings. Court orders are issued on 7.9 million cases.

In order to understand the possibilities of reducing the flow of incoming cases, it is necessary to look at the most common categories of cases. Relatively rare categories of cases (5% of the case flow or less) may be extremely important for the development of the legal environment, but in terms of reducing the workload they are not significant.

The courts deal with 3.56 million claims per year filed by the tax authorities against citizens, ruling in favour of the plaintiff in 98.5% of them. The average "cost" of the claims is 12,300 roubles. A preliminary assessment suggests that no less than half of the claims are for sums of less than 10,000 roubles. The average size of the state duty for consideration of claims of this type is slightly more than 300 roubles. Meanwhile, it costs the state 3240 roubles per hour to pay judges, and the cost for examining a single case is 7430 roubles. One

court day costs at least 25,000 roubles.<sup>27</sup> In addition to the court and legal expenses, the state pays for the time of the Federal Tax Service employee who brings the claim to court. The calculations show the resolution of such disputes to be an inefficient expenditure of public funds, as they generate a loss.

There is a similar situation with suits (claims) filed by the Pension Fund of the Russian Federation. Slightly fewer than 550,000 such claims are filed every year for an average of 11,300 roubles (estimates suggest that at least half of them are for sums of less than 10,000 roubles), with the state duty being 426 roubles. The courts rule in favour of the claimant in 99.3% of the cases.

A standard is already in place whereby the tax authorities can only apply to the courts if the amount owed reaches a certain amount (according to Article 48, Paragraph 1 of the Tax Code of the Russian Federation, the sum must exceed 3000 roubles).<sup>28</sup> However, the current legal framework is such that, after three years, the tax authorities file a complaint with the courts de facto, regardless of the amount of unpaid taxes and fees. Taxpayers are required under the three-year period rule to keep the related documents for four years (Article 23, Part 1, Paragraph 8 of the Tax Code of the Russian Federation).

It would be wise to raise the threshold amount for the Federal Tax Service and the Pension Fund to file claims to at least 10,000 roubles, and preferably to the average salary in each constituent entity of the Russian Federation. At the same time, the provision should be made that, if the amount of arrears in the first year of the three-year period is less than 300 roubles (the most conservative estimate of the cost of producing such a case), then this sum should be written off and the calculation of the three-year period should begin anew from the next year.

Increasing the threshold amount for the Federal Tax Service and the Pension Fund to file suits will result in 2 million fewer civil cases per year (over 13.8% of all civil cases). Increasing it to the average salary will reduce the number of civil cases by 3.5–3.7 million (24–26% of all civil cases).

Increasing the threshold amount would involve the Federal Tax Service and the Pension Fund waiting until a certain amount of arrears is reached (say, 10,000 roubles) and only

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<sup>27</sup> The calculation is made for courts of all instances according to the following formula: judiciary budget / number of judges / number of annual working days. This sum thus includes the salaries of judges and court administration staff, all expenses associated with the maintenance of the buildings, the necessary paperwork for the legal process, etc. This is the most accurate, as it allows us to assess the real costs of legal proceedings. Obviously, the costs vary for different levels of the judicial system. However, the format of the budget spending report does not allow us to assess the cost of a single court day for different categories of courts.

<sup>28</sup> In the event that the tax owed is less than 3000 roubles, the sum is maintained in the system for three years and the tax authorities can file a suit within six months of the expiration of this period (Article 48, Paragraph 2, Sub-Paragraph 3 of the Tax Code of the Russian Federation).

then take legal action. Tax revenues would decrease insignificantly in the first year or two (by 6–7 billion roubles per year). However, these losses would be compensated in full after two to three years (thanks to the accumulated arrears), with the exception of the written-off arrears of less than 300 roubles (which, according to projections, would cost the government less than 1 billion roubles per year). At the same time, judiciary costs will be reduced significantly, as will the costs for administering of tax and pension payments.

According to the most conservative estimates, at least 1000 employees of the tax and pension authorities are involved in the administration of such “micro” cases. This number could be reduced during the very first year of the reform (which would amount to at least 1 billion roubles in budgetary savings). This means that the reform will have paid for itself, as it were, within just three or four years of its implementation. From that moment on, in addition to improving the effectiveness of the judicial system, it will only bring in savings for the state budget.

Another category of relatively small claims is those concerning housing and utilities payments. The courts deal with 2.9 million such cases per year, with the judge ruling in favour of the claimant in 98.6% of cases. The average claim is for 20,900 roubles, with a state fee of 740 roubles. Public utilities companies use cheap and accessible legal means to collect debts, disregarding other methods of collecting the fees. On the one hand, such instruments are necessary, as this kind of business is not premised on the ability to choose customers. Thus, we cannot say that providers of these services assume full responsibility for the risks associated with choosing counterparties. However, they have to assess both the likelihood that the ruling of the court will be executed (it is not particularly strong at the present time: in 2015, Federal Bailiffs Service was charged with initiating 3,886,203 enforcement proceedings to recover debts on housing and utilities payments, with only 1,107,357 being successful)<sup>29</sup> and the extent to which they overload the court with claims that they know cannot be satisfied.

One method that could help the number of claims (by an estimated 1–1.5 million per year, or up to 10% of the total flow of civil cases) is to significantly increase the state duty for legal entities (for example, up to 10% of the recoverable amount up to a maximum of 1 million roubles). The need to pay a substantial state fee upfront before receiving a ruling that is unlikely to be executed will force businesses to forget about small claims and wait for debts to accumulate. They will also start to look for alternative mechanisms for collecting payments, including through negotiations, restructuring payments, mediation, etc.

The state duty for citizens should, of course, be kept at the existing level.

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<sup>29</sup> *Departmental Accounts of the Federal Bailiffs Service for 2015*. [http://fssprus.ru/files/fssp/db/files/201302/vso\\_2012\\_2013161044.zip](http://fssprus.ru/files/fssp/db/files/201302/vso_2012_2013161044.zip). See also: Bocharov, T., Guba, K. and Knorre A. *Execution of Court Decisions and the Organization of the Work of Court Bailiffs*. Moscow, St. Petersburg: Center for Strategic Research, Institute for the Rule of Law at the European University in St. Petersburg, 2017.

A similar situation (albeit with significant amounts) is observed when recovering money under loan or credit agreements. The courts deal with almost 2.58 million such cases per year, with the judge ruling in favour of the plaintiff 99.2% of the time. The average amount of these claims is slightly over 300,000 roubles, and the state duty is just under 4300 roubles. The general situation is similar here. The inexpensiveness of justice reduces the motivation for banks and credit organizations to assess the risks. Introducing the requirement to pay a significant state duty before a ruling of the court (and especially before the ruling is executed) will create the incentive to reduce these kinds of claims by 10–20% (up to 3% of the total number of civil cases per year).

At the same time, increasing the state fee for legal entities will increase the total amount of state fees paid by claimants by around 70 billion roubles per year.

Finally, it makes sense to consider the issue of further differentiating the size of the state duty for civil cases in accordance with the level of court and instance. At present, taking a case to a court of cassation or appeal involves almost no extra cost for the plaintiff, which creates a small but significant flow of unreasonable claims. Introducing or increasing the state duty for these types of cases will cause the participants of the legal process to take a more responsible attitude to the issue of filing appeals.

## CRIMINAL CASES

Every year, the courts try more than 950,000 criminal cases, with over 625,000 (65%) by a special procedure. A total of 220,000 cases (22%) are dismissed. Despite this, the number of officially registered crimes in Russia is not high; in fact, it is significantly lower than in most European countries. However, this does not give reason to expect a decrease in the number of registered crimes. Nor should we expect a significant reduction in the number of criminal cases or an increase in the share of cases dealt with by a special procedure.

The only possible way to reduce the workload in criminal legal proceedings is to create incentives for terminating cases that are typically dismissed in court at the investigation stage, before they are transferred to a court. The Criminal Procedure Code of the Russian Federation already contains a provision allowing for this possibility; however, a maximum of just 1.5% of cases are terminated at the investigation stage. A law was passed in 2016 which, in addition to measures to decriminalize minor offences, introduced a set of procedural measures aimed at encouraging the termination of criminal investigations at the pre-trial stage.<sup>30</sup> The idea is for the indictment to include the position of the parties on the issue of reconciliation, and the breach of this provision should form the basis for returning the case to the prosecutor's office.

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<sup>30</sup> *Federal Law No. 323-FZ dated 21.11.2011 and the accompanying Federal Law no. 326-FZ dated 03.07.2016.*

However, the proposed measure is not good enough, as the reporting system of the investigative bodies is such that it is “unprofitable” for investigators to terminate cases by themselves, so they send them to the courts where they are eventually dismissed. In order for the legally prescribed procedure for terminating cases at the pre-trial stage to work, it is also necessary to adjust the system of incentives for law enforcement agencies — either by getting rid of the estimated figure, which is based on the number of cases sent to court, or by altering it in such a way that it would include the number of cases that had been terminated at the pre-trial stage by the investigator on the grounds that the accused had been relieved from criminal responsibility (except for the statute of limitations), that is, to estimate cases terminated by investigators in the same manner as cases sent to court. This could reduce the number of criminal cases going to court by 10–15%.<sup>31</sup>

Almost three million documents and materials are admitted into evidence for criminal cases. However, the overwhelming majority of issues to which the admitted materials are related cannot be transferred to non-judicial bodies, and their numbers simply cannot be reduced. The only type of court material that can be reduced in number is connected with work to bring court decisions into line with the new criminal law (which works out at approximately 80,000 documents per year). But the only way to stop the flow of these kinds of cases is to put an end to the chaotic practice of introducing amendments to the Criminal Code.

## COMMERCIAL COURTS

As the tax authorities have the right to write off tax arrears before cases are taken to court, then it is unlikely that there will be any significant changes in the number of cases here. Judges are gradually freeing themselves of micro-cases, so there is no real need to take additional measures at this stage.

With regard to applications (filed by organizations) disputing the actions (inaction) and decisions of government bodies, it would be wise to examine the issue of implementing a mandatory internal appeals process (similar to the ones in place in the Federal Tax Service and the Pension Fund), although this would require such structures to be set up inside the government and the development of effective and rapid procedures for dealing with such appeals.

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<sup>31</sup> *The experience of Kazakhstan is convincing proof that changing the system of incentives and the reporting system of the investigative bodies can have a significant impact on the number of cases that are terminated at the investigation stage. After 2011, the number of cases that were terminated due to non-exculpatory circumstances reached 47–48%. Moreover, before the system was changed, the courts terminated 70% of such cases, while the investigative bodies terminated 30%. After the changes, these figures were 36% and 64%, respectively, meaning that most cases are now terminated by the investigative authorities. See Troshev, A. M. Prosecution, Acquittal and Reconciliation in Kazakhstan. In Volkov V. V. (ed.). Prosecution and Acquittal in Post-Soviet Criminal Justice. Moscow: Norma, pp. 18–64.*

A general measure for reducing the flow of incoming cases on civil and commercial matters would be to expand the use of pre-trial settlement hearings. The introduction of the mandatory requirement to examine appeal claims in the higher tax authorities before they are taken to court (Article 138, Paragraph 2 of the Tax Code of the Russian Federation) has proven effective. It would be a wise move to extend this practice of mandatory departmental pre-trial control to all regulatory authorities. That is, before submitting an appeal to court, individuals and organizations must first appeal the decision of a given regulatory authority in the highest instance of that authority.

At first, this measure will not significantly reduce the workload for judges, as the overwhelming majority of cases are not brought to court by individuals, but rather by an administrative authority (for example, 93% of all disputes involving the Pension Fund of the Russian Federation in the commercial courts, and over 87% of disputes in courts of general jurisdiction, are initiated by the Pension Fund itself, rather than by citizens). However, it will undoubtedly help to reduce the number of actual disputes, rather than cases examined in “automatic” mode, while at the same time improving the quality of the work carried out by regulatory bodies and extra-budgetary foundations, which may eventually lead to a slight decrease in the workload of the judicial system.

Another way to reduce the burden on judges would be to change the approach of courts to the issue of reimbursing court costs. The risks involved in the recovery of an acceptable proportion of the legal expenses incurred are what push parties to search for extra-judicial means for resolving disputes, serve as a warning against filing unfounded claims, and prevent the abuse of procedural rights (delaying a trial increases the legal cost that will eventually be collected from an opportunistic party to the proceedings). We must admit here, however, that the institution of recovering legal expenses in Russia serves almost none of the purposes mentioned above. The main reason for this is the uncertainty regarding the limits of how much can actually be recuperated — procedural laws (Article 110, Paragraph 2 of the Commercial Procedure Code of the Russian Federation; Article 110, Paragraph 1 of the Civil Procedure Code of the Russian Federation; Article 111 of the Code of Administrative Judicial Procedure of the Russian Federation) provide for the recovery of costs associated with the provision of legal services “within reasonable limits.”

In the absence of clear criteria of what constitutes “reasonable,” the formulation provides grounds for courts to take a subjective approach when assessing the work provided by legal representatives, often leading to cuts in the amounts awarded to claimants who successfully argue their case. What is more, the practice now involves the sides justifying each and every cost item, which the court must review in detail (thus adding to the overall workload). Resolution No. 1 of the Plenary Session of the Supreme Court of the Russian Federation dated 21.01.2016 dealt with this issue in part only, including a provision that the cost of analogous services on the market under comparable circumstances must be taken into account as a criterion in determining the costs associated with the provision of

legal services. However, this aggregated approach gives no room for consideration of the specifics of a given case or the professional level of the legal representative who provided their services. In addition, courts are also asked to take other criteria into account, including: “the complexity of the case,” “the amount of the claim,” “the time spent preparing the necessary documents for the case” and the “volume of work carried out by the legal representative.” Most of these criteria involve guesswork on the part of judges, and this carries the risk of arbitrary application.

To implement this measure, it is necessary to adopt, at the legislative level or at the level of clarifications from the Supreme Court of the Russian Federation, objective indicators of reasonable court expense limits that would help put an end to the practice of courts awarding the absolute minimum. For example, this would be possible with the transition to a risk model of determining total costs, where judicial expenses are associated not with the subjective evaluation of the work of the legal representative, but rather with the risks for the party in the event that the decision does not go its way. Accordingly, the legal representative’s expenses should be commensurate with this risk. In commercial courts, where disputes involving commercial entities are heard, it might be a good idea to introduce the notion of court costs automatically being considered reasonable if they are within a certain proportion of the total claim amount (we recommend 10%). In this case (when the costs claimed do not exceed 10% of the size of the claim amount or sum established by decision of the court), the court can only reduce these costs if the opposing side can prove that they are unreasonable.<sup>32</sup>

## SIMPLIFYING PROCEDURES AND STREAMLINING THE JUDICIAL PROCESS

### PRONOUNCEMENT OF THE COURT’S VERDICT IN CRIMINAL CASES

The present civil and commercial procedure in Russia allows only the operative part of a judgement in a court session to be announced (Article 176, Paragraph 2 of the Commercial Procedure Code of the Russian Federation and Article 199, Paragraph 1 of the Civil Procedure Code of the Russian Federation). A reasoned decision is presented to the parties in writing later. In criminal cases, however, the court is obliged to fully pronounce the sentence in court. The only time the judge has the opportunity to read the introductory and operative parts of a verdict is when cases are heard in closed sessions or in relation to certain articles of the Criminal Code of the Russian Federation (economic crimes, es-

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<sup>32</sup> For more detail, see: *Pepelyaev, S. G. Approaches to Unlocking the Concept of “Reasonable Limits of Expenditure” on Representing the Court’s Interests // Sudya. No. 8. August 2016.*

pionage, aircraft hijacking and several others) (Article 241, Paragraph 7 of the Criminal Procedure Code of the Russian Federation).

It would seem that, for the sake of procedural economy, the judge should be able to read only the introductory and operative parts of a ruling for offences relating to all articles of the Criminal Code of the Russian Federation, explaining to the parties the terms and procedures for acquainting themselves with the full text of the ruling. However, this procedure can only concern criminal cases in which the scope of the charges and their legal assessment did not change during the hearing, including cases considered in accordance with the procedure outlined in Chapter 40 and Chapter 40.1 of the Criminal Procedure Code of the Russian Federation. If the court introduces amendments to the initial indictment, then the sentence must be read out in full to ensure that the sides are aware of the court's reasoning and its justification for making the changes. Moreover, this procedure does not release the judge from the obligation to prepare a reasoned decision within the established timeframe.

## MAKING A REASONED DECISION IN CIVIL AND COMMERCIAL CASES

At present, magistrates only prepare reasoned decisions at the request of one of the sides on all categories of case, while district courts and commercial courts prepare them for summary procedures. However, in many cases, the writing of the reasoned decision does not have any reasonable practicality, as in a large number of cases there is no legal dispute as such, and in others the defendant ignores the judicial proceedings, does not appear at court and does not appeal the subsequent decision of the court. This is particularly true of the commercial court proceedings in large-scale cases on the recovery of debts or tax or pension arrears. The plaintiff, if the ruling has gone in their favour, can be satisfied with the operative part of a verdict, as he or she has no practical interest in obtaining the full text of the decision. In these circumstances, it is possible to extend the rules for preparing a statement of reasons at the request of one of the parties in magistrates courts and in summary procedures to other categories of civil and commercial cases.

## TRANSITION FROM A PRELIMINARY HEARING TO A GENERAL HEARING IN COURTS OF GENERAL JURISDICTION

Article 137, Paragraph 4 of the Commercial Procedure Code of the Russian Federation stipulates that, if both parties to a dispute are present at the preliminary hearing, the judge has the right to terminate the preliminary hearing and immediately commence the main court session. The civil process does not provide for this possibility, although it would seem appropriate to implement it. This would help to reduce the workload on judges significantly, since, at present, judges in courts of general jurisdiction spend a great deal of time dealing with preliminary hearings, with the main hearing set for another day, or even the following month.

## AUDIO RECORDING OF COURT SESSIONS

Audio recording of court sessions has been mandatory in the commercial court system since 2010, with written minutes being explicitly designated as an additional means of recording trials. The minute order only contains background information and details of the more salient procedural actions for the participants in the hearing: the date, time and place of the hearing; case number; the oral statements and petitions of the parties; the determinations made by the judge without recourse to his or her chambers, etc. (Article 155 of the Commercial Procedure Code of the Russian Federation). The storage media on which the audio was recorded is attached to the case, and the parties can receive copies upon request in order to familiarize themselves with the content. In the event that a party files a complaint regarding a breach of procedural rules, then the audio recording serves as the main piece of evidence.

Moreover, in addition to guarantees of procedural rights, the introduction of audio recording had two important positive consequences in terms of reducing the workload on the courts: it freed court secretaries from having to maintain detailed written minute orders and minimized the number of written comments regarding their content. This, in turn, released court secretaries from having to familiarize the parties with the minute order and to accept comments. As for judges, it meant that they no longer had to review the comments and make the necessary clarifications. What is more, the elimination of the need to produce full written minutes of court hearings significantly reduced the waiting times for the parties when preparing and submitting appeals, as well as the time spent on cases in general.

Discussions on the possibility of introducing the mandatory audio recording in courts of general jurisdiction have intensified recently, and the professional community is in favour of such a step. The Criminal Procedure Code and the Civil Procedure Code stipulate that the main means of recording court hearings is through written minutes. Audio recording is not mandatory, and even when it is used it serves simply as a “means of ensuring the completeness” of the minute order and does not have any significant procedural functions.

The most commonly cited reason by officials for not introducing mandatory audio recording of criminal and civil proceedings is the excessive costs of implementing such a measure. However, in the spring of 2016, the government introduced a bill on the compulsory video recording of court sessions in these proceedings from 2018 onwards,<sup>33</sup> which would entail much higher costs than with audio recording (approximately 1.9 billion roubles upfront and a further 840 million roubles annually).<sup>34</sup>

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<sup>33</sup> *Draft Law No. 965483-6.*

<sup>34</sup> *Financial and Economic Justification for Draft Law* [http://asozd.duma.gov.ru/main.nsf/\(ViewDoc\)?OpenAgent&work/dz.nsf/ByID&82BC6E742E672DA343257F37005053DA](http://asozd.duma.gov.ru/main.nsf/(ViewDoc)?OpenAgent&work/dz.nsf/ByID&82BC6E742E672DA343257F37005053DA)

The rationale of the authors of the bill boils down to the general formulation that “the implementation of the law will help guarantee that the ruling of the court reflects a legitimate, reasoned and fair decision and provide judicial protection of the rights and legitimate interests of the participants in civil and commercial proceedings.”<sup>35</sup> No arguments are put forward as to the advantages of video recording over audio recording. However, audio recording can perform all the same procedural and organizational tasks just as well as video recording, a fact that was noted by the Supreme Court of the Russian Federation in its official response to the bill.<sup>36</sup>

It is difficult to imagine a violation of court proceedings that is committed in a non-verbal manner, but even if we concede that this can happen in a certain percentage of cases, then it is so minimal that it does not justify such serious financial investments. In addition, the process of equipping courts of general jurisdiction with audio recording devices is already in full swing. The Federal target programme “The Development of the Judicial System in Russia for 2013–2020” projects that this process will be completed by the end of 2017. Moreover, the system of audio recording has already been tested in courts of general jurisdiction as part of the administrative process, where, with the adoption of Code of Administrative Judicial Procedure of the Russian Federation, audio record keeping has been mandatory since 2015 (Article 204 of the Code of Administrative Judicial Procedure of the Russian Federation). The court administration has adapted quickly to technological innovations, and the requirement on the audio recording of administrative cases is generally being implemented. There are no obstacles to spreading this practice to other kinds of proceedings.

Audio recording needs to become the main means of recording court proceedings in civil and criminal cases, with written minutes serving as an additional source in which only the basic information and procedural actions of the participants will be noted. Audio recordings of court hearings will serve as evidence in the event that the participants in the proceedings report any kind of violation committed during trial. Uninterrupted audio recording should be carried out throughout the proceedings, including the preliminary hearing. The sides should be able to obtain a copy of the audio file containing a recording of the hearing immediately upon request. Video recording and live internet broadcasting is only worthwhile for meetings of the Collegium of the Supreme Court or the Presidium of the Supreme Court, as the cases considered by these bodies often affect the general public or touch upon a legislative issue that is important for the legal community. In all other cases, broadcasting court hearings live does not have any procedural meaning or social significance.

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<sup>35</sup> *Explanatory Note to Draft Law* [http://asozd.duma.gov.ru/main.nsf/\(ViewDoc\)?OpenAgent&work/dz.nsf/ByID&969762AF97D4D64443257F37005030C9](http://asozd.duma.gov.ru/main.nsf/(ViewDoc)?OpenAgent&work/dz.nsf/ByID&969762AF97D4D64443257F37005030C9)

<sup>36</sup> [http://asozd.duma.gov.ru/main.nsf/\(ViewDoc\)?OpenAgent&work/dz.nsf/ByID&435476ACA4F028B743257F7100290007](http://asozd.duma.gov.ru/main.nsf/(ViewDoc)?OpenAgent&work/dz.nsf/ByID&435476ACA4F028B743257F7100290007)

## ELECTRONIC DOCUMENT CONTROL IN THE COURTS

While the implementation of elements of “electronic justice” into the commercial court system was carried out in a rather short space of time, the process is moving at a much slower pace with regard to courts of general jurisdiction. A number of reasons have been cited for this: the number of courts of general jurisdiction and the volume of cases that they have to deal with is incomparably greater than commercial courts; this, in turn, requires more IT specialists, more equipment and greater financial outlays.

However, these reasons are invalid and do not negate the need for continuing efforts in this area, as, first of all, the commercial court system was a new institution for post-Soviet Russia, which explains why all new innovations were tried out there first; meanwhile, the conservative nature of the general jurisdiction court system is a product of its long-standing history. Second, modern electronic technologies can be deployed quickly thanks to the unification of business processes and the scaling of solutions. The main area for the development of information systems in courts of general jurisdiction is the creation of a unified database of cases where judicial acts can be placed in an accessible format (in commercial courts, this function is performed by the “Court Case File of Commercial Cases”).<sup>37</sup>

At the same time, one of the main elements of improving the effectiveness of any organization whose activities involve working with high volumes of documents is the introduction of an electronic document control and records management system, which removes much of the routine work on the preparation of documents, increases the accuracy of the requisite elements of documents, provides templates in which data can be substituted as necessary (which thus reduces the workload on those tasked with re-checking such documents), makes automated reporting possible and significantly reduces the time taken to transfer information. That said, computers have long since been a part of the court’s work, although in general they are used more as electronic typewriters for processing paper documents. All the prerequisites exist for making electronic documents stored in the database of electronic document management system the main type of documents used in the courts, with hard copies being secondary.

Despite the fact that GAS Pravosudie is carrying out work on the creation of a bank of judicial acts,<sup>38</sup> this service works merely as an aggregator of local court databases, that is, if the text of a judge’s decision is not posted on the court’s website, then it will not appear in the integrated database. The existing difficulties in posting all decisions made by courts of general jurisdiction in the public domain are partly due to the differences in the nature of the cases examined in those courts. Unlike commercial courts, where the parties to the process are usually organizations and judicial acts are published without exception (any ruling signed by the judge using an electronic signature and uploaded into the database is

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<sup>37</sup> <http://kad.arbitr.ru/>

<sup>38</sup> <https://bsr.sudrf.ru/bigs/portal.html>

made publicly available), in courts of general jurisdiction, personal data must be removed from the text of the ruling. The automation technologies are not sophisticated enough at present to deal with this process.

In addition to creating a single database of court rulings, the possibility of submitting documents to courts of general jurisdiction in electronic form is also on the agenda (in commercial courts, this function is performed by the “Moi Arbitr” resource).<sup>39</sup> Federal Law No. 220-FZ dated 23.06.2016 is intended to remove a part of this problem: since 01.01.2017 it has been possible to file documents related to criminal, civil and administrative processes in electronic form.<sup>40</sup>

Subsequently, Order no. 252 of the Judicial Department of the Supreme Court of the Russian Federation dated 28.12.2016 approved the Procedure for Submitting Documents to Commercial Courts in the Russian Federation in Electronic Form, including in the Form of an Electronic Document. This procedure for submitting documents in electronic form is combined with the Unified System of Identification and Authentication accounting record and the use of electronic signatures. Resolution No. 57 of the Plenary Session of the Supreme Court of the Russian Federation “On Certain Issues of the Application of Legislation Regulating the Use of Documents in Electronic Form in the Activities of Courts of General Jurisdiction and Commercial Courts” dated 26.12.2017 appeared the following year.

On the other hand, very few people actually have electronic/digital signatures, so the requirement to have one may be an obstacle preventing access to electronic justice. At the same time, even the simplified procedure that is currently in place for filing electronic documents with commercial courts (a simplified accounting record can be used in the “Moi Arbitr” resource to send scans of paper documents), works effectively when its users are legal professionals (for example, it is necessary to correctly choose the category of document being submitted so that the court does not refuse to accept it). However, expanding this practice to courts of general jurisdiction may generate all manner of errors, or even outright abuses, in the filing of documents, which would place an impossible workload on the court registries that would be tasked with the processing and filtering them. Thus, it would appear that the Supreme Court and the Judicial Department need to monitor the state of law enforcement in this area of the courts’ work, identify and resolve contentious issues and keep a constant eye on the quality of the software being used.

We propose the following: the creation of a unified court case file system for courts of general jurisdiction that provide public access to judicial acts; the development and introduction of a software program that automatically removes personal data from court rulings (and

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<sup>39</sup> <https://my.arbitr.ru/#index>

<sup>40</sup> See: Resolution No. 57 of the Plenary Session of the Supreme Court of the Russian Federation “On Certain Issues of the Application of Legislation Regulating the Use of Documents in Electronic Form in the Activities of Courts of General Jurisdiction and Commercial Courts” dated 26.12.2017.

establish through a legislative act a list of specific information that must be removed, as currently even the sums of recovery and makes of cars are often taken out for no apparent reason); the creation of technical (and organizational) conditions for sending electronic documents to any court of general jurisdiction with a view to the practical implementation of the provisions contained in Federal Law No. 220-FZ dated 23.06.2016.

These services can only be created as a result of the universal introduction of electronic document management systems based on electronic signatures, establishing full cooperation with the System of Interagency Electronic Interaction and the Unified System of Identification and Authentication, and ensuring its uninterrupted functioning.

## OTHER MEASURES UNDER DISCUSSION

In addition to all the measures mentioned above, the professional community discusses other issues that are sometimes related to reducing the workload of the courts. While we support the development of these areas, we must nevertheless concede that that they have little to do with reducing the workload.

### MEDIATION

Despite the many years of efforts to develop mediation, the courts of general jurisdiction dealt with just 1115 mediation cases in 2015 (out of a total of more than 15 million cases). This is primarily due to the fact that the overwhelming majority of cases did not actually contain a dispute, and the courts acted as little more than an instrument for confirming facts that were already clear to all the participants in the process (the plaintiffs' [appellants'] complaints were satisfied in 95.9% of cases). Mediation procedures imply that there is a real conflict between the parties, and a mediator helps them come to an agreement. Preliminary estimates suggest that this is around 3–6% of the total case flow in the first instance. If mediation procedures for such cases are used in every second case, and if they are effective in every fourth case (a very respectable level), then this could reduce the workload by 0.3–0.8% of the total flow of civil cases, or 0.2–0.4% of the total workload of courts of general jurisdiction.

At the same time, the psychological side of legal disputes should not be ignored. Even in the event that the plaintiff is indisputably in the right, they may change their position following mediation proceedings, which should have taken place before the “indisputable” court hearing in the first place. Mediation proceedings can, by their very nature, change the psychology of a person's behaviour in a conflict situation. This is why mediation has huge potential for the pre-trial resolution of legal disputes, as it can significantly reduce the number of cases requiring litigation or significantly increase the number of cases that result in the sides settling claims on the basis of a mediation agreement.

However, increasing the use of mediation in the settlement of legal disputes requires organizational measures to be put in place in order to train mediators, eliminate monopolism in this sphere, and establish reconciliation services in every constituent entity of the Russian Federation to ensure that magistrates and district court judges are able to implement the provisions of the Civil Procedure Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation on the possibility of using mediation or reconciliation with regard to incoming criminal cases, thus reducing the time and effort spent on court proceedings.<sup>41</sup>

## DECRIMINALIZATION

While we recognize that practical decriminalization is an important area of criminal policy, it should be noted that its benefits are beyond the scope of issues relating to the workload of courts. Today, the main flow of cases is associated with widespread and obvious offences (theft, robbery, grievous bodily harm, etc.). Even altering the distinction between petty theft and theft, for example, will have little effect in terms of reducing the load on courts, as it will merely change the manner in which the cases are examined. In general, decriminalization could potentially work in relation to relatively rare offences, which could benefit the system as a whole and, if decriminalization is linked to economic torts that are actually used, improve the entrepreneurial climate. In terms of reducing the workload of the courts, however, the effect would be insignificant.

The only large-scale category where the potential to reduce the flow of criminal cases exists is drug-related offences. However, these changes will not require amendments to the Criminal Code. Transitioning to different methods of calculating the weight of a given drug (based on the mass of the active substance, rather than the whole mixture) will allow fairer judgements to be passed and reduce the number of persons who are prosecuted for possession of what is essentially a single dose, a fact that is not considered a crime by the law. Changing the government-approved concepts of what constitutes “large” and “very large” amounts could also alter the practice with regard to this group of offences. Every year, the courts deliver rulings on 112,000 such cases, where a “one-time” user is detained for possession of the minimum amount of a prohibited substance to qualify as a crime. As a rule, drug dealers are rarely the subject of criminal proceedings, which gives rise to virtually ineradicable drug crime. The proposed changes to the law could help reduce the number of cases related to drug trafficking offences by 25–35%, or 2–3% of the total number of criminal cases.

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<sup>41</sup> *The proposal on the need to adopt a Law “On Reconciliation Services in the Constituent Entities of the Russian Federation” had already been developed some time ago by L. Voskobitova. See: Doctrinal Project of the Model Law of the Constituent Entities of the Russian Federation “On Reconciliation Services” // Mirovoi Sudya. 2007. No. 1, pp. 25–30.*

## REDUCING THE NUMBER OF COMPLAINTS FILED UNDER ARTICLE 125 OF THE CRIMINAL PROCEDURE CODE OF THE RUSSIAN FEDERATION

The professional community is discussing mechanisms for reducing the number of complaints filed under Article 125 of the Criminal Procedure Code of the Russian Federation (regarding the actions/inaction of, or decisions made by an investigator or prosecutor in the course of work on a criminal case). Let us begin by noting that only 131,000 complaints of this kind were filed in 2015, which is less than 0.5% of the total number of cases handled by the court system.

Thus, even a twofold reduction in the number of such cases would not affect this load in any significant manner. On the other hand, judicial protection is one of the most important safeguards of all participants in the criminal process. The fact that 19% of all substantive decisions recognize the complaint as justified proves that this is an important and relatively effective legal institution.

However, the problem is that judges deliver reasoned decisions on just one third of cases. The remaining cases are not examined, as the other bodies (the head of the investigative authority, the investigating officer themselves or the prosecutor) overturn the decision that is the subject of the appeal before the case even gets to court. Expert interviews contain information to the effect that, in the overwhelming majority of cases, the lawyer or party to the case informs the investigating officer that they consider the judgement to be unlawful, but the real test of the quality of the decision is only discovered once an appeal has been filed with the court. This suggests that the very act of appealing to the court is an important mechanism of legal protection, and it forces the investigative organs to take a closer look at their decisions. While this legal institution does create a slight additional burden for the courts, it allows all the sides involved in the process to protect their rights. It thus makes no sense to introduce significant changes here.

# APPENDIX

## BRIEF OVERVIEW OF THE SYSTEM FOR SELECTING AND TRAINING JUDGES IN CERTAIN FOREIGN JURISDICTIONS

### IS IT NECESSARY TO INTRODUCE A SYSTEM WHEREBY JUDGES ARE APPOINTED BY ELECTION?

The election of judges is a rather rare phenomenon in the modern world. In addition to the countries where the law allows for magistrates to be appointed by election,<sup>42</sup> only three countries have implemented this mechanism with regard to courts of higher instance, namely, the United States, Switzerland and partially in Japan.<sup>43</sup>

How successful is this mechanism? And why has it not been adopted in more countries? In theory, electing judges makes them accountable to their constituents and is thus a more transparent mechanism for appointing people to the post — as opposed to closed, secretive procedures where judges are nominated and appointed by a special commission made up of career bureaucrats and politicians. However, this practice often leads to judges acting with re-election in mind and, as a result, making rulings that they believe will please the electorate. For example, the number of executions in certain U.S. states tends to increase in the run-up to an election.<sup>44</sup>

Another important argument used by those who are in favour of electing judges concerns corruption. To be sure, the very existence of elective posts implies that there is relatively more direct control over the finances of candidates and persons already in office. But in

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<sup>42</sup> The laws of the following countries allow for magistrates to be appointed by election: Peru, Colombia, Venezuela, certain departments of France, as well as the Russian Federation, and previously the USSR in the form of people's courts.

<sup>43</sup> A complex procedure is used in Japan whereby the issue of the people's trust in the Supreme Court is decided by way of a periodic national referendum. The Supreme Court is, in turn, appointed by the Emperor at the proposal of the Cabinet. In other words, the Japanese people indirectly elect high-level judges, but have no direct influence on the courts of general jurisdiction. For obvious reasons, the authors of Japan's post-war constitution were heavily influenced by the American models, and this mechanism bears a resemblance to the one that has been used in the state of Missouri since the 1940s and which has been copied by a number of other states since.

<sup>44</sup> Bright, Stephen B., and Patrick Keenan. *Judges and the Politics of Death: Deciding between the Bill of Rights and the Next Election in Capital Cases*. *Boston University Law Review* 75, no. 759 (1995): 14-20.

practice, these control measures are often powerless in the face of the vast possibilities for conducting corruption schemes in the financing of election campaigns. In addition, a potential conflict of interests could arise from the fact that people who are likely to be put on trial at some point in the future, as well as their representatives, could turn out to have been major donors for the sitting judge.<sup>45</sup> Switzerland has a rather radical way for dealing with this issue, effectively banning individuals who want to run for a judicial position from conducting substantive personal election campaigns.<sup>46</sup>

Finally, unlike ordinary elected politicians, who face an extremely broad and potentially unlimited range of tasks, judges carry out work that is difficult for outsiders to properly assess, as it involves a set of special legal competences. It is extremely unlikely that voters will be able to properly evaluate these competences during an election campaign.

This raises the question: How has this system of recruiting judges, which has some serious shortcomings and questionable merits, existed for several centuries in two extremely successful jurisdictions?

The answer lies in the fact that in both cases we are talking about territories that use case law and the adversarial system of the judicial process (as opposed to the inquisitorial system).<sup>47</sup> Theoretically, a judge who follows case law or customary law is less dependent on the will of the legislator and political preferences or attitudes that are expressed through the adoption of certain laws. Precedents allow judges to rely on previously established independent judicial practice rather than the opinions and views of the representatives of the given political force that got them elected. This requires the candidate to possess a different quality of professional knowledge and skills, and it creates a certain independence from the voter. The nature of the legal system in the Russian Federation, with its principle of the due process of law through which the court ensures the policy of the state in any given period, as well as with its very limited application of legal precedents and customary law and its weak party system and political opposition, is extremely ill suited for the introduction of this method of electing judges.

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<sup>45</sup> Schotland, Roy A. *Elective Judges' Campaign Financing: Are State Judges' Robes the Emperor's Clothes of American Democracy?* *JL & pol.* 2 (1985): 57.

<sup>46</sup> In Switzerland, both these shortcomings are offset by running impersonal election campaigns. People thus vote for the representative of a party, rather than for an individual, *per se*. As a result, the party is responsible for the actions of the nominated judge, who, in turn, answers to the party. However, this only serves to remove transparency from the equation, as the closed and secretive procedure for selecting judges by state officials is replaced by an analogous system in which party functionaries do exactly the same thing. [Suter, Benjamin. *Appointment, Discipline and Removal of Judges: A Comparison of the Swiss and New Zealand Judiciaries*. *Discipline and Removal of Judges: A Comparison of the Swiss and New Zealand Judiciaries* (2014).]

<sup>47</sup> Some cantons in Switzerland do use case law, although at the federal level, Swiss law is based on the Romano-Germanic legal tradition.

## EXAMPLES OF THE SYSTEMS FOR APPOINTING JUDGES IN CERTAIN EUROPEAN COUNTRIES

The most commonly used system for appointing judges in continental Europe is the career model. The main characteristics of this model are: 1) judges are appointed at a relatively young age (28–30 years old); 2) the entrance exams are extremely difficult; 3) competition is extremely fierce (more than 10 candidates for a single place); 4) candidates must undergo intensive training at specialized judicial schools (at least one year) or practical training in different legal professions (one to six years); 5) candidates complete rotations in order to gain practical experience (working in various courts, the bar, the prosecutor's office and, in rare cases, some other kind of legal experience); 6) competition — the students are ranked according to performance, and this plays a role in their first appointment.

As a rule, under the career model, judges are selected and appointed by a special commission that is made up of judges and other legal professionals (practicing lawyers). In some cases, the composition of the commission is approved by the ministry of justice or parliament.

### FRANCE

The French judicial system (*le corps judiciaire*) consists of judges and prosecutors. Typically, future judges do not have any professional experience, although around one third of them come from other legal professions. All aspiring judges are trained at the French National School for the Judiciary (*École nationale de la magistrature*, or ENM), a specialized post-graduate school for training judges.

A university degree is not required for entrance to ENM. Formal admission requirements: candidates must be younger than 27 or have worked as a civil servant for a minimum of four years or for a minimum of eight years in municipal organs or the court administration; they must hold French citizenship and enjoy all the civil rights that citizenship entails; candidates must be of a high moral character; and they must have a clean bill of health.

The entrance exam to ENM includes a written and an oral part. In addition, candidates must undergo a psychological assessment and attend an interview with the admissions committee. Approximately one third of the students come from other professions and already have legal experience (15–25 years). However, they undergo the same legal training as those without any professional legal experience. Training at the French National School for the Judiciary lasts 31 months and includes internships in non-judicial organizations, theoretical study, and pupillages at court or the bar. The final exam determines the first appointment of newly qualified judges.<sup>48</sup>

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<sup>48</sup> Erera R. *The Recruitment, Training, Evaluation, Career and Accountability of Members of the Judiciary in France / In Di Federico, 2005. Ibid.*

## GERMANY

Germany is a federal state, and each of the states has its own rules regarding the appointment of judges. The process of selecting and appointing judges is organized by the ministry of justice of each state. German citizenship is required to become a judge. In addition, candidates must demonstrate the following social and professional competences: a degree in law; successful completion of two state examinations; a health certificate; and no criminal record. Candidates must also complete two-year practical training between these two examinations.

The first state examination consists of a compulsory part, which is set by the state examination committee (70% of the total mark) and a special part (set by the university). The results of this exam determine the candidate's future career: only around 17% of the best graduates are admitted to further study to become a judge or public servant.

Practical training lasts two years. During this time, students must obtain the necessary skills to work in court, the prosecutor's office, the local authorities, the bar, NPOs or in business. Students spend between two and five months in each practical placement.

In the second state exam, students are expected to demonstrate their knowledge of procedural issues. Judges and lawyers pay great attention to this exam and take an active role in the work of the commission. Only the top 15% of students are admitted to the judiciary. Upon passing the exam, candidates can apply for open positions. Young judges usually join a panel of three judges in order to gain work experience.<sup>49</sup>

## PORTUGAL

Appointment to a judicial position in Portugal assumes the successful completion of the specialized judicial training programme delivered at the Centro de Estudos Judiciários. Admission to the school is based on an entrance exam, and students must have a law degree in order to sit it. Candidates must hold Portuguese citizenship, or citizenship of any country where Portuguese is the official language. General admission involves two examinations: a three-hour written test on all areas of the law (which is different for general jurisdiction judges and judges in administrative and tax courts) and an oral test on all areas of the law. Candidates may also be accepted onto the programme on the basis of their previous professional experience (five years' experience working in the court or the prosecutor's office) or their academic qualifications (a Ph.D. in Law), in which case they must pass different exams.

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<sup>49</sup> Riedel J. *Recruitment, Professional Evaluation and Career of Judges and Prosecutors in Germany* / In Di Federico, G., 2005. *Ibid.*

The training course lasts two years: the first year (September to June) involves instruction in legal theory, and the second year is taken up by practical placements. Students who successfully pass the final exam can apply for any vacant position, with recommendations being provided by the Judicial Commission. In the event that two candidates are identical in terms of their competences and other characteristics, preference is given to the older of the two.<sup>50</sup> The process of appointing, training and career progression of judges, as well as disciplinary issues are overseen by a special council.<sup>51</sup> This council is made up of acting judges, professors of law, psychologists and prosecutors.<sup>52</sup> Newly appointed judges must complete a two-year trial period after appointment.<sup>53</sup>

## THE NETHERLANDS

The selection and appointment of judges in the Netherlands is carried out by the Council for the Judiciary.<sup>54</sup> Applications are accepted from young candidates with no work experience, as well as from persons who have previously been employed in the legal profession. Applicants without any previous experience must be citizens of the Netherlands, have a degree in law and pass the relevant state exams. In addition, they cannot have a criminal record and must undergo psychological testing and complete an interview.

Successful candidates are then allocated to a court to receive practical training. The traineeship lasts six years in total and includes general training (38 months), specialization (10 months) and two years practical experience in any legal area. Upon completion of the six-year course, candidates are interviewed by judges in courts where there are open vacancies and may be appointed to a position.

In terms of formal requirements, experienced lawyers who wish to become judges must have a degree in law, be younger than 31 years old and have at least six years of legal experience (as a lawyer, public servant or solicitor at a commercial firm). Successful candidates are hired as acting judges on a short-term basis, working one day per week. This is followed by a training period under the guidance of an experienced judge that lasts for between one and three years.

Newly qualified judges are appointed to a specific court. After meeting with all employees at the court, the court leaders prepare a shortlist of three candidates for vacant positions.

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<sup>50</sup> Seawa G. *Recruitment, Professional Evaluation and Career of Judges and Prosecutors in Austria* / In Federico, G. Di, 2005. *Recruitment, Professional Evaluation and Career of Judges and Prosecutors in Europe: Austria, France, Germany, Italy, The Netherlands and Spain*, Bologna: Research Centre for Judicial Studies.

<sup>51</sup> *Higher Council of the Bench and the Superior Council of the Administrative and Fiscal Courts*. <http://countrystudies.us/portugal/82.htm>

<sup>52</sup> <http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/STAT/05.asp>

<sup>53</sup> <http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/STAT/05.asp>

<sup>54</sup> *Similar in competences to the Judicial Department of the Supreme Court of the Russian Federation.*

The appointment is typically given to the candidate whose name appears at the top of the list. The recommendations of the court are sent to the Council, which sends the list to the government for approval of the candidate to the position of a judge (formally approved by the Queen of the Netherlands).<sup>55</sup>

## BRIEF OVERVIEW OF THE FUNCTIONS OF COURT PRESIDENTS IN CONTINENTAL JURISDICTIONS

**Appointing court presidents.** In most European countries, candidates for the post of court president are selected by the self-governing bodies of the judiciary and appointed either by the head of state, the minister of justice, the regional government or the higher court. In all these cases, the judges of a court to which the court president is appointed are not able to influence the selection procedure or deliver a vote of confidence/no-confidence in a given candidate. Three European countries have implemented a system whereby court presidents are elected to their posts by the judges of the courts for which they are running: Iceland, Switzerland and Ukraine. Intermediate models also exist, however. In Hungary, for example, judges vote for court presidents and the results of the ballot are used to create a rating of candidates which is taken into account when appointing court presidents. Greece employs a unique system whereby the post of court president is determined by age; when the court president retires or dies, the post is transferred to the next in line in terms of seniority.

**Term in office and rotation.** The term in office for court president in most countries ranges from four to seven years, and the number of consecutive terms that an individual can serve is usually limited to two. However, there are a number of countries in which court presidents can hold office for life (Denmark and Germany, for example). Intensive rotation (no longer than two years in a row) exists in countries that elect court presidents, namely Switzerland and Ukraine.

**Increased pay and reduced workload.** In almost all European countries, court presidents receive a higher salary compared to ordinary judges (10–30% higher). In addition, court presidents in practically every European state have a reduced workload. In some jurisdictions, limits have been set by law on the workload of court presidents, while in others the court presidents themselves can, at their discretion, reduce their workload in order to perform their official duties effectively and in a timely manner.

**Relationship with court administrators (managers).** The figure of court administrator or manager exists in many judicial systems; however, in certain jurisdictions, these functions are performed by a collective body. For example, Austria has the Personalsenate, a collective

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<sup>55</sup> Langbroek P.M. *Recruitment, Professional Evaluation and Career of Judges and Prosecutors in the Netherlands* / In Di Federico. *Ibid.*

body that assumes most administrative responsibilities. The other extreme is the almost complete dependence of the court administrator on the court president, with the former being merely an assistant to the latter on specific issues. In these cases, the court administrator is appointed and supervised by the court president.

However, a balance between these two posts exists in most jurisdictions, in which the court president deals with strategic tasks, long-term planning, budgeting, judicial policy, compliance with the terms of cases under consideration, etc., and the administrator manages the day-to-day running of the court (primarily the administration) and monitors the current schedule and the distribution of cases, and so on. In this type of system, the administrator is appointed by the minister of justice or other government agency, rather than by the court president. Accordingly, the court president does not control the activities of the administrator and cannot dismiss that person from their post. In these cases, the court administrator model is quite similar to the normative model that was established in Russia when the institution of court administrators was introduced in the country, but, for a number of reasons, did not work.

**Appointing judges and hiring court administration staff.** In most European jurisdictions, the court president is not involved in any way in the procedure for appointing judges. At the same time, however, they are often responsible for hiring court administration staff if that duty is not one of the official functions of the court administrator.

**Allocating bonuses and additional payments to judges and court administration staff.** Not a single European state has implemented a system for the allocation of bonuses and other additional payments to judges. Judges' salaries are fixed at a specified level, and any benefits that the court president might hand out on top of that would be seen as a violation of the judge's independence. In extreme cases, if a judge has carried out an increased amount of work on behalf of one of his or her colleagues, then additional remuneration can be permitted. At the same time, there are no severe restrictions on allocating bonuses to court administration staff — court presidents can hand out bonuses as an incentive for employees to perform their duties in a conscientious manner and to a high quality.

**Ensuring uniformity in the application of the legal provisions.** This function of the presidents of courts of the first instance is not formally fixed in any European jurisdiction. However, de facto, the court presidents in a number of countries hold regular meetings with judges, where deviations from the established practice can be discussed. It is often the case that this task is not even performed by the court president, but rather by the chairpersons of individual panels that are familiar with category of cases assigned to them.

**Involvement in assigning cases to judges.** Most countries do not allow the court president to assign cases, or they restrict this function as much as possible. In countries where an automatic system of assigning cases is used, court presidents do not objectively have the

opportunity to take part in the process. In those that do not employ such a system, the court president draws up a special plan for the year ahead that establishes the criteria and standards for distributing cases among judges. As these plans are adopted, often during a meeting of all judges working in a given court, the court president does not have the opportunity to assign cases at his or her own discretion (the Czech Republic). Priority in assigning cases is usually standardized (for example, cases involving children are given priority), and the court president's only function in this instance is to ensure compliance with these criteria. The only time a court president person is permitted to assign cases among judges is in the event that unforeseen circumstances arise, such as illness, death or (self) recusal of the judge.

**Evaluation of the performance of judges and initiating disciplinary proceedings.** In countries where judges must regularly undergo recertification, the written reports produced by the court presidents on the quality of the work performed by judges are of considerable importance, as they affect their prospects for career development. This is offset to a certain degree by the establishment of clear and formalized evaluation criteria: the number of cases presided over; the number of cancellations or amendments made to judicial acts; whether or not any complaints were filed against the judge; whether or not the judge attended continuing professional development courses; whether or not the judge published any articles in academic journals or in the media, etc. In countries that do not carry out a formal assessment of the performance of judges, the most a court president can do is to hold an “explanatory conversation” with the “underperforming” judge or hand out inconsequential disciplinary sanctions. The court president has the authority to initiate disciplinary proceedings in the event that more serious violations have been committed, which are conducted either by a self-governing body of the judiciary or by a special court. However, in some countries, the court president does not have the right to initiate disciplinary proceedings, as this is the responsibility of a special inspector.<sup>56</sup>

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<sup>56</sup> This review was prepared on the basis of an analysis of the preliminary materials of the Consultative Council of European Judges for Conclusion No. 19 “On the Role of Court Presidents” published in December 2016. [http://www.coe.int/t/dghl/cooperation/ccje/textes/Travaux19\\_en.asp](http://www.coe.int/t/dghl/cooperation/ccje/textes/Travaux19_en.asp). The review covers 38 European countries, including Russia.



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