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Judicial Reform

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KEY INNOVATIONS INTRODUCED BETWEEN 01/01/04 AND 05/30/05

Judicial Reform

In 1992 Russian authorities proclaimed the need to reform the national judicial system and outlined general principles for its restructuring. Some steps in this area were taken between 1992 and 1996, whereas in June 2001 the Russian parliament approved key directions of further reform to start the second wave of judiciary transformation. A Federal Program was launched, allocating 44 billion rubles for “development of the judicial system” in years 2002-2006.

Among other things, during the past 10 years Russian lawmakers have adopted the new Family Code (1995), Criminal Code (1996), Civil Code (1996), Criminal Execution Code (1997), Law on Court Marshals (1997), Law on Magistracy (1998), Law on Military Tribunals (1998), Law on the Status of Judges (2000), Code of Criminal Procedure (2001), Administrative Code (2001), Labor Code (2001), Arbitration Code (2002), Code of Arbitration Procedure (2002), and Code of Civil Procedure (2002). The new law on advocacy in the Russian Federation was passed in May 2002. Although changes appear radical, efficiency of the judicial system remains quite low.

In 2004-2005 there has been no substantial advancement in the judicial reform. Actually, the passed acts seem incremental, as they tend to specify and augment previous law. The core of the matter is not in the law quality but in the state's ability to enforce these laws.

Persistent problems are the following:

- independence of judges and the entire judicial system (including transformation of arbitration into an independent institution);
- citizens' access to public justice and skilled legal assistance (including information access);
- corruption inside the judiciary and low legal qualifications of the judges.

Therefore, the key aims in furthering the judiciary change in Russia should be as follows:

- focusing the reform on creation of conditions for minimization of influence on public justice and converting the court system into an independent arbiter in solution of any disputes;
- adopting a system of practical measures to raise professional qualification of judges;
- implementation of constitutional and international law requirements on citizens' rights for access to public justice;
- recognition and protection of up-to-date legal values within the judicial system;
- development of schemes for active and effective participation of the civil society in administration of justice;
- transparency of the judicial and law enforcement systems, and their accessibility for control of the civil society;
- development of government and public mechanisms to ensure accessible legal assistance for citizens;
- further specialization within the judiciary (including juvenile justice);
- installation of rehabilitation versus punitive principles in operations of courts;
- development of alternative mechanisms for conflict resolution;
- independence of the judiciary to dispose of funds received for their operations.

LIST OF MAJOR LAWS AND STATUTORY ACTS

Reform Target Area	Act Adopting Body and Type of Act	Act Title	Novelty Introduced by Act
Judiciary reform	Russian Federation Government Regulation N 320 of May 23, 2005	On Approval of Rules for Financial Support of Government Powers Transferred to Executive Bodies of Municipal Entities to Compile Candidate Juror Lists for General Jurisdiction Courts in the Russian Federation	<p>In accordance with Part 14 of article 5 of Federal Law N 113-FZ <i>On Jurors for Federal General Jurisdiction Courts in the Russian Federation</i> of August 20, 2004, rules have been adopted for financial support of government powers transferred to executive bodies of municipal entities in compilation of candidate juror lists for general jurisdiction courts.</p> <p>The Rules set forth a procedure for extending Federal Compensation Fund subventions to local budgets for financial support of government powers transferred to executive bodies of municipal entities in compilation (modification, supplementation) of candidate juror lists for general jurisdiction courts in the Russian Federation, as well as the subvention sizes.</p>
Judicial system	Federal Constitutional Law N 3-FKZ of April 5, 2005	On Amendments to the Federal Constitutional Law <i>On Judicial System of the Russian Federation</i>	<p>The laws set forth a single maximum age of 70 years for all judges, with a three-year trial period preserved for newly appointed figures, cancelled the 15-year limit for all acting judges of the Constitutional Court. A magistrate shall be appointed (elected) for a term established by the law of the Russian Federation subject but in excess of 5 years. Repeat and subsequent appointment (election) of a magistrate shall make a term established by the regional law for a term not less than 5 years, until the maximum age of 70.</p> <p>Before December 31, 2004 the Russian Federation Law <i>On Status of Judges in the Russian Federation</i> did not limit the judges' term of office (except for newly appointed district judges and magistrates). Starting from December 31, Federal Law N 169-FZ of December 15, 2001 limits the judges working age by 65 years, except for judges of the Constitutional Court.</p> <p>An amendment adopted in the second reading stipulates that extension of the maximum age to 70 years shall cover the judges less than 65 years of age on the day the amendments became effective. As a result, between December 31,</p>
	Federal Constitutional Law N 2-FKZ of April 5, 2005	On Amendments to the Federal Constitutional Law <i>On Constitutional Court of the Russian Federation</i>	
	Federal Law N 33-FZ of April 5, 2005	On Amendments to the Russian Federation Law <i>On The Status of Judges in the Russian Federation</i> , Russian Federation Law <i>On Magistracy in the Russian Federation</i> ; Federal Law <i>On Amendments and</i>	

		<i>Supplements to the Russian Federation Law on Status of Judges in the Russian Federation, and Federal Law On Bodies of the Judicial Community in the Russian Federation</i>	<p>2004 and April 4, 2005 the judiciary managed to pension off a considerable number of judges over 65 years old, whose term of office had not been limited before December 31, 2004. Proposal of the Supreme Arbitration Court to make the higher age qualification retroactive was rejected. As a result, at first the Law of December 15, 2001 was used to apply retroactivity of the regressive law, and then these laws were applied to persons whose status had been unfairly degraded.</p> <p>Preservation of the three-year trial period for newly elected judges contradicts the principle of the judge status uniformity stipulated by the <i>Law On Judicial System in the Russian Federation</i>.</p>
Judicial system	Federal Law N 26-FZ of March 31, 2005	On Amendments to Article 5 of Federal Law <i>On Jurors for Federal General Jurisdiction Courts in the Russian Federation</i>	The Law made a correction in the above Federal Law, replacing the initial wording “citizens of an appropriate municipal entity” by “citizens residing in an appropriate municipal entity”.
Arbitration law	Federal Law N 25-FZ of March 31, 2005	On Amendments to the Russian Federation Code of Arbitration Procedure and Nullification of Federal Law <i>On Amendment to Article 59 of the Russian Federation Code of Arbitration Procedure</i>	<p>The Law final version allows participation of other legal assistants during legal procedure apart from lawyers; permits extension of review proceedings to 6 months; and expands the grounds for modification or cancellation of a reviewed judicial act from infringement of rights and legal interests of an unspecified persons or other public interests to violation of human rights and liberties :in accordance with generally recognized principles and norms of international law and international agreements of the Russian Federation”.</p> <p>As a result, the Law makes equal powers of legal entities and physical persons within the arbitration procedure, restoring the balance between the Code of Administrative Procedure and Code of Civil Procedure, as any person has been made valid to represent physical persons and legal entities in the civil proceedings.</p>
Judicial system	Federal Law N 2-FZ of February 14, 2005	On Amendments to Article 3 of Federal Law <i>On Magistracy in the Russian Federation</i>	The Law brings the jurisdiction of a magistrate in compliance with the Code of Criminal Procedure, Code of Civil Procedure and Code of Administrative Offenses.

Judicial system	Russian Federation Government Regulation N 890 of December 31, 2004	On Financing and Logistic Support of State Protection Measures Towards Judges, Officials of Law Enforcement and Monitoring Bodies Financed by the Federal Budget	In compliance with Federal Law N 45-FZ <i>On State Protection of Judges and Officials of Law Enforcement and Monitoring Bodies</i> , the act stipulates that financial and logistic support for state protection measures towards judges shall include physical and social security for above persons. Financing shall proceed out of security bloc funds in accordance with the Law of the Russian Federation.
Legal defense	Federal Law N 142-FZ of November 30, 2004	On Supplementation of Federal Law <i>On Magistracy in the Russian Federation</i>	The Law sets forth the procedure for replacing an absent magistrate. In case powers of a magistrate have been terminated or discontinued, or a magistrate is temporarily absent (illness, vacation or another good reason), the appropriate district court shall transfer his responsibilities to a magistrate of another judicial precinct within the same judicial district. In case only one magistrate operates in a judicial district, his responsibilities shall be transferred to a magistrate of an adjacent judicial district by decision of chief justice of the superior court or his deputy.
Advocacy	Federal Law N 163-FZ of December 20, 2004	On Amendments to Federal Law <i>On Advocacy in the Russian Federation</i>	<p>The Law introduces numerous adjustments developed within the law application period towards grounds for terminating the attorney status, organization of the advocacy community and powers of its bodies.</p> <p>Attorney is prohibited to occupy government positions, government service positions and municipal positions.</p> <p>Crucial seems to be the adjustment towards the attorney limitations as per Article 6 of the Law on the prohibition to accept a request for legal assistance if the request is wittingly unlawful. The new version specifies that the ban covers only actions wittingly unlawful for the attorney but not the applicant.</p> <p>Article 7 specifies the attorney's obligation to execute decisions of the Advocacy Chamber only if these have been taken within the Chamber authority.</p> <p>Article 9 stipulates a minimum two-year legal record as a requirement for the attorney status. The new version introduces a supplement stating that "persons with higher education in law, which is their first professional higher education, shall have their service calculated only upon graduation from the appropriate institution of higher learning".</p>

			The effective version of Paragraph 8 of Article 15 prohibits an attorney to change his membership in the Advocacy Chamber within the initial two years upon receiving the attorney status, except for moving to the territory of another Russian Federation subject due to change of residence. The modified version suggests transferring this matter to the discretion of the Council of the Federal Advocacy Chamber.
Judicial system	Federal Law N 100-FZ of August 14, 2004	On Amendments to Federal Law <i>On Bodies of the Russian Federation Judiciary</i>	<p>The previous norm prohibited chief justices and their deputies to participate in the judicial qualification colleges, irrespective of the court level. The new version stipulates that chief justices and their deputies cannot be elected to judicial colleges of the Russian Federation subjects but can be elected to the Supreme Qualification College, which shall be inaccessible only for the Chief Justice of the Russian Federation Supreme Court and his deputies. The modification enhances the administrative component of the Supreme Qualification College and may cause a situation in which chief justices of district and regional courts will prevail in the college.</p> <p>Due to setting up arbitration courts of appeal, the Law changes representation quotas for arbitration courts in the bodies of the judicial community, i.e. in the Russian Federation Council of Judges, Supreme Qualification College, as well as delegates of arbitration courts to the All-Russian Congress of Judges.</p>
Judicial system	Russian Federation Government Regulation N 355 of July 15, 2004	On Amendments to the Rules for Establishment and Payment of Lifetime Monthly Allowance to Retired Judges of the Russian Federation Constitutional Court and Payment of the Lifetime Monthly Allowance to Dependent Family Members of a Deceased Judge	The Regulation raises allowances to judges of the Constitutional Court, with Paragraph 16 of the Rules supplemented by the following: "a 50-percent additional payment to wages for specific labor conditions; a monthly cash bonus".
Judicial system	Federal Constitutional Law N 3-FKZ of June 7, 2004	On Amendments to article 100 of Federal Constitutional Law <i>On the Constitutional Court of the Russian Federation</i>	The Law specifies recoverable expenses of citizens and their associations applying to the Constitutional Court if their complaint results in recognizing a law or its provisions contradictory to the Constitution. The Law also defines sources for financing the compensated expenses. In case an appropriate decision has

			<p>been taken, compensated shall be the state dues; attorney, traveling and residence expenses of the applicants and their representatives in connection with court appearance; mailing expenses; and reimbursement for actual time losses. Appropriate sums shall be paid out of the federal budget (if federal provisions have been found unconstitutional), or out of the Russian Federation subject budget (for appeals against regional laws).</p>
Judicial system	Federal Law N 395007-3 adopted in the first reading by the State Duma of the Russian Federation	On Amendments to Federal Law <i>On Consummation of the Russian Federation Code of Criminal Procedure</i>	<p>The Draft aims to suspend the nullification of Federal Law <i>On People's Assessors of General Jurisdiction Courts in the Russian Federation</i> and consummation of Paragraph 3 of Part 2, Article 30 of the Russian Federation Code of Criminal Procedure until January 1, 2005. As a result, trials for major and grave crimes by three judges of the federal general jurisdiction court shall be temporarily replaced with trials by colleges consisting of a judge and two assessors. By the second reading, the State Duma Committee on Civil, Criminal, Arbitration and Procedural Legislation plans to introduce an amendment on extending the suspension period to January 1, 2006.</p>
Judicial system	Federal Law N 113-FZ of August 20, 2004	On Jurors for Federal General Jurisdiction Courts in the Russian Federation	<p>Before the Law was adopted, requirements to the jurors, guarantees of their independence, procedure for college establishment and time periods for assigning juror responsibilities to citizens had been regulated by Section V of the RSFSR Law <i>On Judiciary in the RSFSR</i> dated July 8, 1981. The RSFSR law has been augmented by this section of the Russian Federation Law of July 16, 1993 during restoration of the jury institution in Russia, after which it became effective in nine regions.</p> <p>Apart from ordinary courts, where the jury has become quite common, the jurors are to appear in military courts and the Supreme Court of the Russian Federation.</p> <p>The Law brings no major changes to the proceedings of the jury, with any Russian citizen able to act as juror, provided law requirements have been met. Candidate lists shall be made up once in four years on the basis of voting lists, with randomization applied to determine the juror candidates.</p>