

---

# **Assessing The Courts In Russia: Parameters Of Progress Under Putin**

By Peter H. Solomon, Jr., University of Toronto

## **Introduction**

The Soviet legacy included courts that were dependent and weak, and whose reform had only just begun. The Yeltsin era witnessed considerable progress in making judges more independent and powerful, but the efforts were seriously constrained by budgetary shortcomings and paralysis in the legislative approval of needed procedural changes. As we shall see, the Putin administration overcame both of these obstacles and at the same time began addressing the thorny question of how to make courts and judges accountable without undue harm to their independence. It also started to address the scepticism about the courts among a significant part of the public, through efforts to improve media coverage, make information about courts more available, and make courts user friendly. While praiseworthy and bound to improve the reality and the perception of the administration of justice overall, these initiatives did not end attempts to exert influence on judges and case outcomes by powerful people (in the public and private sectors) or the mechanisms that facilitated their efforts.

This essay begins by identifying criteria for assessing the quality of the administration of justice in any country, including in the post-soviet world and suggesting specific markers (usually qualitative) connected to each of the criteria developed above. Then, the essay provides an account of relevant policy initiatives in judicial reform undertaken first under Yeltsin and then in the Putin years. The essay goes to provide an assessment of the state of the courts in the Russian federation in 2007 in the light of the criteria and markers supplied in the first section. It concludes with a look to the future, and the identification of crucial markers of change for the post-Putin era.

## **Criteria of Assessment and Markers**

The purpose of courts is to provide to members of the public the opportunity to obtain the impartial resolution of disputes (mainly through adjudication, but sometimes through mediation) in a timely manner. Courts must act fairly and expeditiously, and the design of judicial systems should contribute to these ends.

I propose seven criteria for assessing a court system, some of which break down into a number of components, each of which can serve as markers.<sup>1</sup> They are: the independence of judges and courts; procedural law aimed at ensuring equality among the parties; the power of the courts; the system of judicial accountability; accessibility of the courts; efficiency of performance (and the factors that encourage it); and public attitudes toward the courts.

By judicial independence I mean structural arrangements that improve the chances of impartial outcomes by reducing or eliminating potential lines of dependence of judges, both on external sources and on others within the judicial system. Three basic markers of an independent judiciary (necessary, but not necessarily sufficient to produce impartiality) are: (1) a system of tenure that reduces a judge's potential fear of reprisal for decisions (such as tenure to the age of retirement with dismissal only for serious cause at the hands of one's peers) and minimizes the impact of any disciplinary proceedings; (2) financing of the courts sufficient that judges receive good salaries, have good staff support, and hold sway in buildings that enhance rather than detract from their authority; and (3) a reasonable degree of control by the judiciary over the provision of administrative support to the courts. In judicial systems of the civil law type, where judges pursue careers in the courts, biases are commonly introduced through (4) systems of the evaluation of their performance (often involving higher courts) and through (5) the exercise of power by the chairs (presidents) of courts. In the post-Soviet world chairs of courts are especially powerful, often controlling discretionary perks and benefits for their judges, and in a position to help their judges get promotions or hurt them through disciplinary initiatives including recommending their

---

<sup>1</sup> For a more intricate set of indicators of progress in judicial reform see the CEELI "Judicial Reform Index", which includes 30 different markers falling into six groups: quality, education, diversity; judicial powers; financial resources; structural safeguards, accessibility and transparency; and efficiency. Teams of assessors have applied these tools of assessment to the courts of 18 countries (mainly post-communist), including Ukraine (twice), but not Russia to produce standardized JRI assessment reports. The assessment process includes a battery of interviews with participants in the judicial process, as well as legal analysis. See [www.abanet.org/ceeli/](http://www.abanet.org/ceeli/). In her new book Linn Hammergren provides a thoughtful analysis of the varieties of judicial reform activities and their effects in reaching particular goals. See Linn Hammergren, *Envisioning Reform: Improving judicial Performance in Latin America* (University Park, Pa.: Pennsylvania State Press, 2007).

---

dismissal. At the same time, chairs represent a conduit for requests from the outside regarding particular cases, and they often control the assignment of at least important or hard cases.<sup>2</sup>

At least in criminal cases Soviet procedural law introduced a strong prosecutorial bias, which was reinforced by informal practices. In both the pre-trial and trial phases, the sides were from equal (a consequence of the distorted Soviet form of neoinquisitorialism), and already in the 1991 Conception of Judicial Reform, reform minded jurists pushed for a more adversarial system. The extent to which the practice of criminal justice (as opposed to the law) is truly adversarial and defence has rights comparable to the prosecution represents another criterion of fairness. At the same time, an end to the discouragement of acquittals (a key informal practice dating from the late 1940s) would also mark a significant improvement.<sup>3</sup>

The empowerment of courts and judges represents a mark of their importance in government and society. In my lexicon, judicial power refers to scope of jurisdiction (does it include sensitive matters such constitutional interpretation, administrative justice (complaints against government actions), and high profile commercial disputes?), to the degree of discretion (including right to interpret laws), and to the authority of judges, as reflected in the extent to which their decisions are implemented.<sup>4</sup>

The more power judges exercise, the more other actors seek to make them accountable for their actions, but most forms of accountability come only at the price of compromises with judicial independence. This is true of judicial elections (as used in many states of the USA) and of the systems of evaluating judges found in countries of Western Europe. Yet, any attempts to reduce corruption in the administration of justice involve increased accountability. To ensure that measures of accountability do more good than harm to fair adjudication calls for striking careful balances. Another kind of accountability can be provided by the publication or posting on websites of court decisions, a new practice in the post-Soviet world for all but the highest courts.

To perform their social functions, courts must also be accessible to most of the population and for more than just defence against a criminal charge. In most Western countries courts are too expensive for ordinary citizens, and legal aid programs limited in their coverage. One marker of accessibility is the nature of legal aid and public defender systems. Another is the extent to which the courts are themselves user friendly institutions with an ethic of service. Signs of this include: good buildings with adequate waiting areas and washrooms for the public, places to pay court fees, access to photocopiers, good signage and easy access to information about filing cases, convenient hours of access in the registries, and even electronic kiosks. Information about court activity may also be provided on court websites.

The efficiency of courts also matters to their users, who react strongly to unreasonable delays. The requirements of procedural law help keep most cases under control, but increases in caseload can lead to temporary problems (especially in the arbitrazh courts). The raw data on length of cases and backlogs are useful for inter-court comparisons within Russia, but, as we shall see, do not suggest any systemic problems, with the addition of justices of the peace. Still, the efficiency of courts and the quality of service they provide the public is affected by such markers as the nature and quality of staff and the judge-centered system of case management, as well as requirements of procedural law. The drastic underpayment of court staff, including the new post of court administrator, weakens the operations of the courts by encouraging turnover.

Finally, while the public's assessment of the courts reflects a negative view of government in general, as well as gossip about the courts, public opinion data can serve as a crude way of measuring change. In fact, the current Russian government plan for the improvement of the courts has made annual improvements in public attitudes into a metric for measuring the success of the Plan! (see Appendix 2 "Tselevye indicatory i pokazateli").

### **Courts and their Reform under Yeltsin**

In the nine years of Boris Yeltsin's presidency, starting before the USSR broke apart, Russia embarked on systematic reform of the courts and judiciary that involved simultaneously empowering the courts and establishing many of the conditions associated with judicial independence. During the window of opportunity for radical change, 1990-1993, courts

---

<sup>2</sup> Peter H. Solomon, Jr., "Informal Practices in Russian Justice: Probing the Limits of Post-Soviet Reform," in Russia, Europe, and the Rule of Law, edited Ferdinand Feldbrugge (Leiden: Martinus Nijhoff, 2007), 79-92.

<sup>3</sup> See Peter H. Solomon, Jr., "The Criminal Procedure Code of 2001: Will it Make Russian Justice More Fair?" in Ruling Russia: Law, Crime and Justice in a Changing Society, edited William Pridemore (Lanhan: Rowan and Littlefield, 2005), 77-100.

<sup>4</sup> Peter H. Solomon, Jr., "Courts in Russia: Independence, Power and Accountability," in Judicial Integrity, edited by Andras Sajo (Leiden: Martinus Nijhoff, 2004), 225-253.

---

of one kind or another assumed jurisdiction over constitutional, administrative, and commercial disputes. At the same time, judges on most courts gained life appointments (after a probationary stage) with release only for cause and after review by their peers on the Judicial Qualification Commissions (bodies established already from 1988). Later in the decade the administration of the courts moved out of the executive branch into a Judicial Department under the Supreme Court, and a major expansion of the court capacity was authorized through the creation of Justices of the Peace, themselves creatures of the subjects of the Federation. These later achievements resulted from the political efforts of the judicial community, realized through the Council of Judges and periodic Congresses of judges

The progress of reform was held back, however, by the drastic shortage of funds for the courts and the failure of jurists and the legislature to agree on new codes of criminal and civil procedure. Before and especially during the financial crisis, courts overall received miserly budgets, and lost parts of those through sequestration. Some courts had no money left after paying salaries, and in the mid and late 1990s it was common for courts on the federal budget to receive significant supplementary funding from local governments and private firms, despite the troubling implications for judicial independence. Equally important, the courts remained shabby places, as repairs were not undertaken and little automation attempted. Caseloads rose, but neither new judges nor extra staff were recruited. The prestige of judges remained low, and most new judges came from work in law enforcement or as court secretaries. Hardly any graduates of full time day law faculties became judges. At the same time, the authority of courts was limited, as revealed by the problems securing implementation of many decisions of both the Constitutional Court's and especially the arbitrazh courts's decisions in disputes among private firms. Officials sometimes ignored decisions of the former, and the loser firms in debt collection cases often succeeded in hiding assets from the bailiffs, leading the victors to turn to private enforcement. Moreover, the laws themselves were often vague and contradictory.

By the end of the Yeltsin years the courts had gained key elements of independence and power (tenure and self-rule: new jurisdiction), but lacked others (financial security; authority to secure implementation). At the same time, severe underfunding and the delays in procedural reform held back progress in making the courts fair, efficient, and accessible. This state of affairs was reflected in low public appraisal of the courts and concerns about suspected corruption.<sup>5</sup>

### **Judicial Reform under Putin**

Vladimir Putin's presidency has done much to improve the courts and advance judicial reform in Russia, compensating for the most serious omissions of the Yeltsin years. While Putin's government had far more resources to put into the courts than did Yeltsin's (because of better tax collection and oil revenues), the decision to do so was largely that of the President, who was committed to improving law and the courts as mechanisms of governance and economic growth. Already in the first years, the new administration promoted hierarchy of laws and sought to reduce inconsistencies in the laws of different levels of government, this as part of the plan to counteract slippage of power from the federal centre. Further, the Putin government succeeded in getting the legal community and the legislature alike to reach compromises and approve new procedural codes, which went into effect in 2002 (criminal) and 2003 (civil). While imperfect, they stand to have a long-term positive impact on fairness of court decisions, if only because of the new requirements for adversarialism. The most dramatic and significant contribution of the Putin government to judicial reform lay in the dramatic increase in funding of the courts, a process initiated in the Plan for the Improvement of the Courts, 2002-2006 (more than 44 billion rubles), and continued in the analogous Plan "Development of the Court System for 2007-2011".<sup>6</sup> As we shall see, the new spending did much to improve the courts according to the criteria and markers outlined above. At the same time, the regime struggled with the accountability of judges, trying to find ways of discouraging improper conduct without excessive threats to judicial independence.

The new money provided in the first Plan supported inter alia: significant raises in the salaries of judges (but sadly not also of court staff); partial support for the establishment of the planned network of justices of the peace, who quickly took over a large share of ordinary cases (30% criminal; 65% civil; all administrative violations), leaving the district courts with reduced loads; the introduction of jury trials as an option in all regional level courts, except Chechnya (a costly venture); significant expansion in the staff of courts of general jurisdiction, with the establishment of the position of clerk or judicial assistant; the repair of many court buildings; the provision of more bailiffs to enhance court security; and steps toward the computerization of the courts.

The second, or current Plan, continues elements of the first plan (improvement of court buildings; computerization), but adds to them a battery of measures to make courts more open and transparent and raise public trust in the courts. These

---

<sup>5</sup> On Yeltsin era judicial reform see Peter H. Solomon, Jr., and Todd S. Foglesong, Courts and Transition in Russia: The Challenge of Judicial Reform (Boulder: Westview, 2000).

<sup>6</sup> The Plan is available on the website of the High Arbitrazh Court: [www.arbitr.ru](http://www.arbitr.ru) under the heading "Federal'nye tselevye programmy".

---

include the development of court websites and databanks, which are to include the written decisions in most cases as well as information about the courts and their work; the diffusion of the new post of press-secretary of the court (press secretaries are now found even in some district courts); the development of specialized juvenile panels; and experiments with psychological services to help judges. The Plan includes in an appendix a set of indicators of success (metrics) that feature annual increases in the share of the public trusting the courts, along with a decline in the public's experiencing rudeness on the part of court personnel.

The repeated initiation of new measures of accountability for judges—spurred in large part by the impulse to combat the appearance (or reality) of corruption—has come mainly from outside the court system, especially from the Ministry of Economic Development and Trade (MERT) and specialists associated with it, and recently from the High Arbitrazh Court as well. Most the Ministry's proposals have been controversial, arousing opposition from the judicial community, in part because its power and prerogatives were threatened. Thus, in 2002 the threat to life tenure of judges was countered, but the membership of the Judicial Qualification Commissions that decide on judges' firing for cause was changed, so that instead of all judges, one third of the members would be jurists from outside the courts, and a presidential representative would also be included. In 2004 the head of the Federation Council Mironov proposed reducing the share of judges to half, but this suggestion was rebuffed. Also in 2002 judges lost their strong protections against the launching of criminal prosecutions against them and disciplinary measures short of firing were revived. After a fresh wave of finger pointing about corruption in 2005, the new head of the High Arbitrazh Court Anton Ivanov urged that judges be forced to declare all sources of income and assets (an idea that may well be realized—see the relevant draft law on the Court's website). Other proposed accountability measures include enforceable conflict of interest rules for lawyers and judges and having judges keep diaries of meetings with members of the public outside of the trial setting.<sup>7</sup>

### **The State of the Courts in 2007**

What was the impact of judicial reform activity of the Putin era? To what extent were the various criteria outlined at the start of this paper realized? The answer is: to a considerable degree, but not entirely, and as usual the devil is in the details.

The increases in salaries of judges (the base is now \$1,000 a month, a reasonably high salary in most Russian cities) and the improved funding of court operations—along with the life tenure and administration of the courts by the Judicial Department means that all of the standard formal elements of judicial independence are in place. But informal practices still facilitate the occasional intervention of powerful persons in cases that matter to them. Russia remains a world based upon exchange relationships, and even with better financial support most chairs of courts need good relations with local officials and notables. In turn, those chairs remain extraordinarily powerful figures who bear legal responsibility for the management of their courts and who control the careers of their judges. The chair's personal assessment of each judge is crucial to potential promotion, and should a judge fall from grace, the chair has many ways to punish her/him—within the court and beyond. In practice, chairs easily find pretexts to initiate firing for cause, and the JQCs tend to listen to the chairs, even when they are not members. Often, the chair serves as conduit for outside requests, and with the power of case assignment can ensure that a cooperative or mature judge handles the case. Chairs now serve for two consecutive six year terms (once the term was unlimited), and are appointed by the President after a lengthy review process.<sup>8</sup> The attitudes of Chairs also affect the extent of corruption in a particular court, along with the norms of local culture.<sup>9</sup>

While the new criminal procedure code calls for adversarial trials and increases somewhat the legal resources of the defence during the pre-trial phase, an accusatorial bias still colours the administration of criminal justice. The discouragement of acquittals remains in place and overall judges sitting alone give slight more than 1% acquittals (up from .5%), despite the loss of the main alternative "return to supplementary investigation" and despite the fact that juries acquit at a rate of 15-20%. Judges still face other quantitative indicators of performance like "stability of sentences", which in turn promote conformist behaviour in sentencing. The Criminal Procedure Code of 2001 put into place a modest version of plea bargaining (based on the Italian model), whereby for lesser offences (five year maximum) the accused could admit

---

<sup>7</sup> See Peter H. Solomon, Jr.: "Putin's Judicial Reform: Making Judges Accountable as well as Independent," East European Constitutional Review, 11:1-2 (Winter-Spring 2002), 101-107; "Courts and Federalism in Putin's Russia" (with Alexei Trochev), in The Dynamics of Russian Politics: Putin's Reform of Federal-Regional Relations 2, edited Peter Reddaway and Robert Orttung (Lanham: Rowan and Littlefield, 2005), 91-122; "Threats of Judicial Counterreform in Putin's Russia," revised and expanded version in Remaking the Role of Law: Commercial Law in Russia and the CIS, edited by Kathryn Hendley (Huntington, N.Y.: Juris, 2007), 1-40.

<sup>8</sup> Solomon, "Informal Institutions;" Alexei Trochev, "Judicial Selection in Russia: Towards Accountability and Centralization," in Appointing Judges in an Age of Judicial Power: Critical Perspectives from around the World, edited by Kate Malleson and Peter H. Russell (Toronto: University of Toronto press, 2006), 375-394.

<sup>9</sup> Note that payments to judges often constitute service fees more than bribes and often do not affect the outcome of cases. Both sides may pay; the real winner may be "taxed"; or the decision be reversed by a higher court.

---

guilt and waive the examination of evidence at trial in exchange for a sentence in the bottom two thirds of the legal range.<sup>10</sup> In July 2003 the simplified procedure was extended to serious crimes (with ten year maximums), although in 2006 the Supreme proposed eliminating this extension. This “shortened procedure” was used in 2006 in 37.5% of cases at district courts and 47% by justices of the peace. It is used especially in cases of theft, narcotics, weapons possession, misappropriation, and ecological crimes.<sup>11</sup>

Despite threats (including an attempt to deprive the Constitutional Court of its power to declare laws null and void), courts in Russia have the full panoply of politically sensitive jurisdiction. Administrative justice has been the jewel in the crown, as all sorts of courts, including military tribunals and arbitrazh courts, have satisfied citizen complaints against officials at well above the fifty percent level. Even complaints against the legality of normative acts of ministries come out in favour of the complainant (and against the government) around thirty percent of the time. Most of the complaints have involved social benefits or the conduct of police; there is no separate data on complaints of a politically sensitive nature.<sup>12</sup> The Supreme Court has pushed for the establishment of a separate set of administrative courts under its aegis, but so far resistance from the High Arbitrazh Court and the State Legal Administration of the Presidency has stymied the initiative.

New appointments have made the Constitutional Court less daring than before, but it still plays a positive role in cases relating to federalism and human rights.<sup>13</sup> The decision to move the Court to St. Petersburg struck many observers as an attempt to marginalize the body, as well as start to make St. Petersburg a second capital. Judges saw the readiness of the other branches to move a court against its will as a sign of political condescension toward the judiciary.<sup>14</sup>

Implementation of court decisions through formal procedures has improved somewhat in recent years, as the official numbers show, but far more parties to cases fail to comply with court decisions directly than should be the case, and the use of extra judicial implementation services is still commonplace, though perhaps also on the decline.

The impact of the new accountability measures is hard to assess. I have seen no systematic studies of the conduct of the Judicial Qualification Commissions before and after their change in composition. The constant chatter about judicial corruption in 2005-2006 and threats of various reactions likely put some judges on the defensive. The prospect of the posting of decisions on websites aroused opposition among many judges, who disliked the need to produce documents of a standard that their colleagues might read and perhaps feared that the occasional improper decision would be most noticeable.

Meeting the challenge of making courts in Russia truly accessible is only in its early stages. There are some examples of courts that are user friendly (including model courts developed under Canadian and US projects), but overall this is not the rule yet.<sup>15</sup> Moreover, the system of legal aid, which was among the world's best in Soviet times, has declined. Eligibility for low income persons is limited to criminal cases and a small group of civil cases; somewhat broader coverage is available to targeted social groups like veterans and the disabled.<sup>16</sup> No one gets legal aid to pursue complaints against mistreatment by government officials. However, it is still relatively easy to go to court without a lawyer. There is still a tradition of courts providing counsel to persons wishing to file cases, although more and more judicial assistants and consultants are replacing judges in providing the advice. Moreover, the justice of the peace courts were designed to be

---

<sup>10</sup> Solomon, “The Criminal Procedure Code of 2001.”

<sup>11</sup> 2006 data on the work of regional and district courts and the JPs is on the website of the Judicial Department: [www.cdep.ru](http://www.cdep.ru), then hit “statistika”.

<sup>12</sup> Peter H. Solomon, Jr., “Judicial Power in Russia: Through the Prism of Administrative Justice,” *Law and Society Review*, 38:3 (Sept 2004), 549-582.

<sup>13</sup> See Alexei Trochev, *The Role of the Constitutional Court in Russian Politics, 1990-2006* (Cambridge University Press, forthcoming).

<sup>14</sup> Solomon, “Threats of Judicial Counterreform.”

<sup>15</sup> Peter H. Solomon, Jr., and Pamela Ryder-Lahey, *Model District Courts in Action: Achievements and Lessons in a Russian-Canadian Collaboration* (Ottawa: Office of the Commissioner for Federal Judicial Affairs, 2004); Vladimir Maksimov and Peter Solomon, eds., *Rol' administratorov v organizatsionnom obespechenii deiatelnosti sudov obshchei iurisdiktsii: Prakticheskoe posobie* (Moscow: Sudebnyi Department, 2005).

<sup>16</sup> See Pamela Jordan, *Defending Rights in Russia: Lawyers, the State, and legal Reform in the Post-Soviet Era* (Vancouver: UBC Press, 2005), and Eugene Huskey, “The Bar’s Triumph or Shame? The Founding of Chambers of Advocates in Putin’s Russia,” in *Public Policy and Law in Russia: In Search of a Unified Legal and Political Space*, edited Robert Sharlet and Ferdinand Feldbrugge (Leiden: Martinus Nijhoff, 2005), 149-168.

---

simple and accessible.<sup>17</sup> Still, the designers of the new Plan for the Development of the Court System were correct to privilege accessibility, especially if they seek to improve public confidence in the courts.

The efficiency of courts matters greatly to their users everywhere. Even before the Putin era initiatives of expanding the number of judges, adding staff, and computerization, courts in Russia did much better on most parameters than their counterparts in the West, at least for civil cases. The situation now is even better. The legal time frame, for ordinary civil cases of three months, was met most of the time (94% of cases in 2006), although there was variation from court to court. Arbitrazh courts also met the times requirements in almost 95% of cases. In criminal cases the record was even better (in 2006 97.1% overall), and the violations were usually not to fault of judges but stemmed from the need to postpone trials when victims or witnesses did not appear. The average time for a criminal case between the arrival of the file at court and disposition stood at 2 months in the district courts and JPs (2.6 months in regional courts); for a civil case 2.7 months in district court, 1.2 months by JPs, and 2.2 months in regional courts. (I do not have comparable data for the arbitrazh courts. The average caseload for their judges doubled between 1992 and 2006, but many of these represented initiatives of the tax authorities, either to collect fines or avoid returning overpayments, and legal changes from 2005 produced a major drop in these cases in 2006).<sup>18</sup> Still, what made some cases long was not the trial phase, but what came before and after. Sometimes, investigators did not conclude their work within the required six months, and usually they could get extensions. Then, the post trial appeals, whether cassation or supervisory in nature, added to the time line. Cassation and supervisory reviews in criminal cases could lead to new trials sometimes preceded by new investigations. The bottom line, though, was that the bulk of cases was processed more quickly in Russia than in Western countries, and only a small share of cases became victim of overly complicated procedural norms.

The changes in the Putin years ensured that the courts could cope with a steady increase in the number of cases presented, and improve their overall rate of performance. In some courts (especially district ones), judges reported getting off the conveyor belt, having time to do research about legal issues presented in cases, and above all to “think”. This was often not the case for justices of the peace, who faced huge caseloads, or for judges on some basic level arbitrazh courts (at the regional level), who faced an onslaught of petty cases involving fines for late payment of taxes. Rumour has it that sometimes arbitrazh court judges received payments to speed up the processing of particular cases and give them priority, but few courts had serious backlogs.

One would not expect that public attitudes toward the courts would be especially good, given the overall quality of governance in the RF and cynicism about other government agencies and the fact that most courts were not yet user friendly. However, the latest survey conduct in early June 2007 by the Russian Academy of State Service found that 26% trusted the courts, as opposed to 38% who did not. This finding was better than typical public opinion reports from even five years before, and considerably better than comparable data from a few years ago for Spain and Italy. Moreover, such national level data likely concealed regional variation within the Russian Federation. A new survey conducted on the website of the Arbitrazh Court of St. Petersburg and Leningrad region found that 60% of the respondents trusted arbitrazh courts. 50% expressed confidence in the decisions of all the courts of Russia.<sup>19</sup>

It is unclear to what extent respondents to surveys rely upon gossip or an expectation that they should be critical of the courts. What is clear is that when members of the public have legal problems, they put aside their doubts and turn to the courts in droves. The number of civil cases heard in 2006 was more than 7.5 million, compared to 3.04 million in 1996 and 1.65 million in 1990.

### Markers for the Future

Suppose one is concerned about the future of courts and judges in the Russian Federation. What should one look for? What potential changes would auger well, even herald the arrival of full-fledged independent and trustworthy courts? Here are a few candidates, which, taken together, would make a difference.

1. A decision to remake chairs of courts and their power through changes in their selection and tenure (short terms, elected by their peers). To become primus inter pares and rotate, rather than long term directors or bosses.

---

<sup>17</sup> Peter H. Solomon, Jr., “The New Justices of the Peace in the Russian Federation: A Cornerstone of Judicial Reform?” *Demokratizatsiia*, 11:3 (Summer 2003), 363-380.

<sup>18</sup> Data in this paragraph come from the websites of the Judicial Department RF and the High Arbitrazh Court (see notes 6 and 11).

<sup>19</sup> Anastasia Kornia, “Sudam ne veriat,” *Vedomosti*, 9 August 2007; “Posetiteli saita arbitrazhnogo suda veriat v pravosudie,” *Fontanka.ru*, 22 August 2007; Jose Juan Toharia, “Evaluating Systems of Justice through Public Opinion,” in *Beyond Common Knowledge: Empirical Approaches to the Rule of Law*, edited Erik Jensen and Thomas Heller (Stanford: Stanford University Press, 2003).

2. Improvement of the selection, promotion, disciplining, and firing of judges through either a reform of the procedures used by Judicial Qualifying Commissions, or the creation of a new disciplinary body at a different level of the administrative hierarchy.
3. The establishment of a special training program for judges (minimum of six months) and inclusion in its curriculum of training in psychology, in international human rights norms, in ethics, and in judgment writing.
4. N.B. These first three suggestions appear in a draft law on judicial reform produced by a group attached to the Ministry of Economic Development and Trade in the fall of 2006, which was rejected vigorously by the leaders of the judiciary and led to the appointment of Viktor Ivanov of the presidential administration as political curator for judicial reform matters.
5. Improvements in the rates of implementation of civil and commercial decisions and in observance of decisions without the use of compulsory implementation. This would indicate enhanced judicial authority. Likewise, an increase in the implementation of decisions of the Constitutional Court, on which the Court keeps its own data.
6. A root and branch change in the system of evaluating the work of judges, including the abandonment of most statistical indicators of performance, and the use of qualitative indicators relating to the quality of decisions and the writing of judgements. The abandonment of the concept of "judicial error".
7. Significant improvements, including investment, in the system of legal aid.
8. A change in the background of newly appointed judges: an increase in both graduates of full time day law faculties and mid career entries by former advocates and lawyers, and a decline in former policemen, procurators, and court secretaries.
9. Improvements in the treatment of the public at courts, and survey data showing public recognition of the changes..
10. Continued improvements in public attitudes toward the courts, as anticipated in the Plan for the Development of the Judicial System, 2006-2011.

While all of these changes would either reflect improvements or themselves improve the administration of justice in the Russian Federation, they would not by themselves produce full-fledged legal order, such as rule of law. One would need in addition a shift in the attitudes of public officials, if not also the public itself, toward law, including respect for law as a good in itself rather than simply a means of pursuing one's ends.<sup>20</sup> An instrumental approach to law dominated Soviet culture, but law served as an instrument mainly of the ruling party. In post-Soviet Russia law has become an instrument of a variety of powerful individuals and groups, but an instrumental approach to law still predominates.<sup>21</sup>

There is a view that strong legal institutions, especially those oriented toward protecting individual rights, appear only in democratic contexts, but there are also indications that some forms of political competition have dysfunctional effects on courts.<sup>22</sup>

Clearly, the emergence of truly independent and effective courts requires changes in the broader culture and in the informal practices that connect to the work of the courts and help to shape its impact and meaning.<sup>23</sup> But the accomplishments of the Yeltsin and Putin years go a long way toward laying the groundwork for such courts.

---

<sup>20</sup> See Peter H. Solomon, Jr., "Law in Public Administration: How Russia Differs?" Journal of Communist Studies and Transition Politics (forthcoming).

<sup>21</sup> Alena Ledeneva, How Russia Really Works: The Informal Practices that Shaped Post-Soviet Politics and Business (Ithaca and London: Cornell University Press, 2006).

<sup>22</sup> Maria Popova, "Judicial Independence and Political Competition: Electoral and Defamation Disputes in Russia and Ukraine," unpublished doctoral dissertation (Harvard University, 2006).

<sup>23</sup> See Marina Kurkchyan, "The Illegitimacy of Law in Post-Soviet Societies," in Law and Informal Practices: The post-Communist Experience (Oxford: Oxford University Press, 2003), 25-46.