

Judicial Reforms Directions: independence guaranties for Judge

Perfecting the Procedure of Appointing Judges

When considering candidates for the post of federal judge, the following points must be taken into account:

- fulfillment of certain formal criteria (see Table 1.1);
- qualifying exam: this can be taken by anyone satisfying the formal criteria and wishing to obtain the post of judge;
- citizens who have passed the qualifying exam make up a reserve force of substitutes for court positions. The list of the reserve force members must be open and accessible to the general public.

Table 1.1

Conditions for Eligibility for Nomination for Post of Federal Judge

	Type of Requirement	Content, Requirement, Criteria	Comments
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>
1	Education	Legal, focusing here on graduates of institutions of higher learning from the closed list developed by the judiciary community and ratified by the President of the Russian Federation. The list may be revised once every few years (for instance, once every seven years); only on-site on-campus education (Master's courses); graduates of leading foreign universities, as per the lists, are admitted (with their diplomas automatically converted); graduates of any other institutions of higher learning or departments of law are admitted, provided they have defended a Candidate's or Doctoral dissertation in jurisprudence at institutions of higher learning which appear in a ratified list.	To ensure the success of the court reform, including the possibility of cadre renewal, which alters the situation vis-à-vis quality, it is crucial first to create an initial stock of candidacies, and then later, while the reform is in progress, to assure the renewal of candidates who satisfy the principal requirements. The level of requirements needs to be raised significantly. The same applies to lawyers, since most of the candidates for judges' posts will be recruited from their number.
2	Practical Experience	Legal experience (10 years; initially, possibly 5 years) of practice in the following areas: work as a lawyer; teaching in an institution of higher learning of law (as per the same list, and including foreign ones); experience of participation in law enforcement activities in organizations independent of the authorities, which have been operating in Russia for no less than 20 years; legal practical experience in a major business.	Selection of accomplished, experienced workers in the law enjoying a sound reputation and who have demonstrated their professionalism.
3	Eligibility Age	40 years. For lower courts, 35 years.	

	Requirement		
4	Property Eligibility Requirement	The sum total of income tax paid in 5 years devoted to previous type of work or activity must equal no less than 1 million rubles (a tentative figure; the amount must in any case be considerable). This does not apply to judges advancing in their career. Ownership of real estate (possibly specifying the assessed worth or area of land and living quarters owned), including the package of financial assets.	Material wellbeing is an important component of a judge's independence, and a safeguard against corruption.
5	Additional Requirements for Arbitrating Judges	Experience in work in business; possibly, a higher property eligibility requirement.	

The appointment of federal judges is a political act. That is, it is performed by the President of the Russian Federation based on the conclusion drawn by the representatives of the judiciary community. This conclusion is not decisive, but it must be accessible and known to both the President and the general public. In order to increase the transparency of the process, it is advisable to have parliamentary hearings precede an appointment (for justices of the peace, this should take place at the legislative assembly of a subject of the Federation).

One of the outcomes of the reform should be the achievement of such a status for judges – both state and public ones – which would make occupying the post of a judge be seen as the apex of a successful legal career. Judges in the Anglo-Saxon court systems are a model to orient ourselves by in this respect.

Conditions for the Performance of a Judge's Functions: Personal Guarantees of Independence

Lifelong appointment of federal judges according to the new procedure (term in office for judges of lower courts should be limited to 10-15 years).

Federal judges remain in office up to the age of 70, then changing to the status of consulting judge with a salary not subject to lowering.

Complex procedure of removing a federal judge from his or her post (impeachment); for instance, removal by a qualified majority of the Upper

House of the Federal Assembly (for supreme and regional courts) on the basis of appropriate conclusions drawn by the Supreme Court concerning the solid grounding of the accusation.

Restricting the powers of the court chairman. This person should be not the administrative counselor of the court, but only its coordinator.¹ All functions currently being discharged by the court chairman must be automatized, if not literally, then on the level of bureaucratic procedure.

Restrictions on the possibility of disbanding the jury collegiums. Raising their operational effectiveness.

When these conditions are met for federal judges, justices of the peace could be nonprofessionals elected by the populace. And then their work should probably not be paid. But all the outer display of privileged status (title, mantle) should be the same as for federal judges. Life experience and a compact training course would provide the wherewithal necessary for the resolution of petty disputes. The possession of property and the social position of a judge, along with prestige as one of the main motives for nomination for advancement jointly with the insignificance of the disputes would take care of the problem of corruption. Non-inclusion in the corporation of judges would fortify the independence of such a judge. This last is indirectly confirmed by the irritation evinced by supporters of creating a rigid judiciary vertical (that is, maintaining only the corporative, but not the personal independence of judges) belonging to the “liberals” in the US. Local statistis are in the process of lobbying for a complex and non-transparent system of appointments “in accord with merit and ability” to replace elections.²

Openness of Court Procedure

Online publication of court decisions in the internet by determined deadlines.

Issuance of a legally valid electronic document (audio file and decoding officially agreed upon by the different sides) to the parties representing the different sides on the day when the court decision is made public.

¹ The institution of court chairman as a supervising judge fits quite well into the Italian system of corporate independence. But there is no room for it in the Anglo-Saxon system, where the level of guarantees of the independence for each and every judge is such that no opportunities remain for such a “supervisor” to have an impact.

² <http://judgesonmerit.org/>. For the response of the defenders of the tradition of American freedom to such initiatives, see, inter alia: <http://www.heritage.org/events/2010/09/the-assault-on-the-elected-judiciary>.

Obligatory issuance of printed decisions duly drawn up (acceptable by the court and other governmental agencies) to the parties representing the different sides. This is unlimited in time (from the beginning of the reforms) and in number of paid for copies.

The right to be present in the court hall of public organizations.

Subordination of Court Executives to the Court

At the end of 5 years, judges of “the new type” are entrusted with special subunits for guarding judges in special situations, as well as for the purpose of implementing decisions in cases determined by law (by a judge’s order, issued as per the accepted order of proceeding).

Judge Corps Size

The proposed measures for rigidifying the requirements which judges must meet cannot be realized unless the very notion of the construction of the entire court system is revised. Specifically, these measures will remain nil if the principle is not given up of solving the problem of the judges’ overload by increasing their number (Table 1.2).

Table 1.2

Judge Corps Size (general jurisdiction courts) in 1998-2009 and Suggestions about Increasing the Numbers (as grounds for applying for financing)

Year	Number of Judges^a	Number of Judges Required	Size of Judge Apparatus^b	Required Size of Judge Apparatus
1998 ^c	15 732	35 734	31 815	225 188
2000 ^d	16 742	35 734	38 379	—
2007 ^e	23 172	—	61 161	—
2009 ^f	23 172	—	63 793	—

^a General jurisdiction court judges (not counting justices of the peace).

^b Not counting guards, transportation workers, or building service employees.

^c See the Resolution of the Council of Judges of the Russian Federation, dated October 30, 1998, Moscow.

^d See the Supreme Court of the Russian Federation Plenum Resolution of April 11, 2000, № 17: Explanatory Note to the Law Project “Concerning Bringing the Staff Numbers of Judges and General Jurisdiction Federal Court Apparatus Workers into Accord with Work Load Norms.”

^e According to Federal Law of December 19, 2006, № 238-FL “Concerning the 2007 Federal Budget.”

^f According to Federal Law of April 28, 2009, № 76-FL “Concerning the 2009 Federal Budget.”

As Table 1.2 makes evident, over 10 years, judge numbers grew significantly. Moreover, expanding the numbers of justices of the peace (6,273 as of January 1, 2008, with 7,367 slots available)³ brought the total numbers almost to the same level as the one which had seemed sufficient to the judges themselves at the end of the 1990s. It should be noted that, growth notwithstanding, the numbers of auxiliary personnel is far from optimal (as this appeared from the point of view of the judges in 1998⁴).

The problem of work overload has no quantitative solution, but it does have a qualitative one. Given a sharp improvement in court work quality level and the position of the judges, when the lawyer corps is replaced, citizens will be faced with the problem of prolonged waits and high costs (primarily of lawyers’ services). But the predictability of court decisions will make taking disputes to court a meaningless affair in most cases, thus providing additional stimuli for pre-court resolution of civil disputes.

A sharp rigidifying of the requirements which courts of the new kind will address to the investigators, along with a considerable reduction in the number of crimes punishable by loss of liberty, will lighten the burden on the courts with respect to criminal cases, as well.

The Meaning of Law Enforcement Practices

As the public’s trust toward courts and judges grows, as the prestige of the judiciary corporation increases, as the education level and the decision quality of the judges continue to rise, it will become feasible to address the question of expanding the sphere of applicability of the rule of precedent and decisions of the Supreme Court plenums. Following the rule of precedent can promote the unification of court decisions, achieving equality of all market agents in court and raising the predictability of such decisions.

³ Data from the Court Department at the Supreme Council of the Russian Federation, 2008; http://www.cdep.ru/material.asp?material_id=330.

⁴ See the Resolution of the Council of Judges of the Russian Federation of October 30, 1998, Moscow.

Clearly, a court precedent established by a court decision, including the Supreme and the Constitutional Courts, can be overcome by the decision of the legislator in order to prevent the development of “judges’ activism.”

Legislation and law enforcement practices must be based on the presupposition that the different sides possess common sense, and respect for traditions and customs which are not in opposition to morality and common sense. Accordingly, legislation concerning the rights of consumers must include rules limiting its applicability to facilitate demands for excessive payments from entrepreneurs. Operative legislation concerning the rights of consumers in Russia, the US, and Europe is based on the allowance not only of the consumer’s lack of common sense, but of his or her near imbecility or limited ability to act.⁵

⁵ Consider litigation against tobacco companies or against McDonald’s in connection with the high temperature of the coffee spilled upon oneself, and the like.