

## **PAPER ON JUDICIAL REFORM IN THE RUSSIAN FEDERATION**

Dear Chairman!

Dear Participants to the Conference!

First let me express my gratitude for the invitation to participate in the forum on the judicial reform.

**Deputy Chief Justice Petr Serkov**

My report will deal with the judicial reform in the Russian Federation.

**Deputy Chief Justice of the Supreme Court of the Russian  
Federation**

The Soviet Union had only courts of general jurisdiction. Business disputes were resolved by the State Arbitration under the Council of Ministers of the USSR, which was not a court per se. The key area of operations of courts was crime control, and protection of public interests was the priority in the area.

Thus, for example, courts were required to return a case to a prosecutor for further investigation at their own initiative, if materials of the case suggested that a person committed a more serious offense. Embezzlement of state property entailed greater criminal responsibility than theft of private property.

Civil proceedings limited eligibility of heirs of a deceased person only to close relatives, and in their absence property of a deceased person became state property. Such precedence of public over private was present in all areas of law. Any lawsuits against government agencies were absolutely impossible.

After the collapse of the Soviet Union, political and economic conditions in Russia changed drastically.

After declaration of independence and sovereignty in 1991, the Russian Federation set a course for turning the country into a state governed by the rule of law, providing for organization and operations of state authorities on the basis of the principle of distribution of powers with supremacy of law, recognition and establishment of firm guarantees for protection of rights of a person and a citizen.

As a consequence, pivotal update of all laws and revision of the role of courts in public life became a very important task. A major achievement of the judicial reform is the fact that courts of the Russian Federation were established as independent judicial authority. This is directly stipulated in Article 10 of the

Constitution of the RF. It is also no chance that of 137 articles of the Constitution of the RF about 20 articles refer to courts in one way or another.

The Law on «Status of Judges in the Russian Federation» was passed, providing for independence of judicial power from legislative and executive branches.

At present, judicial power in the Russian Federation is represented by the Constitutional Court, the system of courts of general jurisdiction and the system of arbitration courts. The classification of courts makes areas of court competence quite clear, and I will not go into further detail on the issue, but will draw your attention to courts of general jurisdiction.

I will start with organizational part of the reform. Previously, material support and procurement services to courts were provided by the Ministry of Justice. The above Ministry also had some supervisory functions over courts. This was the reason for the Supreme Court of the RF to initiate establishment of a special federal agency, independent from the executive power, for resolution of all personnel, finance, procurement and other issues, to support complete and independent delivery of justice by courts of general jurisdiction. The Law «On Justice Department of the Supreme Court of the Russian Federation» was passed for these purposes. General Director of the Department is appointed to the position and discharged from the position by Chairman of the Supreme Court of the Russian Federation with approval from the Judicial Council of the Russian Federation. General Director reports annually to the Chairman of the Supreme Court of the RF and the Judicial Council of the RF. He also submits to the Government of the Russian Federation proposals on financing of federal courts and justice operators, excluding the Supreme Court of the RF, as approved by Chairman of the Supreme Court of the RF and the Judicial Council of the Russian Federation.

I have mentioned the Judicial Council twice. Considering lower importance of courts in the Soviet Union, the Law «On Judicial Community Bodies » was adopted to improve the judicial system and proceedings, and also to protect

interest of judges. The Judicial Council of the Russian Federation and judicial councils of the constituents of the Russian Federation were created in accordance with the Law.

The supreme body of the judicial community is the All-Russian Congress of Judges, which discusses the most vital issues of court operations. Last December there was the 7-th All-Russian Congress of Judges, which in its Resolution, among other issues, proposed ways to improve quality of justice, to further ensure reasonable periods of consideration of cases in courts and execution of judicial acts by redistributing competencies between court operators and district courts, implementation of conciliatory and pre-trial procedures. Significance of the All-Russian Congress of Judges is confirmed by the following: in accordance with the Federal Law «On financing of courts in the Russian Federation», a change in the amount of budget funds, allocated for financing of courts of the Russian Federation in the current financial year or of funds to be allocated for the next financial year, by over 5 percent can only be effected with approval of the All-Russian Congress of Judges of the Russian Federation. Besides, other judicial community bodies were established – the Supreme Qualifications Panel of Judges of the RF and qualifications panels of judges of the constituent entities of the Russian Federation, providing opinions for appointment of candidates to judge, court chairman and deputy chairman. In the Russian Federation only qualifications panels can impose disciplinary penalties on judges, either warnings or early termination of authority of judge, court chairman and deputy chairman. Qualifications panels also award qualification grades to judges.

Past years have many a time proven, that establishment of the abovementioned bodies of judicial community is another guarantee for independence of judicial power in the Russian Federation.

To raise professional levels of judges, the Supreme Court of the RF initiated establishment of the Russian Academy of Justice and became its founder. The Academy and its ten branches in several regions of the country provide a system for raising qualifications of judges and court officials. The Academy also trains

judicial specialists on higher and secondary professional legal education programs, conducts fundamental and applied research in the area of judicial system organization, provides research support to law-enforcement and law-making operations of courts.

The judicial reform was related to the issue of court transparency. At the initiative of the Supreme Court of the RF the Law «On providing access to information and operations of courts in the Russian Federation» was adopted. The Law is a direct application act, containing minimal number of references, which makes other specific legal acts unnecessary. According to its provisions, the basic principles for court procedures, supporting improvement of organization and operations of the whole judicial system, are openness, extensive communications of courts with mass media representatives. Such an approach enables higher accessibility of the judicial system by accurate reporting to the public, stronger ties of courts with the public and higher level of public trust in judicial power.

Free access of citizens to information on operations of federal courts of general jurisdiction is provided by options of Internet use. State Automated System of the Russian Federation «Justice» with a corresponding Internet-portal was developed. The portal has official web-sites of two thousand four hundred and ninety federal courts of general jurisdiction and divisions of the Judicial Department.

Now let us pass on to issues of material and procedural legislation. Over the past years there were new laws passed in almost all areas of Russian public life, including justice.

I will name only the basic ones – these are Civil, Criminal Codes and the Codes of Criminal Procedure and Administrative Offences. Resulting from such a reform the legal landscape of the Russian Federation has changed drastically. Of course, our time limits will make it impossible to speak of all novelties. I will focus only on those of conceptual nature.

Criminal cases, involving the capital punishment, are heard by a jury at a petition from criminal defendant. Besides, the Law «On Court Operators», who conduct court proceedings on minor criminal offences and civil cases, was adopted.

Protection of rights and freedoms of people, and of private property became the priority for legal regulations and court operations. All work is carried out in compliance with international laws. For example, provisions of the Civil Code of the Russian Federation and other civil law acts of the Russian Federation actually incorporated provisions of international treaties, reflecting modern practices of property relations in market economy.

Chapter 30 of the Civil Code of the Russian Federation and Air Code of the Russian Federation «Buy and Sell» use regulations of UN convention on contracts of the International Sale of Goods of 1980.

Merchant Marine Code of the Russian Federation and Air Code of the Russian Federation account for recommendations of transportation conventions on maritime and air laws for shipping conditions and responsibility of shipper and shipowner.

All of this over the latest years resulted in major changes of structure of cases reviewed in the Russian Federation. Globalization of world economy in the modern high-tech world brought to the foreground and made more acute the issue of legal protection of intellectual property. The issue became vital for the Russian Federation as well. A set of measures was taken to strengthen the rule of law, including higher levels of law enforcement measures.

Thus, if in 2003 about 200 people were convicted for violation of copyright and associated rights, then in 2006 there were 1975 convicts. The number of convicts for such offences, actually, doubles up with every year.

There were significant changes in civil proceedings.

Along with traditional categories of cases on protection of labor, housing, pension rights, citizens and organizations are actively addressing courts of general

jurisdictions with petitions on disputing legal regulations, completely or partially, and disputing resolutions and decisions (nonfeasance) of government agencies, municipalities, officials, public and municipal personnel. Over a half of such petitions are satisfied.

Courts conduct a lot of hearings on cases for protection of voting rights or rights of citizens of the Russian Federation to participate in referendums.

The data supports the fact that there is a trend in the Russian Federation towards transformation of the nature of relations of government and municipal authorities on one hand, and private persons on the other. Opinions of courts, described in court decisions, lead to the necessity for government and municipal authorities to change their priorities and improve their administrative operations.

One of the main principles of court operations is enforcement of the right for just consideration, which includes consideration of all cases by courts in reasonable time.

The meaning of the criterion «reasonable time» lies in protection of parties from long delays in court proceedings, undermining efficiency of justice and trust. Evaluation of «reasonable time» criterion in practices of Russian courts takes into consideration such conditions as complexity of a case, number of participants in proceedings, volume and nature of materials. Conduct of parties is also taken into account.

Importance attached to the issue of elimination of red tape in the Russian Federation is reinforced by the fact that on December 27, 2007 Plenary Meeting of the Supreme Court of the RF passed the Resolution «On time periods for consideration by courts of the Russian Federation of criminal, civil and administrative violation cases», focusing on improvement of court operations during pre-trial preparations, use for these purposes of all tools of procedural laws.

According to court statistics, in the Russian Federation courts of general jurisdiction annually try over 1 million of criminal cases, about 6 million administrative violation cases and over 10 million of civil cases. As a rule, time

periods for consideration of cases, established by laws, are about one to two months. The majority of the abovementioned cases is tried within those periods. This became possible primarily due to systemic organization of court operations, as I have mentioned above.

Secondly, all regional courts and similar courts are equipped with video conferencing facilities, providing for personal participation of citizens in court hearings during appeals and supervisory proceedings on criminal cases, when penitentiary facilities of prisoners are sometimes hundreds and thousands of kilometers away. Implementation and use of video conferencing facilities enables courts to:

- Significantly accelerate consideration of prisoner cases and reduce time for consideration of appeals;
- Increase security level and reduce risks of violation of prisoner transportation regulations;
- Reduce costs for convict convoys.

The issue of implementing video conferencing facilities in civil proceedings is being discussed at the moment.

There is no doubt, that time periods for consideration of cases were affected by changes in the conditions for reviewing court acts, which came into force. Not every violation of regulations of material and procedural laws is recognized as such a condition, but only conditions of significant and fundamental nature. We think that the principle of legal certainty provides for absence of a right to reconsider an effective court resolution for rehearing and a new court resolution. A different point of view of a supervisory court on outcomes of a case cannot be the reason for cancellation or change of a court resolution of a lower level court.

Last September the Supreme Court of the RF submitted to the State Duma a draft law «On reimbursement by the state for damages, caused by violation of the right for court trial in reasonable time and of the right for execution of court

decision, which came into force». This move is designed to achieve a greater degree of discipline in courts.

In conclusion I would like to wish all participants to the conference to be productive in their work.

Thank you for your attention.

