



## Journal Issue

## Legal Reform

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## The Unexpected Demise of Russia's High Arbitrazh Court and the Politicization of Judicial Reform

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### Abstract

The closing of Russia's successful High Arbitrazh Court and its merger with the Supreme Court, an unpopular and disruptive move, struck informed observers in Russia as an arbitrary political decision. As such, it joined other recent initiatives vis-a-vis the courts that reflected political expediency rather than the needs of the courts or aspirations of their reformers.

### Bolt from the Blue

On June 24 2013 at the Petersburg Economic Forum, Russian President Vladimir Putin announced his decision to close down the High Arbitrazh Court, the 70-judge body that stood at the top of the hierarchy of arbitrazh (or commercial) courts, and merge it with the Supreme Court of the Russian Federation (which already had 120 judges). There had been no earlier public discussion of such a development, especially within the judicial community, and the official explanation that this move would eliminate the occasional conflicting interpretations of law among the two high courts struck most observers as lame. The decision was especially strange because the High Arbitrazh Court was an exceptionally well managed and effective court that served the needs of the business community.

Further details about this revolutionary change became known only in stages, first with the submission in October of a draft law on the necessary constitutional changes and then in February 2014 of draft laws implementing the merger. Putin signed the legislation on February 6, 2014. The strong objections, warnings, and suggestions from judges, legal scholars, and the business bar were all but ignored, by both deputies in the State Duma and the drafting group in the State Legal Administration of the President. Discussion in the State Duma of the law on constitutional changes was rushed and superficial, with all three readings happening within ten days. Such haste had become common for bills that mattered to the President.

The imminent closing of the High Arbitrazh Court in the summer of 2014 raises questions about how well courts in Russia will handle business disputes in the future. It is also worth considering how this initiative connects to the long term pursuit of judicial reform in the Russian Federation and what it says about President Putin's approach to policy in the legal realm during this third term as President.

### The Court Merger and Its Consequences

The High Arbitrazh court, along with the rest of the arbitrazh courts, came into being in late 1991. As formerly

state owned firms started to privatize in the late 1980s, the bodies that had handled disputes among them—the tribunals of state arbitrazh (within the executive branch)—were forced to act as courts, a fact soon recognized by their change in status. Specializing in business disputes and disputes between business and government, the arbitrazh courts soon developed a reputation for competence not shared by all courts of general jurisdiction. Moreover, in the past decade the arbitrazh courts led the way in automation (including the capacity to file claims by computer), in transparency (publication of decisions on websites and in databases), and in procedural and operational simplifications that helped them serve the needs of business firms—mainly because of inspired direction by the High Arbitrazh Court (HAC).

Replacing HAC will be a thirty judge collegium for economic disputes within the structure of the Supreme Court. The new collegium will act as the final instance for cassation reviews of decisions rendered by the three remaining levels of arbitrazh courts, which will continue to operate as before. These courts are about to lose some jurisdiction to the courts of general jurisdiction, including over challenges to the legality of economic regulations and the calculated value of land in cadastre surveys. More important, the management of their budgets and court administration will be handled for the first time by the Judicial Department under the Supreme Court and its regional branches, which service the courts of general jurisdiction; previously, the staff of the HAC performed these functions.

In theory, the merger of the courts could have been effected with the same judges continuing in place, but the positions on the new economic collegium of the Supreme Court will not be assumed automatically by current judges on the High Arbitrazh Court. Rather, all aspirants for positions on the new Supreme Court (including current members of both high courts) have to make applications and pass muster of a special qualification commission made up of judges from regional courts chosen by regional councils of judges (a procedure that seems to denigrate judges of HAC and the Supreme Court). In other words, with the merger of courts comes

an opportunity for rotation of judges (perhaps a violation of judges' constitutional rights), and in practice the dismissal of judges perceived by their colleagues to be nonconformists, including from HAC.

As it happens, not all judges on HAC were prepared to join the enlarged Supreme Court. Not only did they not fancy working in new conditions, but many did not want to move to St. Petersburg! Early in 2013 President Putin had announced another unexpected and unpopular decision, to move both the Supreme Court and High Arbitrazh Court from Moscow to Petersburg, where they would join the Constitutional Court that moved in 2006 and create a "city of courts" (against the wishes of many of its residents). With the merger there would be only one Supreme Court left to be moved, but the prospective disruption in the lives of judges and court staff, with spouses who work in Moscow, dachas in the region, and children and grandchildren nearby, remained intolerable. The earlier move of the Constitutional Court was seen by many as an act of judicial counterreform, designed to produce a more compliant court with less competent staff. If Petersburg lacked the depth of legal talent to support the Constitutional Court (19 judges, 200 staff), how much greater would be the challenge for the Supreme Court (170 judges, 1,000 staff)? In short, the court merger and the move to Petersburg ensured that some of the most experienced judges in handling business disputes would retire.

It was also unclear what would happen to the accumulated wisdom of HAC reflected in its guiding explanations and most important published decisions. In his response to the initial draft law on the merger, the Head of HAC Anton Ivanov called for clarification of the status of these materials, but Duma leaders handling the bill refused, even suggesting that it would be a good thing if the jurisprudence of HAC were forgotten! Gratuitous insults may reflect the culture of the Duma, but the concerns expressed by Justice Ivanov remain valid. Judges on the arbitrazh courts throughout Russia cannot achieve consistency in their decisions without guidance from HAC. In short, the way that the merger has been conducted thus far promises confusion and inconsistency in the handling of business disputes, and this augurs ill for the business and investment climate in the Russian Federation.

### **Authentic Judicial Reform versus Political Expediency**

The current merger of the two high courts has no connection to the main tendencies of judicial reform that date back to the 1990s. It is not part of the many efforts to enhance the independence or the power or accountability of judges or to make the operation of courts more

efficient or accessible (as did the creation of a new layer of the court system, the Justices of the Peace in the early 2000s). But over the past seven years (from 2007) initiatives relating to the courts reflected outside political goals as often as they did the needs of courts or the values normally served by judicial reform.

Three of the reform initiatives of these years were supported by the judicial community and aimed at improving the administration of justice. These include the attempt to improve public knowledge and opinion about courts through adding press secretaries to courts and developing their websites to include posting of decisions; improving the protections of judges by eliminating the initial probationary period for new appointees and adding a Disciplinary Tribunal to review decisions about firing for cause; and promoting efficiency by replacing cassation review of court decisions with an appeals procedure whereby the second instance court rendered decisions in cases rather than sending them back for retrial.

At the same time, there was also a series of initiatives that did not help the courts and reflected political priorities, sometimes in a glaring way. Thus, to cut down on the embarrassment of so many Russians bringing complaints about their courts to the European Court of Human Rights in Strasbourg, the Russian Supreme Court was authorized to review some categories of complaints and to provide monetary compensation.

Other political initiatives imposed on the courts, though, were less benign. Trial by jury, introduced in 1993 and available throughout most of the RF from 2002, was a cornerstone of the effort to reduce accusatorial bias in criminal trials and make acquittals normal as opposed to a statistical rarity. For the hundreds of cases at regional courts that had jury trials, this was the result, and acquittals in jury trials averaged 15%, with only one third of these verdicts rejected by higher courts. Needless to say, police and procuracy officials did not like jury trials, nor did some persons in the presidential administration. Twice in the past seven years, the range of offenses open to the jury option has been narrowed, first with the removal from juries of political cases, including terrorism (in 2008) and secondly (in 2013) with the transfer from regional courts to district courts, which do not use juries, of trials for thirteen offenses involving maximum sentences in the 15 to 20 year range (including kidnapping, attacks by armed groups, some sexual offenses, and the formation of criminal societies). Changes to the operation of the Constitutional Court in 2010, including both its *modus operandi* and the appointment of its chair and deputy chair, put this body under closer control of the President. And, the decision to move the Supreme Court and High Arbitrazh Court to St. Petersburg reflected President Putin's

personal decision to enhance the political status of his home town, even at the cost of harming and/or marginalizing the courts.

As these examples show, the politicization of judicial reform and legal policy can take two forms. One is the pursuit of initiatives that have little if any connection at all to the quality of the administration of justice or needs of the courts (such as merging or moving the high courts). The other is the adoption of measures that counter or reverse a pattern of reform and represent counterreform (narrowing the jury; controlling the Constitutional Court). This latter counterreform tendency has also dominated developments in both criminal and criminal procedure law since Putin's return to the presidency in 2012. Instead of Medvedev's emphasis on cutting down excessive and inappropriate use of the criminal sanction (in his "humanization of criminal law program"), Putin has used criminal law to both curtail civil society (extending treason; harassing NGOs) and mobilize support from conservative social groups (the anti gay laws and criminalization of speech offensive to believers).

Moreover, in winter 2014 the State Duma was considering returning to the Criminal Procedure Code the concept of "objective truth" (*istina*), a change that threatened the promotion of adversarialism that lay at the heart of the post-Soviet reform of criminal procedure in Russia. If this change is adopted, the judge in a criminal trial will be expected, as in Soviet times, to help the prosecutor uncover the facts rather than serve as a neutral umpire, and to make rulings on the basis of "truth" as well as evidence. This initiative had strong support from the Head of the Investigatory Committee, Alexander Bastrykin, whose investigators sometimes had trouble providing the evidence needed for conviction.

### Politics and the Court Merger

The merger of the two high courts exemplified the first form of politicization, a decision that has little or no con-

nection to the policy area at hand, namely the improvement of the courts. However, with the court merger it is unclear whose interests are served by the change and why it was initiated. Insiders in the legal and political worlds of Moscow often cite such personal factors as a desire to undermine the position of the Chair of HAC Anton Ivanov, whose allegedly extravagant lifestyle allegedly offended some in the leadership and who had refused to resign; and/or to find a comfortable future position for Dmitrii Medvedev, a possible pretender for Chair of the new combined court (the current head of the Supreme Court Viacheslav Lebedev is in his early 70s and has health problems). Such rumours cannot be confirmed, but their persistence must trouble judges throughout Russia. There is also a view expressed by a rare defender of the merger (writing for TASS, the government news agency) that it constituted a healthy response to the (allegedly) haughty attitudes of arbitrazh court judges and their business clientele, who had "created VIP courts for their own use and disparaged the other courts available to simple people (the plebs)". Whether or not such social engineering played a part in the decision, it did have a whiff of a "put down" for someone.

Whatever provoked the merger, it did not advance the cause of impartial adjudication, the value at the heart of authentic judicial reform. Nor did it connect to the current agenda of reformers within Russia, which features reducing the power of chairs of courts and changing the evaluation of judges' performance so that they need not fear displeasing superiors or powerful persons. Nor would the merger improve the efficiency of the administration of justice, which, to informed observers, requires the creation of a separate hierarchy of administrative courts, not the demise of the High Arbitrazh Court.

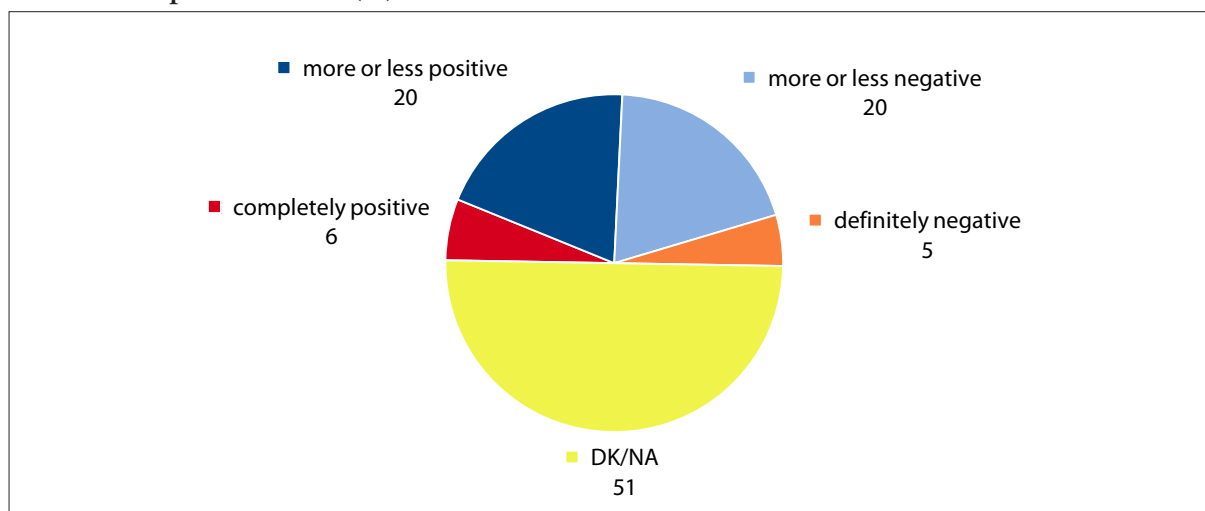
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## OPINION POLL

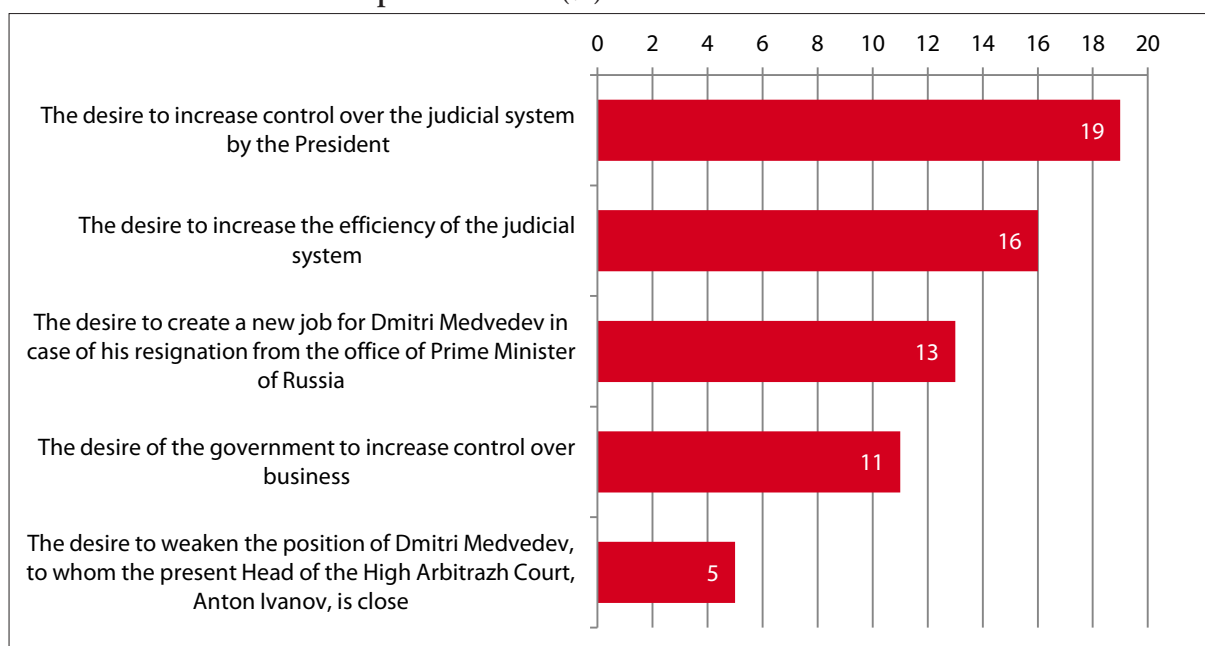
## “To Create A New Job For Dmitri Medvedev”: Opinions on the Merger of the High Arbitrazh Court With the Supreme Court

Figure 1: What Is Your Attitude To the Proposal To Merge the High Arbitrazh Court With the Supreme Court? (%)



Source: representative opinion poll by Levada Center, 15–18 November 2013,  $N = 1603$ , <<http://www.levada.ru/print/27-11-2013/obedinenie-verkhovnogo-i-vysshego-arbitrazhnogo-sudov>>

Figure 2: In Your Opinion, What Is the Reason For the Proposal To Merge the High Arbitrazh Court With the Supreme Court? (%)



Source: representative opinion poll by Levada Center, 15–18 November 2013,  $N = 1603$ , <<http://www.levada.ru/print/27-11-2013/obedinenie-verkhovnogo-i-vysshego-arbitrazhnogo-sudov>>

## Accountability and Discretion of the Russian Courts

By Alexei Trochev, Astana

### Abstract

Judges are much more likely to rule against the government in non-criminal cases than they are in lawsuits brought by state procurators. The difference lies in the relationship between judges and the law enforcement agencies and other agencies of the government. Their closer ties with the law enforcement agencies makes it harder for the judges to oppose their requests, whereas judges have fewer connections to other parts of the government and therefore have greater freedom in opposing them.

### A Puzzling Duality

The two decades of judicial reforms in Russia have produced a puzzling duality of judicial behavior. On the one hand, little has changed in the way judges handle criminal cases, as indicated by the pre-trial detention and acquittal rates. On the other hand, Russian judges have been increasingly ruling against the federal government in cases brought by individuals and companies, something unimaginable in the Soviet period.

One source of this duality is the contradiction between what Richard Sakwa described as constitutionalism and the arbitrariness of the administrative regime in Putin's Russia. However, this contradiction rarely touches upon the work of ordinary Russian judges, who are well integrated into the regime.

Instead, judges face a host of formal and informal incentives, most of which center on corporate and bureaucratic accountability. In handling criminal cases, this accountability strongly ties together the interests of the law-enforcement officials, investigators, prosecutors, trial-level judges, and appellate judges, with whom judges interact on a daily basis.

In the court cases against the Russian Federation, this judicial accountability is weaker given that the defendants are officials from different government agencies with whom judges may interact only a few times a year, and, most importantly, who do not face any job-related problems or financial loss for losing cases. Therefore, judges feel much freer when deciding lawsuits against the federal government as compared to criminal cases, in which exoneration or acquittal may mean demotion, lack of salary bonuses and other career-related sanctions to many law-enforcement officials.

### Wholesale Approval of Pre-Trial Detention

Russian judges are systematically biased in favor of state prosecution in the criminal justice system. Similar to the period of "developed socialism," the first twenty years of postcommunism demonstrate that Russian judges consistently show the Soviet-era "accusatory bias" and side with the state prosecutors in both the pretrial and trial stages of criminal proceedings. The appellate courts

encourage the amicable relationship between judges and prosecutors. In Russia, judges received the exclusive power to detain the accused persons in July 2002, but this monopoly to detain failed to produce any significant change in the practice of pretrial detention. As Table 1 shows, Russia's judges approve 90 percent of pre-trial detention requests (see Table 1 on p. 8). Russia's judges also prolong 97 percent of detentions. In 2008, the Human Rights Ombudsman Vladimir Lukin openly complained to President Medvedev that judges automatically approved detention requests. The accused persons and their attorneys appeal about one-tenth of the detentions and win 3 percent of the appeals. Russia's procurators have a much higher chance of having the denied detentions overturned by appellate courts. Procurators win about 20 percent (246 out of 1,131 in 2013) of appeals in this category of cases.

The chairs of the oblast-level courts serve as the tribunals that hear the appeals, and they encourage the Soviet-era practice of deferring to state prosecutors in criminal justice. Every other chair of these courts received his law degree during the 1970s and has worked in the court as a judge or a court clerk prior to becoming a chair. Meanwhile, only a quarter of them worked in the Procuracy or in the police force prior to appointment to the bench. These seasoned career judges carry over deference to the procurators, even though the latter now hold much lower status within the legal system. For example, in November 2008, Chair of the Volgograd Oblast Court Sergei Potapenko succeeded in dismissing Marianna Lukianovskaia, a judge working in the same court, from the bench for refusing to extend the detention of a person accused of extorting five thousand rubles (\$190 U.S.). She ordered the accused released on the grounds that the latter was unlawfully deprived of the right to an interpreter during the detention hearing. The procurator, however, arrested the accused again and wrote to Potapenko that Lukianovskaia had to extend the detention. She was fired from the court, and the Russian Supreme Court, the court in which Potapenko served as a judge between 2002 and 2005, confirmed her dismissal in the fall of 2009.

Moreover, even when the procurators uncover wrongful detentions and release illegally detained persons from custody, the perpetrators are rarely criminally prosecuted. The official number of registered unlawful arrests and detentions (criminal offenses under Article 301 of the Russian Criminal Code) is minimal and declining from the record high of 73 in 1997 to 14 in 2006. By contrast, experts estimate the number of wrongful detentions in Russia in the thousands. Between 2008 and 2010, judges placed merely 921 persons under house arrest, even though the Justice Ministry estimated that some 20,000 persons were eligible for this measure instead of custody. In short, strong ties between prosecutors and judges make it quite safe for judges to approve detention requests: they are encouraged from above to arrest criminal suspects and face virtually no risk of being punished for automatic approval of detention requests even when some criminal cases are clearly fabricated.

### Avoidance of Acquittals

Russia's courts have not acquitted more than 1 percent of defendants in the past two decades—the same proportion of acquittals as in the 1980s in the USSR. However, the proportion of acquitted doubled from 0.4 percent to 0.8 percent between 1992 and 2013. The number of acquitted persons has also increased: 4,183 persons were acquitted in 1994, 9,179 persons were acquitted in 2009, and 5,624 in 2013. However, more than two-thirds of these acquittals (3,981 acquitted persons in 2013) have been the outcomes of minor criminal cases of private prosecution (libel, battery, etc.), in which state prosecutors are not required to take part and there is no pretrial investigation. This means that judges can and do hand out acquittals in these minor criminal cases in which state prosecutors are not involved without accusatorial bias.

When state prosecutors are involved, they see each and every acquittal as a failure, accuse judges of being too lenient or on the take, and appeal every acquittal even if they have a weak case against the defendant. The 2002 Russian Criminal Procedure Code allows unlimited appeal of acquittals. State prosecutors know that they have a chance, just as they appeal denials of their detention requests. On average, between 1996 and 2007 procurators won one out of three appeals against acquittals they had filed, as compared to the 2.4 percent success rate of appeals filed by convicted defendants. In 2009, appellate-level courts overturned the acquittals of a total of 981 persons (10.7 percent of all acquitted persons), including 99 persons in cases of private prosecution, and 47 persons acquitted by juries. In 2013, appellate-level courts overturned the acquittals of

a total of 1,008 persons (18 percent of all acquitted persons), including 465 persons in cases of private prosecution, and 25 persons acquitted by juries. These figures send a clear message to trial-level judges: do not hurt your “stability of sentencing” indicator, inherited from the Soviet era, by issuing acquittals.

The return of criminal cases to procurators for supplementary investigation by judges—another Soviet legacy of avoiding acquittals and giving state prosecutors a second chance—does not show signs of extinction. In the late 1980s, judges in the USSR returned some 4–5 percent of criminal cases for supplementary investigation instead of handing down acquittals. In 2000, Russian judges returned the cases of 22,827 persons, while in 2004, judges returned cases to the prosecutors for 38,913 persons while acquitting only 4,100 persons. In 2009, Russia's judges returned to the procurators 21,325 cases (2 percent of all completed criminal cases) involving 27,763 persons—three times the number of those acquitted. In 2013, the figure declined to 9,356 returned cases. Although judges return most cases before the opening of a criminal trial, they are clearly more comfortable giving a second chance to the prosecution than proceeding to acquittal.

As Dmitry Medvedev openly explained, the avoidance of acquittals was the problem of the conscience of judges who were ashamed of acquitting an innocent person and challenging the law enforcement agencies (*Neue Zürcher Zeitung*, January 26, 2013). Even though a new generation of judges, investigators and prosecutors who never worked during the Soviet era has entered the scene, the old habits of mutual agreements and cover-ups among them persist. These habits effectively protected judges from then President Medvedev's insistence on raising the number of acquittals: “I hope that every year we will have more and more acquittals because this is absolutely correct. We should not be shy in issuing them” (January 26, 2012). Judges, especially retired ones, do frequently and openly criticize the poor quality of state prosecutors' work. Yet, when it comes to deciding criminal cases, judges tend to cover up such sloppiness or give law enforcement officials a second chance, thus, rejecting the very idea that the acquittal rates could serve as legitimate indicators of judicial performance. Those rare judges who reveal that they receive orders from government officials to avoid acquittals, like Judge Vakhid Abubakarov of the Supreme Court of Chechnya, face threats of dismissal and accusations of corruption.

### Ruling against the State

The stably high rates of detention and conviction in criminal cases go hand in hand with the consistently high number of court cases lost by government agencies. As



Table 2 on p. 9 shows, judges promptly handle several hundred thousand lawsuits filed by citizens against all federal and regional government agencies, often rule in citizens' favor, and award citizens levels of compensation that average three to four times as much as the average awards won by the government in lawsuits it initiates against individuals. Indeed, the Russian Supreme Court blames the government for overloading the courts of general jurisdiction with lawsuits (between two and five million cases annually) over minuscule amounts—for example, 2 kopecks. Until 2010, it cost 100 rubles (\$3) for an individual to file suit against any unlawful action by a government official. In 2010, the court fee was doubled. Companies pay 2,000 rubles (\$66) in filing fees in such cases. Judges have discretion to reduce or eliminate court fees in individual cases.

As Table 3 on p. 9 shows, the courts of general jurisdiction handle a large number of cases against the legality of government actions and rule against the government more than half of the time. The courts have handled an increasing number of lawsuits against decisions and actions by election commissions since 1999, a year of national parliamentary elections. Between 2008 and 2011, litigants won about one-third of lawsuits filed against election commissions, which have been under the tight control of the ruling United Russia party. Even though local and top courts tend not to interfere in salient election disputes, judges no longer hesitate to cancel election results in electoral precincts and districts. Witness the judicial cancellation of the 2003 State Duma election results in Electoral District 207 (St. Petersburg), of the 2007 State Duma election results in Electoral Precincts 1500 and 1501 (Kemerovo), and of the 2011 State Duma election results in Electoral Precincts 65 and 371 (Vladimir), not to mention regional and local elections. Note that the judicial cancellation of election results was taboo until the Russian Constitutional Court in 2002 ordered the courts to take a more active stance in this regard.

Zooming in on the court cases against the federal government, one can also see that taking the Russian government to court makes sense. In 1999, when Vladimir Putin became Russia's prime minister after his meteoric rise through the Kremlin hierarchy, the Russian government was named as a defendant in 29,300 court cases (including tax-related ones), which resulted in a total of 2.43 billion rubles (\$0.1 billion [all figures in dollars refer to U.S. currency]) awarded to successful plaintiffs. In 2008, when the highly popular President Putin finished his two terms in office and returned to the prime minister's seat, courts ordered the Russian government to pay 33.2 billion rubles (\$1.1 billion) to 137,359 plaintiffs who successfully sued Russia in just

two kinds of lawsuits: for damages caused by wrongful actions of government officials and for the failure of federal government agencies to perform their contractual obligations. In 2012, the year when Putin returned to the Kremlin, courts ordered the Russian government to pay 31.9 billion rubles (\$1 billion) in these two kinds of lawsuits. Even more surprisingly is that the Russian government is grudgingly, yet increasingly, paying out this court-ordered compensation. If in 2002, the Russian government paid only one-fifth of court-ordered amounts, in 2009—the year of the financial crisis—it paid about 90 percent. Moreover, Russia's budget annually allocates billions of rubles to pay court-ordered awards as a way of coping with this avalanche of lawsuits against the federal government.

Judicial insistence, even if often inconsistent, on the government's obligation to honor its promises explains much of this difference. Indeed, government officials repeat that judges made them realize that they had to pay in a systematic way: the 2005 Russian Constitutional Court decision on streamlining the procedure of paying court-ordered awards, the hundreds of cases lost by Russia in the European Court of Human Rights, and the thousands of domestic court decisions in favor of the Chernobyl clean-up workers, who demanded a better healthcare subsidy, and of the retiring military officers, who demanded a housing subsidy. To be sure, government officials have not been happy with this court-ordered generosity. Between 2008 and 2009, federal Treasury officials complained that Dagestani judges were too generous in awarding compensation (1 billion rubles annually) to the wrongfully convicted. The Defense Ministry has lobbied the Russian Supreme Court to narrow the range of military retirees eligible for the housing subsidy. The Finance Ministry insisted that courts should not award larger amounts of compensation to the Chernobyl clean-up workers "in order to eliminate social inequality" and that those who sue the state viewed the "federal treasury as a bottomless barrel." Aleksei Kudrin, then Russian Finance Minister, complained in 2009 that in lawsuits against the federal government, courts most often sided with plaintiffs when the law was vague enough to hold out "hope or the chance of demanding something." Russian judges withstood these criticisms more often than not. Why?

Judges seem to rule against the government because of diluted accountability. Unlike in criminal cases, where judges personally know the detectives, investigators, and prosecutors and where acquittal is a sign of failure, cases lost by the federal government are not a failure of anyone. These cases bring to courts representatives of the local branches of treasury and of other government agencies outside the narrow law-enforcement

community and representatives of the central apparatus of these agencies dispatched from Moscow, whom judges may never see again. Those who represent Russia in courts have no connection to the persons or agencies who violated rights of the plaintiffs. Meanwhile, these persons and agencies bear no responsibility when judges establish that the rights of plaintiffs have been violated by the governmental action or decision. Attempts to impose actual responsibility have largely failed. In April 2001, Kudrin warned of an “avalanche” of lawsuits against the federal government and demanded the imposition of individual responsibility on government officials who broke the law and caused harm to firms and individuals. His demand never became reality. The same year, the Russian Constitutional Court ordered the parliament to provide for the possibility of suing judges directly for breaking the law and causing harm. But the rest of the judiciary has openly resisted this order and nixed such lawsuits. This lack of individual responsibility allows judges a broad degree of discretion that they use to rule against federal authorities.

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### **Conclusion**

The Russian judiciary is a large and complex bureaucracy that has multiple faces, various degrees of discretion and operates according to its own internal logic, sometimes connected to the nature of the political regime, and sometimes disconnected from it. Criminal justice clearly operates under the incentives and thinking inherited from the late Soviet era, which resisted dramatic political transformation due to strong linkages of accountability and control within the law-enforcement community. Administrative justice is a new and growing area of judicial business because judges are much less accountable to the governmental officials involved in the litigation and to the officials who wrongfully harmed citizens. Court-ordered compensation is paid from the federal budget, not the pocket of a bureaucrat, and thus, is not considered a failure. This is why judicial discretion in the lawsuits filed against the federal government has been expanding in parallel with the closure of the political space in recent years.

**Table 1: Judge-Approved Detentions in Russia**

|                                | 2003    | 2004    | 2005    | 2006    | 2007    | 2008    | 2009    | 2010    | 2011    | 2012    | 2013    |
|--------------------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| Detention requests reviewed    | 231,149 | 228,000 | 284,000 | 272,000 | 247,500 | 230,269 | 208,416 | 165,323 | 152,028 | 147,784 | 146,993 |
| Detentions approved            | 211,526 | 207,024 | 259,576 | 248,608 | 225,498 | 207,456 | 187,793 | 148,689 | 135,850 | 132,923 | 133,311 |
| Percent of detentions approved | 91.5%   | 90.8%   | 91.4%   | 91.4%   | 91%     | 90%     | 90.1%   | 89.9%   | 89.4%   | 89.9%   | 90.7%   |
| Detentions appealed            | -       | 24,200  | 27,500  | 28,600  | 21,900  | 20,545  | 20,220  | 17,417  | 17,857  | 19,265  | 19,238  |
| Detentions canceled on appeal  | -       | 2,700   | 2,800   | 2,800   | 1,400   | 1,187   | 1,129   | 1,053   | 859     | 859     | 589     |
| Successful appeal rate         | -       | 11.2%   | 10.8%   | 9.8%    | 6.4%    | 5.8%    | 5.6%    | 6%      | 4.8%    | 4.5%    | 3%      |

**Table 2: “Citizen Versus Government” Lawsuits in Russian Courts of General Jurisdiction, 2007–2013**

|  | 2007    | 2008    | 2009    | 2010    | 2011    | 2012    | 2013    |
|--|---------|---------|---------|---------|---------|---------|---------|
| Cases filed  | 600,000 | 505,696 | 531,434 | 536,897 | 483,976 | 481,148 | 404,909 |
| Cases handled  | 532,414 | 459,960 | 461,104 | 472,257 | 416,778 | 408,293 | 361,867 |
| Cases won  | 485,799 | 399,022 | 416,301 | 410,093 | 363,617 | 344,146 | 308,504 |
| Success rate (%)   | 91      | 87      | 90      | 87      | 87      | 84      | 85      |
| Total awards (billions of rubles)                                    | 10.1    | 10.8    | 7.4     | 5.8     | 7.2     | 5.3     | 4.7     |
| Average award (rubles)   | 20,800  | 27,145  | 17,837  | 14,249  | 19,749  | 15,270  | 15,296  |
| Average award in suits brought by govt. against individuals (rubles) | 4,800   | 5,021   | 5,978   | 5,902   | 7,345   | 15,189  | 12,873  |

Source: Judicial Department of the Russian Supreme Court ([www.cdep.ru](http://www.cdep.ru))

**Table 3: Lawsuits Against Unlawful Government Actions/Decisions at All Levels Handled by Russian Courts of General Jurisdiction (thousands)**

|                                    | 1999 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 |
|------------------------------------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| Cases handled                      | 135  | 162  | 118  | 90   | 75   | 66   | 66   | 59   | 74   | 126  | 145  | 121  | 121  |
| Success rate (%)                   | -    | -    | -    | -    | -    | -    | -    | 59   | 55   | 63   | 65   | 55   | 54   |
| Cases against election commissions | 2    | -    | -    | -    | -    | -    | -    | 3    | 3    | 3    | 3    | 4    | 4    |
| Success rate (%)                   | -    | -    | -    | -    | -    | -    | -    | 39   | 31   | 29   | 44   | 34   | 25   |

## ABOUT THE RUSSIAN ANALYTICAL DIGEST

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