

The Center of Political Technologies

*at the request of the Institute of Contemporary Development*

**The Russian Judicial System  
The Current State and Problems**

**Moscow, October 2009**

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## **Background**

This Report has been prepared by the “Center of Political Technologies” Fund, at the request of the Institute of Contemporary Development. The Project Manager – Igor Mikhailovich Bunin. The coordinator of the project - Aleksey Vladimirovich Makarkin. The managers of the sociological groups - Valeriya Viktorovna Delinskaya, Valeriya Aleksandrova Filimonova.

In 2009, the Center of Political Technologies conducted a qualitative sociological study of the problems faced by the Russian judiciary, which has served as ground for this Report. The study had been carried out by using the method of expert interview in Moscow, Saint Petersburg, Leningrad Oblast (Vsevolozhsk, Sosnoviy Bor), Sverdlovsk Oblast (Yekaterinburg, Revda), Voronezh and Ulyanovsk.

The study objectives are as follows:

- ✓ To identify respondents’ perception of the problems, faced by the judiciary of the Russian Federation
- ✓ To identify respondents’ perception of the priorities, which the state shall be guided by in implementation of its policy with regard to the judiciary
- ✓ To learn about respondents’ opinions on issues of concern within the set topic (relationship between business and judiciary, role of the civil society, role of the mass media, efficiency of the jury courts, reduction of term for examination of civil cases, etc.)
- ✓ To identify respondents’ attitude toward certain activities, carried out lately within the judiciary.

The specific characteristic of the study consisted in learning about the opinion of representatives of both professional legal community (judges, lawyers, scientists, legal scholars), and members of the Russian civil society, socially active Russians (employees of the non-profit organizations, human rights advocates, court journalists, representatives of small and medium business). Consequently, the study consisted of two parts and besides, the character of the questions asked has been adapted to each part. The list of the respondents is shown in the table below.

**Table No. 1**

<i>Respondents’ category</i>	<i>Moscow</i>	<i>Saint Petersburg, Leningrad Oblast</i>	<i>Sverdlovsk Oblast</i>	<i>Voronezh</i>	<i>Ulyanovsk</i>
<b>STUDY No. 1</b>					
Judges	13	5	4		
Lawyers	8	3	1	1	1
Scientists	3	1	1	1	1
Legal scholars		2	2	3	
<b>RESULTS OF THE FIRST PART OF THE STUDY</b>					<b>50</b>
<b>STUDY No. 2</b>					
Non-profit organizations and human rights advocates	12		8	6	1
Court journalists	4		2	3	1

Small and medium business	6	6	4		1
<b>RESULTS OF THE SECOND PART OF THE STUDY</b>					<b>54</b>
<b>TOTAL NUMBER OF THE RESPONDENTS</b>					<b>104</b>

On its face, the selection and activity of the respondents could be considered satisfactory.

The text of the Report includes examples of direct speech of the respondents (*italicized* in the text). The quotations are shown with neither changes nor corrections – in the form in which they have been produced by the participants in the study.

## **Introduction**

The topic of the present study is of current concern, since it is directly connected with the initiatives of the Russian power on improvement of the judiciary, launched in 2008. In the most concentrated form they were expressed by the Russian President D.A. Medvedev in his speech at the VII All-Russia Congress of Judges on 2 December 2008. According to the President, “the quality of the courts’ work - is the determining factor of the democratic development of our state and we shall firmly and consistently strive for effective activity of the entire judiciary”. It is clear that the judiciary may enjoy authority among the population only in the case when it is effective (allows the full exercise of the right to speedy and fair trial), independent, competent, “transparent” for the society, is not jeopardized by corruption, guarantees equality of the citizens before the law despite of their social status and is able to provide for the execution of all its decisions.

One of the President’s initiatives - adoption of the Law “On Providing Access to Information Regarding the Activity of the Courts in the Russian Federation” – has been already implemented (the law was signed by the head of the state on 22 December 2008). The Law establishes various forms of disclosure of information regarding the activity of the courts, particularly by means of electronic mass media (Internet). The Law shall enter into force as of 1 July 2010 which is connected with a lot of preparation measures needed for its implementation.

Other issues, raised by the President, have not been reflected in new legislative acts so far. To mention, in particular, execution of the court decisions, which the President called to be “the utmost important and, regrettably, imperishable issue”. Despite the fact that the court bailiff service is provided with authorities and resources, no radical changes for the better have been in its activity so far, and, according to the statistics, every second decision is not executed, notably of both courts of general jurisdiction and commercial courts. In this context, many Russians have to address to the European Court of Human Rights. D.A. Medvedev agrees that the Russian judiciary shall be absolutely independent (and, correspondingly, the Strasburg Court shall not substitute the national courts) and, at the same time, shall be sufficiently effective to minimize the number of applications to the international courts. In his Address to the Federal Assembly, the President mentioned the necessity to establish a mechanism for addressing – within a reasonable time – the damage caused by violation of citizens’ rights to full and timely implementation of courts decisions; the same issued have been raised in his address at the Congress of Judges.

This idea was reflected in a draft of the law, the preparation of which the Ministry of Justice announced in summer 2009. The draft of the law does not establish the size for compensations; however, it shall be not less than in the European Court. Thus, citizens could receive approximately EUR 1.5 - 2 thousand for each year of delay in moving case forward. Besides, Minister Aleksandr Konovalov suggested providing private structures with access to certain stages of the court enforcement proceedings, in order to lessen the load for the state court bailiffs. They could be released from such technical, but labour-consuming and important functions like search for depreciated property, which might be subject to penalty, and collection of evidence, proving that the property is owned by the debtor. Besides, the Minister referred to work experience of American private bailiffs, who “are running throughout the country, looking for the respondents, and recording with camera the moment of handing over the subpoena to the latter”. By so doing, court appearance of the respondents can be improved.

The question of existence of a speedy and fair in Russia is closely linked with period of examination of cases in courts of various jurisdictions. In this connection, the President

expressed his opinion about the need to reduce duration for examination of civil cases which, as is well-known are often counted in years.

Significantly important is the problem of rendering legal assistance to the citizens who often feel helpless before the court – “as a rule, because of their lack of legal knowledge and inaccessibility of the lawyers’ services”. Presently, there is an experiment ongoing in the country on creation of the state system for rendering free of charge legal assistance to the low-income persons; in a number of the constituent entities of the Federation, special legal bureaus have been established to compose the documents for the citizens and to ensure participation on the process as representatives. However, this practice has not acquired yet all-national character. In summer 2009, it was announced that the Ministry of Justice was preparing a draft law on establishment in Russia free of charge legal assistance to the low-income groups of the population.

In his address the President raised the question about the quality of the judicial corps – in particular, about the reasons for early termination of powers of the judges which, unlike most European states happens in our country quite often. The President believes that this is a sign of imperfection of work of the qualification boards which recommend nominees for positions of the judges and first of all, imperfection of work of these boards. It is worth mentioning the proposals on creation of a single disciplinary body, which could examine the conflicts related to application of disciplinary sanctions with respect to the judges. In the course of the discussion at the Congress, D.A. Medvedev raised the problem of three years pre-trial period following which the reappointment of the judge takes place: “I assume that we can either examine the simplification of the procedure of reappointment of the judge when the three-years term is over, or, perhaps, on cancellation of any procedures and apply lifetime appointment”. In order to increase the level of training of the judges, the President suggested to define, by law, the status of examination boards and procedure of their forming, and to set up requirements for the qualification exam. Besides, he mentioned the necessity to attract practicing lawyers and representatives of the scientific community to work in the judicial corps – clearly upon examination of their professional qualities and ability to carry out judicial work.

Significant role in consolidation of authority of the judiciary is played by the question of independence of the court, which the President called “the key condition of its work”. The head of the state underlined that proportion of “old” instruments for pressuring the court (calls from various instances on behalf of the power or under instruction of the power) has reduced, however new methods have emerged, including informational campaigns through the Internet.

In his speech, the President also touched a number of other, more private, but not less important for the development of the judiciary topics – on optimization of activity of different types of courts. Thus, it is possible to consider the question of the specific competence of the commercial courts to cover not only cases of bankruptcy and corporate disputes but also disputes, emerging from tax and customs relations, financial market, investment, anti-monopoly activity (which is highly specific and requires special knowledge). Besides there is a question on improvement of activity of the Justice’s Courts, i.e. referring questions related to their activity to the federal level.

Some questions of increasing efficiency of the judiciary were referred to in reports presented at the Congress of Judges of Supreme Russian Courts. In particular, V.M. Lebedev, the Chairman of the Supreme Court suggested adjusting the Law on Judiciary in line with the call of the time. A.A. Ivanov, the Chairman of the Supreme Commercial Court stated about the need to increase openness and accessibility of the judiciary, which includes implementation of the modern technologies. According to his [A.A. Ivanov’s] words, it is necessary to extend application of the pre-trial settlement of the disputes, conciliatory measures and administrative

procedures of the pre-trial examination of the applications, for further reduction of the load placed on judges. He also drew special attention to the need of combating external pressure on the court, which is essential for providing independence of the judiciary.

Following the Congress, the Russian state power proposed other measures aimed at optimization of the judiciary. In particular, Aleksandr Konovalov, the minister of justice, proposed to create in Russia “towers of justice”, in which the most complicated criminal cases will be tried. This should be extra-protected places, which would provide the participants in the trial with the utmost security. The system of protection of witnesses and other participants in the criminal proceedings has already been practiced in Russia, and it provides for a number of measures, connected with protection of the personal data, physical protection of the citizens, change of their appearance and place of residence. However, presently it is planned to strengthen such a protection and not only of the witnesses, but juries, judges and prosecutors also. Similar measures have already been undertaken in Italy in the course of trials against the mafia’s “God fathers” who, despite their influence, were sentenced to long terms of deprivation of freedom.

Another suggestion of Konovalov – is cancellation of immunity of the judges for being subjected to special investigation activities. According to the minister, nowadays, such immunity prevents from carrying out activity on suppression of corruption in the judiciary. The head of the Ministry of Justice also believes that it is necessary to control special investigation activities with respect to the judges in order not to turn it in a form of exerting pressure on them.

Solving the existing problems of the Russian court – is not only the question of competence of the judicial community itself, although its professional opinion is highly important. This is, in fact, the task of the entire legal society (scientists, representatives of Procuracy and the Bar, corporate legal scholars) and institutes of civil society interested in authoritative independent court. Significant role shall be played by the position of the citizens, who either are experienced in participation in such processes, or can acquire such experience, and in different quality – party in the civil suit, defendant, witness or the injured party in the criminal suit or jury in examination of the case on grave criminal offenses. In the democratic society the judiciary exists for protection of legal rights of citizens, who shall have the right to express their opinion regarding its effectiveness.

This is why the present study contains an attempt to present the widest possible range of opinions concerning the current state of the Russian judiciary. The respondents in the study comprise experts in legal field, and “non-professionals” known as capital legal scholars and residents of the regions. In addition, “consumers” of the legal services included attracted representatives of small and medium business, who, in a greater extent than many other Russians by their own experience are familiar with legal problems. Naturally, the points of view expressed by different groups, did not coincide, and in some cases were opposite (it is clear, that “a view from the inside” far not always coincide with “a view from outside”), but they all were united by sincere desire to increase effectiveness of the Russian judiciary

As to the key problems faced by the Russian judiciary, representatives of business and human rights advocates stressed the dependence of the judiciary on executive power, and representatives of the judicial corps and legal scientists mentioned firstly, the level of qualification of the judges and material and technical equipment of the courts. The study has demonstrated that the judicial corporation, generally, has a very conservative position – in particular, with respect to reduction of terms for examination of the civil cases and publicity of

the judicial proceedings. It does not demand changes, which, in fact, is not surprising, since a corporation seeks to protect the status quo that is considered to be a norm. High level of corporativity (which is perceived by the external experts as caste) of the judicial community hinders speedy changes in this area and raises the need for its gradual adoption to changing conditions of activity, including with the help of the seminars, trainings and other activities of this kind

At the same time, representatives of the civil society and partly the legal scholars, not taking part in the judicial corporation, there has been expressed sharp criticism with respect to the existing judiciary; they suggest often quite radical suggestions on improvement of its work. However, this part of the society takes with a grain of salt the feasibility of its initiative presently.

It appears that the task of the state is to find the “middle way”, allowing preserving all the best in the existing judiciary, and, at the same time, to give a new impulse to positive changes, promoting increase of authority of the court in Russia.

As result of the conducted study the following conclusions can be drawn:

- Respondents deem that topics formulated by the President of Russia and by Chairmen of the superior courts at the Congress of Judges are of significant importance for the development of the judiciary.
- Most experts concluded that in Russia up to date there is a **high degree of court dependence** on bureaucracy, while corruption in the judiciary is part of a larger problem, and namely the system corruption which has affected the general society. The basic amount of cases, not related to the interests of governmental agencies or of big business, is examined objectively; however, public opinion about the work of the courts is formed by negative examples. A large number of measures are suggested to increase the independence of courts, including the creation of a mechanism of horizontal transfer of judges, the change of status of the Chairman of the court, the establishment of judicial districts in the system of courts of general jurisdiction (based on the example of the existing commercial courts in the system) and other.
- The experts deem it necessary that **the reduction of duration of case examination in court** should be implemented in close interrelation with the integration of the universal principle of equality before the law. It is possible to improve fundamentally the enforcement of court decisions by undertaking a system of measures oriented to the optimization of the service of bailiffs. These measures include the improvement of educational level of its personnel, salary raise, advancement of material and technical basis, and modification of current legislation.
- The experts think that in future **the number of the citizens’ applications to the European Court will only grow**. Complex measures for the increase of independence of courts and for a drastic improvement of the enforcement of court decisions (for details, see above) are required to diminish the number of applications in Strasbourg.
- **Increase of openness of the judiciary**, if not implemented within the framework of a single concept, it can results in unforeseeable outcomes. In experts’ opinion the creation of a virtually favourable information field requires a well-judged approach comprising the design of a programme for information support of the activity of the judiciary in the mass media; increase of the journalists’ legal literacy, dialogue development between the judicial community and civil society and the mass media.
- Most respondents believe that in Russia there is informal discrimination against different groups of population regarding the issue of **access to justice** by social status, in the first place. Experts view the idea of enhancing the availability of legal services for the poorest groups of citizens as attractive and they specifically drag the attention of both governmental agencies and public and human rights organisations to the significance of work in this sphere.

- A possible transfer to the federal level of a significant number of criminal and administrative cases, examined today by **magistrate courts**, is given, generally a positive appraisal, although in this respect the issue of growing workload in district courts is raised. A part of the judicial community has suggested transferring to the federal level cases examined by justices of the peace, such as criminal cases and those related to marriage and family relationships (but not administrative ones), given the special qualification required in these matters.
- **The issue of extension of the competence of commercial courts** has met the positive reaction of experts, and namely of both legal scholars (based on their knowledge of the situation) and “non-professionals” who have resorted to common sense.
- Experts’ attitude to the perspectives of the **pre-trial dispute resolution** is grounded on the consensus understanding of the need to “unload” the judiciary. At the same time there is a question of who shall encourage the development of this process. Presumably this is a problem of political will of the state which should appear as an active actor in the solution of this issue.
- The participants of the study have assessed differently the **level of judges’ income**. According to the general trend those who are not judges are inclined to assess the level of judges’ income much higher than judges themselves, who, in their turn, affirm a not high salary level in the system. Judges point out an extremely low level of material and technical maintenance in the work of the courts.
- Most respondents are inclined to thinking that for the time being the **procedure of selection of judges** is quite transparent, however judges are selected by professional and reputational parameters, while no ethic and moral characteristics of judges are in no way diagnosed at the time of approval.
- **The level of qualification of judges** is given contradictory evaluations, starting from the highest grades (by representatives of the judiciary) to the lowest ones (by representatives of civil society and by part of the legal community). The decrease of the higher education level in legal field (as well as in other fields) and the entering in the profession of young judges, with no completely shaped moral position represent some serious problems. It is suggested to raise the lower age threshold for judges from 30-35 years.
- Respondents agreed that a **three-year preliminary period** on the appointment of judges has been applied unlawfully, it run counter the Constitution and encouraged the violation of the principle of independence of judges. For this reason the respondents spoke for the cancellation of this period, which has been implemented already after the completion of the study, and namely a respective law has been adopted in July 2009.
- Many respondents deem that the **judicial community is rather closed** and it is not interested in attracting lawyers, corporate legal scholars and scientists in its circle. A hasty inclusion in the judicial corps of representatives of other fields may lead to discord within the system, this is why it is required to preventively establish certain forms of communication between judges and other legal scholars, such as seminars, conferences and round tables, carried out on a “neutral territory” rather than within the judicial community. Generally speaking, the participants of the study agreed that the main point for a candidate for the position of judge is his professionalism and not the previous place of work.

## ***Problems of improvement of the judiciary***

### **Independence of the court**

Many participants agree that the judiciary is not sufficiently independent today, and firstly, because of corruption.

Speaking about corruption, the experts, firstly, mean neither the so-called “*Xerox box cases*” nor the multilevel system of cuts (yet this also), but a more complicated dependence – dependence on the state machine. The experts are convinced that today the court does not have an arbitral position in high profile cases, but *a priori* aligns itself with the state, defending and approving interests of the officials and not the rights of persons with the law on their side. The judiciary is perceived not to be independent, but entirely implanted into the state machine, “transparent” for neither the civil society nor the mass media, or “ordinary people”.

In the course of the study, the experts referred to various levers, which are used for maintaining the dependence of the judiciary from the inside. Total dependency is reached through the entire system of local dependence of the judges – from the chairmen of the courts to the superior courts.

In particular, a correct (pursuant to the law) court decision taken, which is in conflict with interests of the high-rank officials, is very likely to be blocked by a superior court and referred to reexamination. The bigger the number of such cases is, the more reasons for the judge to be dismissed. Correspondingly, the judges keep watching over each other, memorize the rules and draw conclusions, which legal decisions shall be taken and which – shall not, regardless of their legal relevance.

Another lever – is the selectivity of application of sanctions to the judges. Absence of a unified approach makes possible use of even positive initiatives of the state power against insufficiently loyal members of the judicial corp. Thus, significant reduction of the terms for examination of the civil cases may cause, in opinion of the judges themselves that the Qualification board could bring them now to account for the *delay* in moving case forward. The main point of the situation is that not only and not so much about such a possibility itself, but that fact that these levers, in opinion of the judges, will be applied selectively – with respect to the judges, who for one reason or another, happened to be undesirable for the chairman of the court or the superior court. Thus, the judges feel themselves being permanently placed in hindsight and being hostages of their relations with the management.

Such levers, according to the experts, are applied at all the levels of the court hierarchy, and they are effective (*should the judge try to act otherwise than instructed from above, he simply will not survive in this system*). Due to action of these levers, as a result, the officials have a more controlled court, which could be used, in particular, both as a punitive mechanism (*we believe that the court – is a repressive body, and this is very notable in the society*), and as the instrument for lobbying interests of various economic groups.

Needless to say, that it is not only the officials who are corrupted. Not the last role in corruption is played, according to some participants of the study, by lawyers, who call themselves “cash collectors”. Undoubtedly, the growth in corruption is affected by the level of remuneration for the judges which is not sufficiently high. Representatives of the civil society claim that the judges frequently take decisions following “*a telephone call*” or upon “*money parcels*”.

Given the Russia’s leading position in corruption ratings, the experts see no reasons for the judiciary to remain independent (*number of the people who are ready to resist against this system is very small; there are almost none of them in judiciary; people, who succeeded in being assigned as judges, they simply will not go there*).

According to the experts, dependence and corruption of the judiciary, results in evident inequality of the Russian citizens before the law; this, however, is not of a complete nature. When interests of two “ordinary persons” interfere (as in civil cases, for example) the judges, according to the experts, hold the trial objectively and without prejudice because there are no reasons for them to be biased and subjective. On that ground the courts suggest to consider them independent.

However, if the interests of ordinary persons interfere with those of the state – the situation may be different. For instance, disputes with local officials on land and other insignificant conflicts can be settled quite successfully (*sometimes it is important for the judge to show that he decides on the case in favour of the citizens*).

Extension of the competence of the courts, related to examination of complaints against actions of governmental agencies, is deemed by Moscow experts a very important initiative. Participants in the study believe that any citizen shall have the right to address the court against actions of authorities and officials. However, practical implementation of this measure is seen very skeptically by the respondents. *Litigation between two ordinary citizens with no concerned parties involved can be settled under the law. But presence of an official makes the issue be solved in favour of the latter.*

The majority of the regional experts have recorded the fact that reports on extension of the courts’ competency connected with examination of appeals to actions of the governmental agencies and officials, have emerged in the mass media lately. At the same time, the experts can not define precisely what such extension consists of, how it demonstrates itself, and how the current state of affairs differs from the previous one: possibility for appealing the actions of officials existed and before. It is another matter that, according to the experts, ordinary persons could not make use of this possibility before and today it still withers on the vine.

Improvement of independence of the judiciary – is, to a large extent, the question of political will on one side, and the question of self-restriction of the élite, on the other side, many experts believe. To generalize the statements of the experts, the following ways for solving this problem may be identified:

- **Creation of a mechanism for horizontal promotion of the judges.** This question has been treated contradictory by the experts. The majority of the experts, including the judges themselves, theoretically take this idea positively. Even the question about promotion to another city is not taken negatively (under condition that accommodation and working place are provided and with agreement of the judge). *If, theoretically speaking, the judge arrived from Moscow to*

*St. Pete, who will pressure him then? Nobody knows him; nobody knows what a buzzwig has come. Surely, theoretically it should be like this, - the judge believes. Another participant in the survey underlines that horizontal promotion shall be of rotation character and not aimed at releasing from pressure. Besides, according to him, given the appointment of the judges is from 9 to 12 months, it would be easier to move them from a court with less workload to a court where the workload is more intense. It is desirable, especially in the region, not to keep the judges for more than the established term, and to replace them once in 3 years. Worthy judges shall be promoted vertically while ordinary judges, who have not proved they are highly professional – horizontally, - the lawyer believes.*

However, this measure is of contradictory character. In the course of the discussion, some experts have come to a conclusion that if such a measure is undertaken in order to release the judge from the pressure, this brings up the question about professional suitability of such a judge. *If the judge can be pressured on, what this judge is needed for in another court then?* Moreover, such practice would give extra load to the judge, making his position equal to one of a military. Some experts from the part of the lawyers vigorously oppose to such a measure. They deem this would just increase dependence of the judge who could easily be thrown to another court, should he bring in the “unwanted” verdicts. Thus, the possibility for transfer of the judges can serve both the means for combating dishonest judges and a “sanction” against the “disobedient” members of the judicial corps.

- **Forming of a new type of judges:** the system needs brand new persons to come, whose past is not linked with the soviet system. *This must be new people, who have not passed through the mill of absolute subordination to chairmen of the courts, - a judge from one of regional courts is convinced. This must be a competent iron-willed bullet-head, as one of the experts described. It is suggested to create a special system for judicial recruitment and their training in institutions, dealing with legal education not like high educational institutions, but like special professional judicial establishment. There was voiced even the exotic suggestion to implement even property qualification, which would allow for the position of the judge to be considered solely as a high-status position and not as a place which allows for improvement of the financial standing through bribery.*

- **Change of status of the chairman of the court.** Representatives of the lawyers’ community are convinced that it is necessary to introduce a system for assignment of the judge to the position of the chairman, similar to one which exists in the Constitutional Court, *i.e.* the selection of the chairman by the judiciary corps. To mention, the selection shall be for a relatively short term – not exceeding two years. *The chairman shall be a coordinator, and by no means a manager. He [the chairman] shall not be assigned any powers and administrative influence to the judges.* It is proposed also to change the order of distribution of cases among the judges. Members of the judicial corps suggest to introduce computerized distribution or by casting lots. *The chairman shall not be the person, who implements disciplinary prosecution of the judges, - the judge says. One of the experts mentioned that the chairman shall be a nominal figure rather than leader of the court. It is the law that shall lead the court.*

- **Expanded practice of jury courts,** where corruption is *a priori* lower. If the competency of the jury courts is extended, more confidence from the part of the society can be expected. Some participants in the study hold to an opinion that *even despite their decisions are unfair and killers go unpunished, - this only testifies that the evidentiary base is poor and work of the prosecutor in the court is weak.* At the same time, acting judges treat the jury court skeptically.

- **Ensuring physical safety of the judge.** The lawyers are convinced that *it is necessary to take care of those people who work worthily, encourage them, and take care about their health and well-being*. The pressure exerted over the judges, in particular with respect to members of their families is totally unacceptable, the experts deem.
- **Competitiveness of the judiciary.** The possibility for the cases to be examined in different courts, the possibility for using forms of pre-trial decision, decentralization of the commercial courts.
- One of the levers of influence on increase of independence of the judges could be the **free press**. *If the judge is sure that everyone, including people he knows and those whose opinion he values, will learn about this [the bribe], he may have doubts raised,* - the businessman suggests.

Opinions of the experts (regardless the category) with regard to the lifetime appointment for the judges has divided. A part of the respondents is convinced that the lifetime appointment hurts, because in case of negligent attitude to work, the judge can not be dismissed. The other part of the participants in the study is sure that it is namely the lifetime appointment that could provide for independence of the judge from the superior agencies, which are unable to exert pressure on him due to his irremovability from the office.

In the course of the study, several experts insisted on the need to separate organization of the courts of general jurisdiction from administrative division and to create judicial districts (like it exists in commercial courts) and which would provide for consolidation of the independence of the judiciary. *There shall be neither the Moscow Oblast nor the Moscow City Court, instead, judicial districts, which include several districts, shall be created. Then the executive power of a guberniya could not directly influence the court,* - a legal scholar said.

Shall we take a closer look on who and what influences the judiciary; it becomes clear that the influence source and extent of its influence on the court depends on the level of the court: the higher is the court, the higher is the pressure source. For instance, according to the experts, the Constitutional Court is more independent than others. If we refer to the courts of regular jurisdiction, the pressure can be exerted from totally different sides. Moreover, it largely depends on the subject of the dispute and the situation. In the republics, for example, family links and clanship may have a great influence. According to the respondents, in big cities such levers of pressure are significantly weakened.

Generally speaking, the sources of influence on the Russian judiciary, in the opinion of experts, look as it is shown below:

- **Representatives of the executive power:** *Many judges consider the reaction of the regional authorities while making the decision of the case. There is a certain fear of highest officials. And this is the problem of mentality of our judges – the representative of the human rights organization says. Today we see how obstinate judges, who refuse to be under thumb of the local administration, are dismissed. They are simply forced out, are declared by the qualification commissions as non-compliant to their status,* - the expert believes.
- **Chairmen of the courts, superior courts, Procuracy.** It is notable, that only one judge acknowledged that he might be influenced by the upper management, other judges – participants in the study have categorically denied existence of any pressure on them. A major

part of the experts claim that the chairmen of the courts, by participating in distribution of the cases among the judges and in distribution of the material values, including bonuses, have quite strong levers of influence on the judges.

- Average influence is exerted by the **mass media**. However, there exists an opinion that such an influence is created artificially. *When the power needs to publicly show a trial, show it from a certain perspective, this is done through the mass media*, - the businessman is sure. The judicial corps treats mass media negatively, since the latter frequently hinders the course of justice. *If this was within my power I would, actually, prohibit all the publications, related to certain criminal cases before the verdict is brought in*, - representative of a Moscow rayon court is sure.
- **Business and public organizations**, as explained by the participants of in the study, exert medium and small pressure on activity of the Russian judiciary.

Thus, the majority of the experts have concluded that Russia is still facing high level of dependence of the court on bureaucracy and corruption in the judiciary is a part of the common problem – system corruption, which affected the society in general. At the same time, most cases, which do not affect interests of the governmental agencies or big business, are solved objectively – however, the impression of the society on activity of the courts is formed based on negative examples.

### **Speedy and fair trial**

According to the experts, people nearly always face delay in moving the case forward in the courts. It is indicative that both “simple” and “complicated” cases are delayed (for instance, a case on stolen child bicycle may be examined several months, and the case on illegal closing of a non-profit organization may last for years). Following the results of the study, several objective and subjective reasons which cause delay in moving the trial forward, can be identified:

- **Delay in obtaining the information in the course of the trial**. The judges themselves complain about serious problems with speedy obtaining of results of examinations, information of registration services, document from notary officers, problems with mail service, etc.
- **Problem of notification of the persons to participate in the case**. Often, citizens deliberately avoid receiving subpoenas. *Since the person does not receive it, he is considered not notified. And here we are with period of examination. The judge finally takes the decision. And the person shows up and claims: <...> I was not present in the court! And the appeal procedure starts*, - the judge explains.
- **Lack of experience and competency of the judge**. The court indeed causes delay in moving the case forward and because of the mental capacity also. *There are judges, who not always are able to understand the salt: they start requesting all the documents in the case and gather it like a snowball*, -a participant in the study says.
- **Workload of the judges** – is a curse of the Russian judiciary. The judicial corps literally cries out about the huge workload and that they physically are not able to reduce the examination period. It impossible, they explain, to check the case quickly; there exist a number of factors not depending on the judges, and which cause time delay: *Our judges examine, sometimes, 7-8 or 10 cases daily. Daily! They schedule court sessions each 30 minutes. This is why it happens that the*

*flow of cases examined by the judges does not allow them to properly prepare themselves for the court sessions. They simply have huddle of ideas. Sometimes, they can not recall what was spoken about at a previous court session, despite of the fact that it happened just three days ago.*

It has been repeatedly underlined that the notion “speedy trial” shall not be replaced by notion “hasty trial”. Justice endures no rush, as legal scholars say. “Speedy trial” will be of poor quality both content-wise and result-wise, the majority of the participants in the study say.

The perspective of reduction of the period for examination of civil cases is treated differently. The majority of the participants believe that the initiative of the President to reduce the period of examination of cases, at first sight, seems to be a very important measure. Nevertheless, in fact it requires nominal organization in the courts, attention from the part of the judges and the courts the utmost consciousness of the persons who are placed in judges’ armchairs. It is important for the analysis of the court workload to be done first. The experts insist, that it is not necessary to endlessly extend the judicial corps (although the lack of personnel is evident), it is more important to elaborate certain pre-trial procedures. In the opinion of the judges, the ideal variant would be if the citizens come to the court with prepared materials and documents like in the entire civilized judicial world.

Representatives of the civil society and business-structures (and even partly legal scholars and lawyers) are happy with such a turn of events, since the delay in moving the case forward is considered to be one of the most obvious problems faced by the Russian judiciary, it can be *easily observed*. At the same time, the experts do not see, how, and by means of which resources the reduction of examination period could be practically implemented. As of today, as it is seen by the experts, the infrastructure is not ready for such innovations: the courts are overloaded; the judges already work overtime for very modest remuneration, and the government did not plan to change anything in the existing remuneration system (or to increase the number of the judges) This perspective makes the members of the judicial corps literally groan; they believe that forced reduction of the terms would definitely worsen the quality of examination of the civil cases.

A representative of the human rights organization brings an interesting example of already started fight against delay in moving the cases forward in examination of administrative cases. *There is a currently efficient decree saying that the administrative case shall be subject to examination within the period not exceeding one month. This leads to frequent violation of the rights of a person, against whom the offence has been committed. He is not given the possibility to collect all the documents and to present all the witnesses. The judges say it openly: sorry, we are fighting against delays.*

Only particular persons tend to believe that reduction of the terms could lead to confidence building with regard to the judiciary. Most think that even if less delay is reached, this circumstance would just partly affect level of trust of ordinary citizens to the judiciary. The general opinion results in the idea that the real trust to the judiciary could be increased by one way only – by making all people equal before the law.

*The system of civil cases allows affirming that the case shall be examined as long as it is needed for both parties to exhaust its possibilities for collecting of evidence. Otherwise there is a feeling left that you haven’t been shortened of justice, - a legal scholar says. Generally speaking, the*

experts believe that reasonable term shall be determined for each particular case based on specific conditions of the case.

As concerns the decrease in applications filed by the Russian citizens to the European Court as following the aforesaid measures, the experts believe that this is theoretically possible, yet in the long-term perspective only.

The work of the court bailiffs is strongly criticized by most experts. However, a small part of the respondents have noted positive shift in their work, having associated this with the new Moscow management.

Most participants in the study believe that the court bailiffs' service does not provide, to the right degree, execution of the court decisions. This is testified by the number of applications submitted by the Russian citizens to the European Court (under the article on reasonable terms for examination of the case). And the judges, in particular, feel indignation at the bailiffs frequently losing execution orders. One judge has even pointed out that the execution shall be applied differently in civil and criminal cases. Different approaches shall be practiced, for instance, it is important for the business to return its money sooner, so that the turnover not be stopped.

*It often happens that court bailiffs deliberately do not execute court orders in order to receive "remuneration" from the injured party.* In this case, the experts deem the problem lies in lack of responsibility from the part of the bailiffs and imperfection of the procedure itself.

The respondents have raised the question of who, ideally, shall be liable for the court bailiffs: the court or the executive power? The judges deem that the court shall obligatory dispose of control mechanisms with respect to the court bailiffs. The judicial community considers it important for a single centre for execution of the court's decisions to be established and an insurance fund besides it. *If the service is not able to compensate the damage quickly, sources from this fund can be used,* - the judge explains.

According to the experts, non-execution of the court decisions is a reality, which, in many respects defines and explains lack of trust to the judiciary from the part of ordinary citizens. In fact, the President's critic in address of the court bailiff service is more than grounded.

The experts justify inefficiency of court bailiffs by the following factors:

- Poor qualification of court bailiffs. It is often practiced that people with no basic legal education work as bailiffs.
- Remuneration level for court bailiffs. The court bailiffs – given the tasks that are placed in front of them – have extremely low level of remuneration of labor.
- Low level of remuneration of labour defines high turnover of personnel. The court bailiffs are changes so often that the judges can not even memorize them, without mentioning their appraisal.
- The court bailiffs experience lack of resources and instruments. In particular, they dispose of neither the necessary database, nor effective levers of pressuring the debtors, etc. This defines the duration of execution of the court decisions, which, in its turn, often makes such execution impossible.
- Imperfection of the legal basis. For example, if the court takes the decision to charge the legal entity with certain payments, the legal entity can easily self-liquidate (with debts) and found a new legal entity with respect to which the suit can not be subject to satisfaction.

The experts believe that increased effectiveness of court bailiffs could objectively improve the judicial practice; however this requires radical change of not only the mechanisms of activity of the court bailiff service, but also the legal basis. In particular, the experts propose to keep records of the legal persons so that even if new legal entities are created, the liability for *old sins* shall not be written out but considered.

The experts acknowledge the importance of this issue and consider that reduction of the terms for examination of the cases shall be implemented in close interconnection with introduction of a universal principle of equality before the law. Significant improvement of execution of the court decisions could be achieved by approving a system of measures, aimed at optimization of the work of the court bailiff service. One of them – is improvement of educational level of the employees, increase of their remuneration, development of the material and technical base, correction of the currently efficient legislation.

## **Increase in number of applications to the European Court**

Experts link significant (and increasing) number of applications to the European Court with several factors:

- **Impossibility to “find the truth in motherland”.** The experts believe that the judiciary acts selectively and people are not equal before the law. Such state of affairs kills in people the basic feeling of justice and, according to the experts, it is namely the justice, what the Russian citizens are seeking when appealing at the European Court. *People address to the Strasburg Court because the people used not to trust to his own country but trust in foreigners. It is just a sport for the officials – to ping-pong people,* - an owner of medium business says. In general, the experts agree that applications to the European court – are an indicator of what is happening in the Russian judiciary. *Strasburg – is a pivot, on which the remains autonomy of our judiciary rest,* - the human rights lawyer deems. But a small number of the experts still assume that the European Court – *is an element of advocacy PR, which is used to attract the attention of the press to certain cases, and nothing else.*
- **Promotion of the European Court.** The experts believe that only several decades ago an application to the European Court would be considered a desperate step, the last attempt to find the truth, through an outstanding act of disobedience with the system. By the present moment, due to openness of the borders and increased awareness of the Russian citizens, application to the European Court has lost its dramatic halo and has become something if not ordinary, then, in any case, normal and natural display of legal consciousness. Let us underline that the point is not about improvement of legal culture of Russian citizens – according to the common opinion, legal culture of our nation remains to be at a very low level. But the mere availability of legal advice, which they can receive through the European Court, has become higher.
- Against this background, an opposite trend can be tracked: **Symbolization of the European Court.** If in high-profile cases the European Court can not influence on the process (the Yukos affair), in perception of Russians it still remains the only hope, the standard of justice, the instrument of symbolic rectification of justice, which our country lacks.

▪ **Promotion of the system for settlement of disputes in lawful manner.** The judicial community negatively treats popular TV broadcasts on judicial topics. According to the experts, almost each TV channel shows lately broadcasts (shows) dedicated to trials (“Chas Suda” [“Court Hour”], “Vstati, Sud Idyot” [Up, the trial is on] etc). On one side, such shows form and stimulate in the Russian mind the need to apply mechanisms of judiciary for solving certain conflicts, which bears positive character. On the other hand, the experts underline that, such shows not so much improve the level of legal culture of the population (according to the general opinion, legal culture is not improved at all by such shows) as “tease”, goad the Russians, earlier practiced so-called pre-trial forma of disputes settlement to proceed with decisive *actions*. In the result, according to the judges, being impressed by the shows, Russian citizens started to sue. Having no idea about basics of legal culture, being able neither to compose the suits correctly, nor to assert their interests in the intelligent way in the court, but with clear desire to sue until the final victory. The judges curse the shows, because, under unanimous opinion of the experts, the shows reflect neither the actual process of the trial, not the rules of play, or the basics of legal behaviour. Consequently, the courts are literally “covered” with suits from Russian citizens, and the citizens are puzzled and wonder, why what they see in the shows does not correspond to the real picture.

According to the judges, many suits are of preventive character – which means that the applicant, not having bothered to assert his interests in a DEZ [local housing maintenance office] (ZhEK [housing department]), comes directly to the court and sues against DEZ while this DEZ has no idea about the existence of the problem, which the applicant sues in the court. It is obvious that the opinion about lack of action of Russian officials and governmental structures prevails in mass consciousness. At the same time, this opinion often (not being personally proven) is taken as a basis for the petition.

In other words, relations between Russian citizens, governmental structures and the judiciary evidently faces **communication problem**. The people are simply not aware on how certain issues are settled, and where to obtain the information on how to behave correctly and in intelligent manner, in order to settle the issue. Often they simply are not able to; do not know how to do this, nobody has told them this and all their ignorance, despair and (clearly following from all the aforesaid) aggression they address directly to the court – as the last instance.

The experts believe that further on the number of applications submitted by the citizens to the European Court will see increase. In order to decrease the number of suits to Strasburg, the experts suggest radical change of the system of judicial proceedings and elimination of corruption, which would make the laws efficient and court decisions to be executed.

## **Publicity of the judicial proceedings**

The experts agree (both legal scholars and representatives of the civil society) that the current system of informational support to the judiciary needs to be corrected.

In this context the experts point out a number of problems in relations between the judiciary and the mass media.

▪ **Closeness of the judiciary.** In the opinion of representatives of the civil society and the mass media, judges are not interested in constructive relations with press. The courts, as a rule, do not comply with the principle of openness of the court sessions (it is particularly characteristic for St. Petersburg and Voronezh, and, to a smaller extent – for Sverdlovsk Oblast). The judges often use various excuses for not allowing the reporters attend the court hearings, take away dictating machines, erase recording made in the course of the court hearings, violating, in so doing, the rights of the press to have access to the information. (*Why does he need additional ears and eyes at his trial? They are not interested in that*). Most of the experts are convinced that the attempts to close court hearings under various excuses – are the attempts to hide judicial violations. *Occasionally, the trials are closed deliberately, because of the unfair trial*, - a human rights advocate says. Court hearings are often held in the halls which do not allow for all the public to be present. *And absolutely not because there are no free halls* - a lawyer testifies.

▪ **The reporters are convinced that the judges deliberately deprive them of the access to the information.** In their turn they have a number of claims to the judges related to frequent withdrawal of the mass media representatives from the court hearings or not giving any comments in the case. *I know and I accept that there are only two reasons for the judge to be unsatisfied with absolutely professional and correct material: either the position of the reporter does not coincide with the one of the judge, or the judge has perception, that nothing shall be written because our society is not ready for that*. From their part, the reporters are interested in obtaining the required information at any cost (*The mass media should obtain the information promptly, otherwise the information loses its significance*), this is why when preparing a publication they have to use unverified sources, and namely because of this reason the materials on legal issues contain mistakes and inadvertence. In cases when the judge finally provides the necessary information, it is, as a rule, rich with professional terms and due to the specifics of the language shall be recoded by the reporter and repeatedly agreed with the judge afterwards. As a result, time moves on and the information loses its significance.

Mass media representatives are sure that an experienced and professional judge would easily comment on his own decision explain and translate it from the legal language into the Russian language. But if the judge is insufficiently qualified, then he *is simply afraid to utter an extra word*. The journalists stick to the position that the more open is the court, the higher will be the basis for legal education of the journalist. *Because, observing the court through the fence, the legal culture of the journalist can hardly be improved*, - the mass media representatives say.

▪ **Poor law knowledge of the journalists.** The judges complain that the journalists often hinder their work: they publish unverified facts, introduce chaos I judicial proceedings, stir up unnecessary public interest, make incorrect use of legal terminology (and in doing so significantly misrepresent the essences of the informational message):

*The journalists, undoubtedly, write inaccurately on legal topics. It is often that they confuse basic issues – the verdict and the decision. Not even to speak about such subtle nuances between the accused, the suspect and the defendant. They treat it as some replaceable detective terminology. And this is totally wrong.*

According to one of the judges, *I provided a journalist with the copy of the verdict that says that one of the accused was sentenced to 10 years of deprivation of freedom in a correctional colony of a certain regime and the other – to 8 years of deprivation of freedom in a correctional colony*

*of a certain regime. The journalist took the verdict with him. And when I have read the article, I was simply crying because he failed to write accurately about the sentences: he confused the regimes, confused the penalty. He reversed the normal order!* The judicial community believes that this hurts reputation of the judiciary.

Besides, the judges have underlined that not each participant in the judicial proceedings (regardless of the role, which he plays in this process) is interested in publicity of the course of the court hearing. The journalists, as explained by the judges, demonstrate high interest to breaking news and are not really concerned about the reputational consequences of their publications for the participants in the trial. And lack of time does not allow the courts to timely present press-releases. We should underline that the journalists place the responsibility for the absence of a competent dialogue on the courts, which do not issue press-releases, which forces the journalists (taking into consideration all the risks and possible consequences) write texts, not based on written sources. In this regard, the participants in the study see it reasonable for permanent press-secretaries to work in the courts, and in the Moscow City Court.

Representatives of the civil society confirm that, the **journalists tend to provide unilateral presentation of activity of the judiciary**. There is a perception, that critical, conflict publications, showing the judiciary from the unpleasant perspective, are more demanded than positive material, throwing light on daily, routine and labour-consuming activity of the judges. It should be mentioned that such a “skew” is observed not only in the materials, related to activity of the judiciary, but in the entire press: it is assumed that “negative” materials adequately reflect the truth of the life while positive are perceived to be another “order”. The participants in the study believe that the journalists shall go deep into the subject of the problem which they write about, it is important for them to set strict rules for themselves. Specialists are needed and not omnivores, - the respondents say.

- Representatives of the civil society stress that today’s total legal illiteracy of the journalists is nothing else but particular display of the **low legal culture of the population in general**.

The experts treat quite positively the perspective of increase of openness of the judiciary. In particular, they deem it attractive for the law “On Providing Access to Information Regarding the Activity of the Courts” to be adopted (since *this disciplines the judges*). At the same time, the experts assume that the judges would block implementation of this program:

*There was an attempt made – to create such a system of openness at the St. Pete’s courts. They have practiced such system – all the decisions, brought by the courts of general jurisdiction were published in the Internet. Thus all the judicial practice was available. However, after a certain period of time, the judges started to simply ignore it. Because in doing so, all their mistakes could be learned about. The general jurisdiction system simply set up a boycott, and this has not been implemented.*

In opinion of the experts, this law may remain at the level of declarations. Access to information incurs certain expenses and any draft law shall solve the question of who shall be liable for the expenses on copying of the documents, distribution, etc. The experts propose the access of information to be partly funded from the budget and partly – at the expenses of the applicant (for instance, cost of making copy of a document).

Many participants in the study believe that the entire judicial process shall be obligatory recorded with a camera or dictating machine, because it happens too frequent that the court hearing records are

misinterpreted. *There is no recording and the judges rewrite the court record as they need. The second reason – rude behaviour of the judges in the course of the court hearing. In many cases they behave themselves like a market sellers: they may interrupt the lawyers, remove them from the courtroom, threaten them,* - a human rights advocate says. The lawyers also testify that many judges, in fact, are dealing with forgery of the records.

Both representatives of the legal community and representatives of the civil society see that increased openness of the judiciary incurs certain potential risks. In particular, they think that there will also be unconscientious citizens in our society who will undoubtedly take advantage of the data, published in open sources. In particular, the judges believe that decision on land disputes shall not be published in open sources (*“they will publish that an old lady of 1929 year of birth won a dispute on 30 hundred square meters from the state, and it might happen that the old lady is gone in a short while”*), as well as the disputes concerning division of property, commercial information, etc. One legal scholar gives an example: *for instance, the witnesses who have been questioned shall not get in touch with the witnesses who have not been questioned so far. However, it makes no sense in isolating them from each other, since all the statements are published anyway.* Moreover, it may be not correct to provide the wide access to the cases: the information may be used for unlawful purposes. Some lawyers expressed doubts as to whether all the information shall be published since it would be reasonable to provide to the applicant upon request the required information only.

Besides, in the course of the interview there was voiced an opinion that the information, placed in Internet is badly protected and is vulnerable for computer hackers (with all the following unfavourable consequences, related to misrepresentation of texts of the court decisions). A key moment is disclosure of names, surnames and addresses of the persons acting in the case. Some experts suggest the cases and decisions in the cases to be published with changed surnames, while the other part of the respondents fairly note that to change of all the surnames in all the documents is a huge workload. Besides, there is another problem of lack of technical personnel. There should be specialists who would be dealing with introduction of all the information in the database and its publication in the Internet.

The general idea is that it is not totally correct to provide all the interested persons with access to a certain trial. *The USA and Canada practice big and public trials. People go there as if it was a theatre or other kind of entertainment. I believe this is not right. There are persons who are involved in a certain case and it is entirely their business,* - a representative of the business community is sure. The judicial community also treats the increased openness of the judicial proceedings negatively. As it explains, the sessions are open anyway (except those, which are stipulated by the law otherwise). They say that the court room not always is able to provide space for all the interested persons. Moreover, the judges complain about stuffiness and no air conditioning. At the same time, one legal scholar brought a vivid example from American experience, having treated it as positive: *in the USA, a homeless person entered a courtroom where the case was tried by the jury court and remained there (to warm up, probably). Neither the guards nor anyone else dared to kick him away from the courtroom, despite of disgusting smell from him! This is what the publicity means - the principle of the principles!*

It is noted that closeness of the judiciary significantly complicates professional growth for students of legal high educational institutions, who, often are not able to accumulate experience

in the course of the court hearings, because the judges artificially block access to the court hearings (*we all know that in other countries it is possible to visit the court as a kind of tour; several students come to the trial and see how it all happens; here, one would tire himself out to get a permission*). And this is despite of the fact that the currently efficient legislation provides for the court hearings to be open (with exception of a limited category of cases which are tried in camera).

The experts believe that closeness of the judiciary and lack of feedback is a complex conflict: *Everyone is guilty. The citizens, who have not realized themselves as citizens. The judges, who consider themselves to be the Vicars of Christ. The press-secretaries, who believe that they are the owners of the resource to which they only are granted access and they control the information as they deem it necessary. Everyone is guilty. Our having blinders on and closeness as persons is guilty.*

A part of the respondents believe that increased publicity of work of the courts directly leads to improvement of their work. The experts note that being placed under hindsight of cameras, the judges take more correct decisions and behave in a more conscious way (with account of public attention). Following this logic the experts assume that openness of the courts will improve its relations with the society. On the other hand, it is namely the transparency that will detect shortcomings and defects of the judiciary, since precisely the increased transparency of the courts, with which, in the opinion of another part of the experts connects further deterioration of image of the judiciary is connected, in perception of the citizens.

The general opinion shows that simple increase of transparency of the judiciary, not being carried out within the framework of a single PR-concept may lead to unforeseen consequences. In the opinion of the experts, creation of indeed favorable informational field around the judiciary requires elaborated complex approach. In the framework of such an approach they suggest the following:

- To elaborate a mass media program of complex informational support to activity of the judiciary; to cover, more frequently, positive moments, related to justice, to tell about daily reality of the courts; to attract professional PR agencies to implementation of this task;
- To increase legal knowledge of the journalists (hold trainings, and educational seminars); thus increasing the objectiveness of journalistic materials on legal issues;
- To hold press conferences and round tables, in the framework of which representatives of the judicial corps could communicate with representatives of the civil society and ass media, establish relations, elaborate single conceptual framework and search for common interests touch points.

## **Accessibility of legal services**

Moscow participants in the study note two types of informal discrimination, which presently exist in Russia: discrimination on ground of nationality and social-economic position.

With respect to discrimination of grounds of nationality, the respondents note that if a native of the Northern Caucasus is the accused in the trial, there are big chances that a guilty verdict will

be brought in. *If a Chechen happens to get in this meat grinder, he hardly will be able to get out. Only in the case if the jury court declares him not guilty, - a human rights advocate is convinced.*

The discrimination on grounds of social-economic position was discussed by the experts in the light of the problem of accessibility of legal services for the low-income category of citizens. *Rich persons have a better access to the justice, because they can hire a lawyer. Poor people are not able to do this, and the appointed lawyer often cooperates with the investigation, because partly what he gets depends on the investigator. And conspiracy is obvious here.*

Increased accessibility of legal services for the poorest categories of citizens has been unanimously declared as vexed and painful problem, which will never be solved until the very end. *The professional interest of the bureaucracy and legal scholars is to confuse everyone. Even in cases when everything can be written in simple words, the bureaucratic document will be composed in such a way that no one would be able to understand anything unless they had special training. And the more complicated it is, the more demanded are the paid services.*

Free of charge legal advice, to which the respondents referred, can be divided into the following options:

1) **Community liaison office.** The experts agreed that the recent initiative of the Union of Russian Legal scholars – creation of community liaison offices for providing legal advice to the low-income category of citizens – is, in principle, a helpful beginning, aimed at extension of accessibility of the legal services. In doing so, they pay attention to the problem of relatively low qualification of the specialists, providing such services, and which presently reduces the efficiency of the projects.

2) **Free of charge legal assistance.** The important moment is that the aid shall be free only for the citizens, and not for the lawyers. Representatives of the lawyers' community acknowledge that the lawyers potboil cases which they are assigned by the state, and they take it as additional burden. In fact, daily allowance of the lawyer for one such court day comprises 275 rubles while in the USA the appointed lawyer receives 200 dollars per hour. One participant in the study suggests: *if the state sets up the following payment for the appointed lawyer: advice to one person per day - 5 thousand rubles, to two persons - 11 thousand, three - 17 thousand, etc. then the lawyers would be sure that their work is adequately paid. <...> moreover, it would be an advantage for the lawyer to provide services to the state, and to act as a political figure, and a full legitimate. A law may be approved, under which if no remuneration is provided for his work, the lawyer shall be promoted in the Bar, appointed to the Public Chamber, to the post of a judge ...*

3) The respondents believe that significant help is provided by **public and human rights organizations. The participants in the study** prefer the latter rather than state consultations. *I do not really believe in positive practice of the free of charge state consultations. People work there. But this must be a sincere wish to help – a human rights advocate is convinced..*

4) **Legal advice at high educational institutions,** in which the senior students could participate. This is an excellent practice for the student, and assistance to the citizens. However

the experts warn that the level of qualification of such advice shall be discussed. One expert mentioned about positive experience of such work in Lipetsk Oblast.

Another problem in this issue is the problem of definition of who can be considered as low-income citizens: *I've seen a list what a person must have to use the services of the municipal Bar. It is easier to hang yourself. It is also said there what a disabled person must have. He would definitely change the disability group until he collects all the information confirming that he is a low-income citizen.* – the expert said.

In the course of the interview there have been repeatedly brought various examples on organization of free legal advice to socially unprotected groups of citizens:

- **Legal clinics.** In the regions subject to the study (for example, in St. Pete's, Voronezh and Ulyanovsk) experts heard about the so-called "legal clinics". The idea is that graduates from the legal high educational institutions undertake internship there and render free of charge legal advice to the population.

- Free of charge legal advice is provided by the human rights advocates (non-profit organizations), their work is funded by **foreign grants** (for example in Voronezh and Yekaterinburg) or look for funding independently (fundraising):

*The human rights organizations in many respects play the function of pro bono lawyers, when they conduct cases for free. To mention, that they conduct it much more carefully, then the lawyers. All the cases related to freedom of expression - we conduct free of charge. We have been doing it free of charge for 15 years already.*

- The experts note that during the election period, the **MP's reception rooms** of different legislative levels practice free of charge legal advice (for example, in Ulyanovsk). Some experts mentioned that in the reception room of the State Duma or Legislative Assembly it is possible to agree on free legal advice outside the election campaign also – but hardly anybody is aware about that.

- In some law offices (in small towns) lawyers often render **free of charge legal advice to the pensioners**, and these days are **paid by the state** afterwards (for example – for one day of free of charge legal advice lawyers receive 343 rubles).

- In Yekaterinburg, free legal advice is rendered by the **Social Protection Department**. Special meetings are organized for the pensioners, at which their rights and duties are explained to them.

According to the opinion expressed in the course of the study, free of charge legal advice or legal advice at the reduced cost is needed not only for the formally unprotected groups of citizens, but for a major part of the population. As a rule, university graduates or young specialists do not have funds to pay for the legal services, however, they can not be considered as "low-income" category of citizens. At the same time, it is namely this category of citizens which will further form the opinion of the society of our country as of the rule-of-law state:

*He comes to a lawyer. The consultation costs 500 rubles. He checks – he has 500 rubles – however, it is his weekly budget. And they are told that we take care of you, guys... Those – are the people who are at the edge of poverty and middle class. They enter the life and do not get that protection.*

*They hate courts. I am asking - why? It is inaccessible for us. We do not have access to these social services. We do not have access to legal services which we should be provided with. The system has not been created for us, and we are not able to create it on our own, since we are too young.*

*I always begin my recent meetings with students with the point that Russia is a social state, and the person is the highest value. They start laughing at me. I say, I understand that what I am saying is stupid.*

Besides, there exists a communication problem here. In fact, according to results of the study, the least protected citizens can count on free of charge legal assistance (or legal assistance at the reduced cost). But the citizens mostly are not aware of that. In the course of the study, the experts stressed the necessity of precise delivery of the information about rendering legal services to the interested parties.

In most cases, the experts consider the quality of the free of charge legal assistance as doubtful (*no motivation*). From their point of view, competent professionals, as a rule, find possibilities at the labour market and earn money.

It is believed that those who is not in-demand in commercial structures, participates in voluntary activity:

*There was a case, and personally witnessed it when I was still a student when a person was provided with a lawyer free of charge. The lawyer was sitting at the court hearing and reading a detective story. Periodically, he was giggling to himself. When the judge asked for his opinion, he said he agreed with everything. He even did not hear the question addressed to him. This shows the attitude. And the person was writhing in hysterics, trying to prove his rightness. That was his lawyer. But should he care? If he was paid three rubles.*

*The lawyers have a kind of very negligent attitude to unpaid cases. They will be trying to get away from it. They are obliged to conduct it. Especially this refers to the young lawyers, to whom such cases are distributed. However, they still pay almost no attention to it and let things slide.*

Most respondents think that Russia has an informal discrimination of various groups of citizens in the issue of having access to justice – and firstly, by social principle. Experts see the idea of increasing accessibility of legal services for the lowest-income categories of citizens to be an attractive perspective, and, notably, they pay special attention to activity in this issue of not only governmental structures but public and human rights organizations as well.

## **Magistrate Courts**

Common opinion of the judges with respect to the magistrate courts is characterized by the following points:

- **Qualification of the magistrate judges is lower than qualification of the federal judges.** According to the respondent, there has been identified a trend lately, for the candidates for federal judges to “go through the mill” as justices of the piece, and later, after they accumulate experience, they are promoted to the position of the federal judge. In other words, federal judges treat the status of the Justice’ court as a starting point. Besides, justices of the piece (the lowest judicial link) are young people before 30 years old and consider this as a first step in their career ladder. *A simplified judge with no distinguished characteristics is good for trifles*, - the experts say. The experts are sure that qualification of the justice of the piece must be improved.

- **Authority of the justices of the piece is lower than the authority of the federal judges.** This opinion is based on the fact that мировые судьи examine the cases of value not exceeding RUR 100 000 while the cases with a higher value of the matter in dispute are examined by the “federals”. The federal judges, in this connection, feel themselves more experienced and responsible (“smarter”). In fact, justice of the piece do not take offence for such attitude from their federal colleagues, since they believe that ability of correct application of the law does not correlate with value of the issue.
- **Workload** of justice of the piece is estimated differently. A part of the experts believe that it is higher than of the federal judges, however, other part sticks to an opposite point of view. Both groups estimate the workload of the judges (both federal and justice of the piece) as inadmissibly high.
- The suggestion made by the Congress of Judges in December about **transfer of the fair amount of criminal cases** and cases on administrative offences **to the federal level**, is assessed differently: justice of the piece are satisfied, federal - not. The question of a part of the cases to be referred to the rayon courts is taken very painfully: *the ping-pong the jurisdiction because they do not manage there! Why they have been created?* In this case the experts suggest to increase the number of the justices of the peace or to increase the number of the Justice’ courts, or to solve the cases outside the frames of the judiciary: with the help of arbitrators, mediators, etc. at the same time, a part of the judicial society believes, that the justices of the peace shall be released from both criminal cases and the cases connected with marriage cases (not administrative though) due to the fact that such questions require special qualification.
- **Rayon judges believe that justice of piece - is a good support for them.** They are dealing with minor administrative and civil cases and thus, slightly unload the rayon courts.
- **Simplification of the form and procedure of the trial** (including in criminal cases) is perceived as a two-edged sword, because, on one side, this reduces time expenditures and on the other side – reduces the quality of the judicial proceedings. Besides, the experts think that the system of proceedings in Justice’ courts is already considerably simplified.

In general, **dependence** of justices of the peace on executive power is estimated to be much higher than that of the federal judges, due to the fact that “the federals” are funded from the federal budget while justices of the peace – at the expenses of the constituent entities of the Federation. Correspondingly, it is generally considered that justices of the peace are more flexible, because it is the local authorities, on which the level of equipment of their offices and their financial stability depends on. There was expressed an opinion that although objectively the status of the federal judge is incomparably higher than the one of the justices of the peace, significant part of justices of the peace are not keen to be promoted to federal judges.

### **Extension of competence of commercial courts**

Respondents from Moscow deemed reasonable the initiative of the President regarding the extension of the special competence of commercial courts. *The extension of competence is an objective trend which exists in the whole world. If you create a court, you should know that it shall cover all new fields,* - a participant of the study has said. Many experts noted that

commercial judges prove to have a much higher qualification than judges in courts of general jurisdiction, while the workload is not that great. *In Commercial courts everything works more distinct, everything happens quicker: they have organised well the document control, dissemination of decisions, the deadlines are always met, there is openness*, - a respondent is convinced. This is why they are quite able to afford the extension of their competence. It is most important to avoid creating the excessive case workload in the commercial proceedings. Experts have voiced concern about the increasing workload in the commercial proceedings and a questionable possibility of attracting competent personnel to work on these tasks. In their opinion the increase of workload must be accompanied by the strengthening of resources in the commercial proceedings, which would allow preserving the level of case examination quality.

Few regional experts know which jurisdiction today covers disputes arising from tax and customs legal relations, financial market, investment and antitrust activity. This is why it has proved difficult for epy experts to foresee at least presumably the dynamics of settlement of these disputes, considering their transfer into the competence of the commercial court.

On the other hand, suggested by logic the experts have assumed that the above mentioned disputes are evidently closer to the competence of the commercial courts than to the competence of courts of general jurisdiction; moreover, experts see in this decision the expansion of the legal framework (*Guys, stop shooting each other, stop sending men in masks for mask shows and all, but rather go to the court and settle your issues there, because it seems that there is such an option. And this is correct.*) Accordingly, for these reasons, regional experts support the proposition of the President to transfer additional authority to the commercial proceedings.

The issue of extension of competence of the commercial courts enjoyed a positive attitude of experts, including both legal scholars (who based their opinion on basis of knowledge of the situation) and of “non-professionals” who have resorted to common sense.

### **Pre-trial disputes resolution**

The participants from Moscow in this study think that a pre-trial dispute resolution system in the field of economic relations is a good way of unloading the courts. They deem that in Russia today the functioning of this system is not sufficiently efficient, while in the West 80% of cases, according to experts, are settled in the pre-trial procedure. Respondents view the application of this system in the field of civil and administrative cases, but in no way of criminal cases. The judicial community deems that such system could be very efficient in cases related to personal relations of the citizens as, for example, cases of property division between spouses.

Given the heavy workload of the courts, *it is necessary to introduce a system of alternative means to resolve minor conflicts without the involvement of the courts. This practice is widely applied in the whole world and it is very efficient*, a participant of the study mentioned. According to some experts arbitration courts used in Russia today under the chambers of commerce and industry could significantly unload the courts, reduce costs for judicial procedures and make citizens learn how to settle matters without the interference of the state.

Participants from Moscow believe that it is necessary to extend and formalize in the legislation a series of crimes which can be subject to possible pre-trial conciliation. In this respect respondents deem as very important to increase the citizens’ legal literacy. Judges have confirmed that citizens come to court absolutely unprepared, and the popularity-gaining judicial TV shows do not reflect the reality all the times.

According to regional experts for the time being the pre-trial dispute resolution system works quite efficiently. The general opinion amounts to that because court proceedings lack efficiency, plaintiff and defendant can much easier and more effectively settle the matter between themselves, without involving the judicial agencies in their conflict.

According to experts such public organisations as the Chamber of Commerce and Industry, Russian Union of Manufacturers and Businessmen or Branch Associations can be regarded as professional mediators between the business and the court.

In other words, even so citizens are interested in not bringing a case to the court. For this reason regional experts are inclined to believe that, perhaps there is no need to undertake any special actions oriented to the popularization of pre-trial and conciliation procedures. If plaintiff and defendant are interested in fastest dispute resolution, they shall find a way to an agreement, but if they wish to sue each other, no legislative acts or bylaws promoting the pre-trial dispute resolution shall not make them change the chosen path.

In addition, administrative and civil cases which may fall under the coverage of conciliation procedures, by essence presume that plaintiff and defendant have, evidently, tried to find a common language before going to the court, meaning that there is no need to specifically write a conciliation procedure for this category of suit.

Of course, regional experts also like the idea of “unloading” the judiciary. At the same time they do not think that the promotion of the pre-trial dispute resolution system is an appropriate tool for the achievement of this goal. In addition, they can not imagine who could encourage the rooting of the practice of pre-trial procedures. Judges shall not engage in doing this simply for the lack of time, lawyers and legal scholars are not preoccupied by this, having a financial motivation for the case examination to be conducted. Also the state has not yet made any efforts to improve the communication between the state structures and ordinary citizens (*many governmental agencies have various powers, but these powers have no effect; all the time they try to send citizens to the court*).

Experts attitude towards to the perspectives of the pre-trial dispute resolution is based on the consensus understanding of the need of “unloading” the judiciary. At the same time the questions raises as to who shall give an impetus for this process to develop. Presumably this is a problem of political will of the state which should appear as an active actor in the solution of this issue.

## ***Personnel and material matters***

### **The level of qualification of judges**

The determination of the compliance of the level of education and qualification of Russian judges with today's tasks assigned to Russian judiciary has proved to be a difficult challenge for experts from the capital city. The study showed that it was important to determine the category of judges in question: either justices of the peace or federal judges, in the first place.

For example judges of district courts believe that, in general, the level of judges' education is quite acceptable. There is, however, a huge discrepancy between the judicial workload and the received remuneration. According to the participants of the study only enthusiasts and people with strong civic position work in courts today. Representatives of the judicial community draw the attention to one crucial point that, according to them, given the tremendous specificity of this field, only a person who obligatorily has work experience in the judiciary should become a judge: *there comes an ordinary person and becomes a judge. Yes, he has passed the qualification examinations with "excellent" grades. Yes, he has positive work characteristics. And yes, he has the necessary experience and record of service, but he has absolutely no idea about the work of the court! And this is a very specific type of work.*

Representatives of the lawyers' community in Moscow and of the mass media have severely criticised the professional level of actual judges. *Brilliantly educated people should be judges. Today there are many judges whose decisions can in no way be published because of their illiteracy not only in the knowledge of Russian, but also in the application of the law,* a respondent says. According to experts it is very important that judges should have life experience and take regular (once per 5-7 years) qualification test. Some experts wish an age limit to be introduced. For example, it is proposed to appoint only a specialist over the age of 30 years for the position of judge. Experts deem that apart from high professional qualifications a judge should have vast life experience coupled with an open mind and a strong civic position. In addition experts state that the authority of the profession of judge has been lost and it is judges rather than claimants who are the "cogs" in the judicial proceedings. *Judges feel not like representatives of the independent judicial power, but like some officials in judge's robes, who must comply with interests of the state,* a lawyer is convinced.

*Graduates of higher education institutions come to work in the court and very often they do not seem to distinguish between a claimant and a petitioner,* a judge has complained. As one lawyer has noted the panel of judges faces today a dynamic inflow of personnel from the Procuracy, FSB [Federal Security Bureau], MVD [Ministry of Internal Affairs], and from the tax service. *These are people with shaped repressive prosecutorial attitudes. While in the West the formation of the judicial corps occurs mainly on account of former lawyers and legal scholars of commercial firms.*

As regards the procedure of selection of judges, respondents of all categories were solid in the opinion that the executive power must not appoint the judicial power. Experts insist that only judges should conduct the selection of judges and the judicial power (for example the Supreme Court), and not the President, should make the final appointment.

Some respondents from Moscow are convinced that today there is no really efficient selection, there are, instead, behind-the-scenes issues which are solved by way of corrupt relations. Experts insist that examinations in qualification collegiums should be tougher and, perhaps, there should be special demands regarding documents submitted by candidates. *Perhaps candidates should be*

*demanding to provide letters of recommendation from lawyers they participated with in (criminal or civil) court proceedings. It is necessary to make the selection procedure as open as possible, it is necessary to dispose of corporativity in the decision making process, a representative of the lawyers' community deems.*

Experts have noted a significant matter that it is more reasonable to provide a certain internship or courses for those willing to become judges or to introduce a position of candidate for judge position to be held during a fixed period of time. Such measure could help a theoretically versed legal scholar to investigate thoroughly all niceties of the judicial process and to comprehend the enormous burden. *The idea of training judges "from scratch" in educational institutions is, in my eyes, totally useless! Judges make such responsible decisions that they necessarily must have experience of work in court (either from the behalf of the prosecution or of the defence), a legal scholar is convinced.*

Experts from the city of Moscow have often appealed to the experience of the western states and of the USA to the effect that it is people with practice and work experience such as prosecutors or lawyers who can become judges therein. On the other hand, however, it is believed that a person should necessarily be given an adaptation period in a judge position, because after working for long within one specialty he is subject to *professional deformation*.

Regional experts assess differently the level of qualification and professional training of Russian judges. Approximately half of respondents thought that in professional sense Russian judges comply with the expectations which governmental agencies vest in them. To argue in favour of this the following arguments have been brought:

- **Careful selection of judges.** According to respondents judges refer to the elite of legal community, because if legal scholars have intellectual resources, judges are vested with the power authorities and this is deemed prestigious. Accordingly, it is quite difficult to enter the bench, and it is for this reason namely that respondents think that *the best ones are selected there*.
- **Qualification Collegiums' control.** It is recognized that Chairmen of the courts keep a jealous eye on judges' performance of duties and, if necessary, any misdeed can be regarded as ground for the submission to qualification collegiums for consideration. Accordingly, judges (as explained by them) try to maintain their professional level and "be at their best".
- **Professional training.** Judges (in particular in Voronezh and in Sverdlovsk Oblast) are permanent participants at training seminars and attendees of lectures focused on the improvement of legal culture and the study of the practice of application of law.

In addition, a significant part of regional respondents has assumed that for the time being the level of education and qualification of Russian judges does not comply with today's challenges faced by the judiciary. Among the reasons they mentioned are:

- **The status of the judiciary.** For the time being the most solicited qualifications of Russian judges have proved to be duty performance, obedience, flexibility and mental agility, and not professionalism, wisdom and impartiality. In the course of interviews respondents brought on several occasions examples of judges, abiding by the letter and spirit of the law, who lost the good graces of their superiors (and some of them lost the status of judge), whereas judges who have delivered decisions that obviously contravened the law but were approved of by the upper courts would remain in favour and secure. Accordingly, the current state of affairs in the judiciary possibly contributes to the attraction of competent professionals among judges, but it does not encourage their withholding.
- **Decreased level of higher education** in the field of jurisprudence, in particular, and in all other fields, in general. Despite the oversupply of legal scholars who have graduated from Russian VUZ [Institutions of Higher Education] in the course of last decades (starting with the

perestroika), the number of qualified and competent professionals on the market is in continuous decrease. First of all, this category of respondents has challenged the opinion that it is *the best ones* from the legal community who enter the judicial corps, and second, even if it had not been challenged, it would still be interpreted not in the sense that judges are on the top of the qualification rating, but rather that the general (average) professional level of the legal community, evidently, leaves much to be desired.

- **Continuously changing legal framework.** Respondents believe that in recent years Russian laws have been changing so impetuously that it is more and more difficult to follow the logic of their modifications (not to mention their proper application), this requires additional degree of skills. Not everyone can meet the increasing requirements for judges.

- **Age of judges.** Many respondents have emphasised the need to raise the low age threshold for judges (for example up to 30 ... 35 years). Today in the light of the fact that conditions of work are not sufficiently appealing for judges, the state, according to one respondent, is forced to appoint young people, not having yet a formed value system, for judicial offices. In their eyes those legal scholars who fill the positions of judge right after the VUZ probably have a required set of notions, but for the most part they do not have the wisdom to let them use these notions in a proper and humane way. According to respondents many legal scholars who *have laid hold of* judge's chairs abuse their powers, since they do not have a due level of culture, not so much legal culture as culture in the ordinary sense of this notion. Respondents are convinced that it is not a rare case in the case law, when it is required to presume that justice is above the law and mercy is above justice, but inexperienced judges do not think in these terms, that is why their resolutions often damage peoples' lives rather than contribute to their correction.

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The majority of respondents are inclined to think that today the procedure of selection of judges is sufficiently transparent. The general opinion amounts to that on approval of candidates for the position of judge quite severe procedures of selection are applied; this selection is conducted in public space, in full public view, this is why, perhaps, there is sense in making it more open, but the main problem of the selection of judges resides in other issue.

Respondents deem that judges are selected exclusively by professional and reputational criteria (also the general opinion says of cases when the bench was often entered for money and/or due to one's connections). At the same time ethical and moral characteristics of judges are in no way diagnosed on their approval and (for this reason too) they are passed by, but after all it is namely the level of cultural and moral development of a judge that must determine, but it does not, his efficiency, reasonableness and performance.

Participants of the study have emphasised that the current procedure of selection of judges is obviously convenient for the governmental agencies, because on its part the power demands not a fair, impartial and lawful court but a court that would legitimize the power's deeds and would create for it the most favourable and comfort conditions also by way of law-enforcement practices.

### **Three-year preliminary period**

Experts from Moscow believe that the preservation of the three-year preliminary period before the appointment of judges is only theoretically efficient. When taking a closer look at the problem there appear to be negative factors attesting against this measure.

Speaking abstractly, a three-year period could be interpreted (and it is so positioned) as a trial period, during which it becomes clear whether this or that specialist is able to take a judge

position. According to judges this three-year period is optimal for this purpose, because if a judge is appointed for life at once, then after a while it may be found that for whatever reasons he is not suitable for this position. An expert deems that *we have not reached the level when we can introduce here the rule on irremovability of judges as an imperative*. According to respondents the preservation of the three-year periods would make sense, if there were specified certain criteria for the appraisal of judge's work during that period and if it were the judicial community, and not the executive power that would come up with the appointment for life in this position.

However, respondents have agreed that a three-year period is, in fact, applied illegally and runs counter the Constitution, which says that a judge is appointed for life. In addition experts say that *a three-year period is a violation of the independence of judges. This is exactly "the sword of Damocles" that hangs above a judge for three years, forcing him to be obedient to the will of his management*. During this three-year period a judge should "integrate" in the judiciary in the worst sense of this word, because if he does not comply with the will of the Chairman of the court, then three years later the latter will write an unflattering reference for this judge and the issue of his appointment for life will simply not be raised. In the eyes of the participants of the study it appears that the three-year period, in fact, serves to *reject some extra independent judges. This is a mechanism of hammering out flexible and obedient judges, with a constant fear in them*.

Regional respondents expressed different opinions in this respect. A part of them (namely those who are not judges) think that a trial period is applied in all structures and they do not see reasons why members of the judicial community would claim an exclusive status. The regional judges themselves speak in favour of the cancelling of the three-year trial period, bringing the following arguments for justification:

- **A judge can be dismissed at any moment**, regardless whether he has passed a trial period or is only undergoing it. According to judges today (because of the reduction of the duration of examination of civil cases) Chairmen of courts appear to have additional leverages for the dismissal of judges (for example, for delay in moving the case forward if the judge has delayed the decision). In other words formally undergoing the trial period does not reduce the risk of the removal of a judge from the exercise of his duties.
- A judge who undergoes a trial period finds himself taken as hostage by the Chairman of the court; it is, generally, easier to manipulate a judge in such status than an experienced judge; a judge undergoing a trial period is more inclined to be guided by the opinion of the management and by the existing law enforcement practice rather than by the letter and spirit of the law. Accordingly, it is not a rare that Chairmen of courts **use judges, undergoing a trial period, to their own advantage**.
- According to judges they perceive the three-year trial period as **a stress factor**. Naturally they would like more psychological comfort and certainty. Judges deem that the selection procedures applied with regard to them are rigorous enough, and on this basis judges believe the three-year trial period to be superfluous.

## **The level of remuneration and social guaranties for judges**

Generally participants in the study are convinced that the remuneration of judges should be the highest: judges should be successful and well-to-do people. *An angry and exasperated person must not be a judge*.

At the same time participants of the study have assessed differently the level of compensation for judges. The general trend is that those who are not judges are inclined to assess the level of

income judges far too high compared to judges themselves. Thus, legal scholars, lawyers and other representatives of the legal community (except for judges) believe that the level of remuneration and of social guarantees for judges is not only sufficient, but it is constantly increased.

However lawyers are firmly convinced that the level of remuneration of judges is absolutely appropriate, it corresponds to the inflation, and the salaries have recently been increased. *If we compare the salaries of judges with the salaries of the personnel of the state apparatus and of the law enforcement agencies, we'll see that judges are doing pretty well*, a legal scholar is convinced. A participant of the study has stated that in the Moscow City Court the New Year bonuses would amount from 200 thousands of roubles to one and a half million of roubles. The decision about the amount of the bonus depended on the Chairman of the Moscow City Court.

Judges themselves have pointed out that they do work not “for the sake of money”, because they deem the current level of compensation as insufficient. They say unanimously that the state of affairs in the area of salaries in the courts is a complete failure. The level of remuneration and the tremendous workload are incompatible. And in foreseeable future representatives of the judicial corps do not see any hints as to the improvement of this situation. *We have only true devotees of this profession left*, a judge has stated bitterly. According to judges their salary varies from 10 to 18 thousands of roubles, the salary of a judicial assistant is from 7 to 8 thousands and of a secretary is between 3 and 5 thousands roubles. The participants of the study stated that an acceptable salary should amount to 30 thousands roubles to attract judges.

Similar allegations refer to the level of social securities for the judicial corps. All respondents, except for judges, believe that judges enjoy an impressive package of social benefits. Judges themselves say that they do not have social benefits (save for some small allowances for the qualification), in particular, they are neither provided with housing nor with the appropriate level of personal security. One judge remarked that he does not use the few benefits that he might be provided with, because *it is not worth showing one's dependence on some situations*.

A conclusion that the current level of social guarantees for judges does not comply with the high level of the prestige of judge's profession would be incorrect. Regardless of the level of income and of the social status, all respondents have agreed that the profession of judge is very prestigious. It proves to be prestigious in its direct connection to the possibility to use the power authority which ensures a special status of judges, and all respondents deem that it is namely the satisfied aspiration for power that compensates both financial difficulties and the lack of basic guarantees of life safety.

According to judges the level of remuneration of the staff of judges' apparatus and of the court is even more remote from that which could attract (or keep at work) promising specialists in these positions. At the same time, respondents believe that judicial assistants and secretaries of the court hold on their places at the prospect of career growth. Judges says that most of them came from the position of judicial assistant, having received in this status not only a law degree, but also a specialized practice. Thus, one could argue that the factor of career growth definitely compensates for the low level of salaries of staff of judges' apparatus and of the court.

The specifics of small towns is marked more by female unemployment; this is also one reason why women hold to their position (even though it is low paid) of secretary of the court and judicial assistant (in Revda it was mentioned that the payment of salaries is delayed even in the courts; at the same time, on basis of the wholesale redundancy in the local economic mainstay the very fact of payment (although a late one) of salaries in the courts is perceived as good).

In the opinion of judges the increase of compensation for the personnel of judges' apparatus and of the court (for example, up to 18.000-20.000 roubles per month) would be deemed adequate. At the same time the competition for these positions is still quite high, notwithstanding the lack of salary increase.

Poor material and technical basis is one of global issues actively reported by the representatives of the judicial corps. During the interview the representatives of district courts have repeatedly complained about the lack of normal means of communication, such as a fax and Internet. *Today citizens often ask to send them some materials by e-mail. The modem in the court works very slowly just as a typewriter. It takes one and a half hour to forward one material. Meanwhile the phone line is, of course, busy. Later indignant citizens call us and say that they can not get through to the court,* a judge said.

### **The authority and the composition of the Qualification Collegiums**

Most experts deem that the authority of the Qualification Collegium is rather high in the eyes of judges, it works efficiently and copes well with the role of "filter", screening off inappropriate people for the judicial corps. According to those judges who have been in the collegiums, nobody, generally speaking, raises any legal issues there. Basically, they take in consideration the results of the examination commission and evaluate a specialist in human terms, that is how able is this person to exercise the position of judge. In this respect members of the public look very naturally there. According to judges, they actively ask questions in essence.

The respondents stated that being a member of a Qualification Collegium positions a person as a representative of the elite of the judicial community. Judges keep the hold of their membership in the Qualification Collegium. Conversely, an exclusion from the Qualification Collegium means that this person was "given a black mark". As regards a third part of the members of the Qualification Collegium, who are not judges, an invitation to join the Qualification Collegium is for them quite a prestigious recognition of their authority as lawyers or as public figures.

Most respondents believe that the Qualification Collegiums are rather authoritative body of the judiciary. According to judges to be elected as a member of the Qualification Collegium is prestigious, it is perceived as evidence of the high qualification rating of a judge. As explained by the respondents the selection of judges in the qualification collegiums is open, and hardly anybody mentioned the possibility of falsification of election results.

The majority of the respondents did not question the independence of the qualification collegium. *It is composed of the chairman of the military court, the regional court, the commercial court, the district courts and representatives of city courts. To take only district courts and commercial court, the relation is fifty-fifty. I don't know, how one can make all members of the collegium dance to one pipe,* a judge said. The representatives of the mass media also failed to recall any cases of pressuring the qualification collegium. The opinion of one lawyer stands apart, he has described the qualification collegium as a closed corporate structure the composition of which should be necessarily changed. At the same time, according to judges, they are afraid of being called for a meeting at the qualification collegium, because they assume that all claims from the behalf of the qualification collegium may have more than unfortunate consequences.

It is characteristic that the other respondents, who are not judges, first of all, are poorly informed about the activity of the qualification collegium, and, second, they tend to underestimate the "weight" and the influence of these collegiums.

And the respondents believe that the qualification collegiums can fulfil punitive functions: *Judges are really afraid of these collegiums. This is some kind of a punitive mechanism. If a judge must be removed, then by way of the qualification collegium he shall be removed without any problem.*

At the same time it is obvious for everyone that the removal of a judge happens extremely rarely and often the compromised members of the judicial community continue to hold the office of judge. During the interview the respondents cited a significant number of examples, when a judge delivered an apparently unauthorised court decision and was in no way punished (for example removed from the office). Thus, it is believed that the qualification collegiums certainly have a tool for the cleaning of the ranks of judges, but the qualification collegiums use this tool exclusively on approval and by agreement (for example, with the Supreme Court or with the agencies of the executive power).

According to respondents (mainly judges, because respondents with no legal education are not informed, as a rule, of the activity of the qualification collegiums), the representatives of the public participate in the work of the qualification collegiums (and this is stipulated by the current legislation). Opinions about the role and the „weight” of the public in the sense of influence in the decision making process of the qualification collegium differ greatly. As a rule the respondents with no legal education assume that the representatives of the public have no influence on the decision making in the course of meetings of the qualification collegiums. Legal scholars and lawyers are also quite sceptical in this respect, they think that the representatives of the public are selected from a pool that is admittedly loyal to the power and this is why, even if they do participate in the decision making, their participation does not conform with the generally accepted line. According to judges, the representatives of the public, on the contrary, play a prominent part in the decision making of the qualification collegium. Judges dispose of the opinion regarding the bias and admitted loyalty of the representatives of the public included in the composition of the qualification collegiums.

### **The extension of channels of formation of the judicial corps**

The representatives of human rights organisations, journalists and lawyers stated unanimously supported the inclusion of lawyers and scientists in the judicial corps, justifying this by the fact that it may, first, reduce the prosecutorial nature of verdicts due to a tremendous case law. Second, in their opinion, judges who have “grown up” from secretary of the court, themselves have never been taken part in a trial and can not fully assess it. This part of respondents appeals to the experience of Great Britain and USA, where judges are appointed only from among those, who have long served as prosecutor or as lawyer. One’s civic position, in the first place, as well as fair salary, of course, and the opportunity to establish useful contacts could serve as an impetus.

The overwhelming part of the interviewed judges has strongly opposed the appointment of lawyers as judges. They advocate that *a lawyer or a prosecutor bear the psychophysical characteristics of their profession and it shall take time to erase them. The person shall not be able to stand above the fray, keeping the balance,* a judge from a district court is convinced. With regard to incentives the representatives of the judicial community deem that *in general the work in the court must not be attractive due to some incentives, because not everyone can make decisions in the name of the state. This is very difficult.* Referring to the young people and to “fresh blood” in the judicial corps one of the respondents gave such an example: *In England all judges are aged over 60 years. They are all old and wise in experience <...> Here we have a*

*totally different workload! I have never heard of a case in our country when one judge would examine only three or four burglaries. We don't have this at all! If we put such a grandfather in the judge's chair, then only a week later he'll be taken with a heart attack or something else will go wrong. This is why in our system should work relatively young people with good health.*

In general both representatives of the legal community and representatives of civil society think that the judicial community is quite close and it is not interested in attracting in its rank lawyers, corporate legal scholars and scientists, not even in order to expand its own picture of the world or to enhance its own professionalism. The general opinion is that, perhaps, the closed nature of the judicial corps is dictated by the non-willingness to debate or by the lack of sense of openness for themselves. The participants of the study have assumed that the public, being admitted inside the judicial community, can, out of lack of habit, behave improperly, unprofessionally and in a forceful manner, and namely this perspective leads to professional judges' reluctance to interact.

The participants of the study think that such forms of interaction between the judges and the society as seminars, conferences and roundtables are possible to carry out not within the framework of the judicial community, but on a neutral territory. Generally the participants of the study agreed that if a person is a professional, then it does not matter to a large extent what profession he comes from.

## **Early termination of the office of judge**

The study has revealed that there proved to be two categories of reasons for early termination of the office of judge: objective and subjective.

The majority of experts from Moscow think that objective reasons for early termination of the office of judge can be the following:

- **Personal letter of the judge** (resignation), which can be submitted given that by skills the specialist does not meet the requirements advanced by the qualification collegium for judges. It is referring to low skilled judges, high workload, psychological strain etc.
- **Violation of the law in criminal matters.** Flagrant violations of the law, bordering with a criminal offence, which discredit the honour and dignity of judge.
- **Delays in civil and criminal cases.** A large number of pending or untimely examined cases.
- **Violation of rules of judicial ethics.** Unethical behaviour and the use of offensive language in course of court hearings.
- **Activity incompliant to the activity of judge** (for example, consulting businessmen, carrying out seminars and trainings).

As to subjective reasons for early termination of the office of judge the participants of the study have pointed out the following ones:

- **Bad relations with the Chairman of the court:** criticism of the chairman of the court, failure to comply with instructions of the upper management (for example of the Moscow City Court).
- **Refusal to abide by the pressure exercised by the executive power.** For example, a demand to make a court hearing *in camera* irrespective of the law.
- **High rate of acquittals.**
- **Judge's independence:** delivering verdicts in accordance with one's inner convictions. Active application of conciliation of the parties.

At the same time according to regional respondents, early termination of the office of judges is a very rare thing. Even judges with longstanding experience point out that they have either never heard of such cases or those were singular cases. It is typical that in those singular cases of early termination of the office of judges there were given reasons related judges' moral portrait rather than to their professionalism. For example, a woman was dismissed from a judge position because some compromising intimate photos of her turned out posted on the Internet. As well, according to judges, one can be dismissed from this position for an outrageous violation of law; however, judges did not give one example to support this thesis. Legal scholars, non-judges, could not recall a single case when a judge's powers would be terminated early. This can be comprehended in the sense that, in general, judges can count on their impunity as well as on the lack of unfavourable consequences even in the case of a breach of law. The termination of judge's powers for political reasons is referred to separately.

## ***The court and the society***

### **The authority of the judiciary**

Many experts believe that Russia's judiciary is unauthoritative in the eyes of its citizens. The respondents think that the authority of the judiciary is built of three indicators: the authority of judges, the accessibility and transparency of court decision and of the work of the system itself. Citizens do not trust any of these three components. One respondent cited a survey data: 82% of the population doesn't know at all how the judiciary works and 40% deem that it is totally corrupt. In addition the authority of the judiciary is affected also by the percentage of acquittals, which is extremely low in Russia.

The participants of the study are confident that citizens have resorted to the court out of habit, out of necessity and not because of trust and respect for it. *People apply to the court only when it can be useful for them in some way. They don't seek the truth, but rather success,-* a businessman said. However, as noted by a human right advocate, *strangely enough, but those who have personal experience of applying to the court, they have a better attitude to the judiciary (even those who were not able to defend their interests) than those who have never had participated in a trial at all.* This means that in the eyes of the general public the authority of the judicial power is not very high, partly because the mass media disseminate negative information about the corruption and delays in the courts.

Experts agree that the society views the court not as a tool for seeking the truth and justice, but rather as a tool of violence. They provide statistical data which say that in Russia the number of acquittals is below 1% (without jury trials). Approximately 20% of people have been imprisoned unfairly, according to numbers cited by the human rights advocate. The judges themselves recognize that *acquittals are cancelled thirty times more often than convictions, hence the prosecutorial inclination and fear of delivering acquittals. The main thing is the fear and dependence on Chairmen of courts.*

According to some experts, the efficiency of judges is secretly determined by several parameters, including the number of delivered convictions. *The court sees itself as part of the law enforcement system and all kinds of acquittal in the court are regarded as personal flaw in the work,* a representative of small business said. According to the observations of expert in Russia's judiciary very often judges proceed not from the presumption of innocence but rather from the presumption of guilt, which does not increase the authority of the court in the eyes of the population.

### **Civil society and the judiciary**

According to the respondents for the time being civil society does not have levers of influence over the judiciary, the civil voice is devalued, the judiciary is distorted, and its transparency to the public is reduced to zero. Human rights advocates find it quite difficult to talk about the impact of the civil society structures on the judiciary. After all, in theory, the judiciary is independent and nothing should have influence on it. Some experts are of the opinion that, given the principle of independence of the court, the impact of the civil society on the judiciary is perhaps not reasonable.

Other experts emphasise that public control does not stand for the impact on the independence of the court, but it is the correction of the quality of its work. Experts deem that public control is to correlate the quality of the system of the law with the actual current situation. The respondents in

the study stated that the point of control mechanisms is not to indicate to judges and prosecutors what to do, but that, if citizens are not satisfied with this are that decision of state agencies, the state is obliged to explain this to them. Human rights advocates declare that if the court does something illegally, this, certainly, must be corrected, however the damage inflicted on the authority of the judiciary should be as small as possible.

Speaking about specific mechanisms, these could be for example press-conferences, held to react to any outrageous violations and to drag the attention of the public. Among other mechanisms of public control there were mentioned complaints filed to the qualification collegiums of judges, collection of signatures, writing letters to superior instances, advocacy for jury trials and pre-trial methods of conflict resolution.

However, the representatives of human rights organisations complain that the fight against unjust court decisions is very difficult. Often they receive only formal replies to all attempts and requests. *During these years lots of letters were signed, especially with regard to celebrated cases. But the authorities didn't respond. And the degree of efficiency of such letters is extremely small*, a human rights advocate has complained. *The state took every effort to maxi efforts to crush the reputation of the civil society organisation to the maximum and to show that all of them work for the West.*

Representatives of non-profit organisations believe that the activity of numerous social councils designed to conduct control from the behalf of the public are in majority only fiction (*"the Potemkin villages"*). According to the respondents these social councils are formed from a pool of loyal officials, scientists and artists who are interested in the maintenance of the current state of affairs rather than in changes. Those activists who are able to show civil initiative and civil responsibility and are interested in the development of democratic values in our country do not have access to these councils (or to other agencies of the so-called "public control").

Experts realise that in an open democratic society they should be tending to participate in the expertise of draft laws and in the control over the activity of the governmental agencies and of the courts in particular. However at the current stage of development of Russia they deem this mission impossible.

## **Business and the judiciary**

The bias of the courts in disputes between the state and the business is evident for all respondents representing small and medium businesses. *The court takes the position in which it is put by the state*, a businessman is convinced. It should be noted that the business representatives think that it is necessary to give a fair trial, but on condition of observing some clearly defined rules.

The same attitudes prevail with regard to the protection of private property. Businessmen are convinced that disputes concerning issues of property between the state and business are always won by the state. Although there may be exceptions, it depends on the scale. According to experts, big business can afford a strong legal support, which a small business can not afford. However, a businessman noted that recently there have appeared precedents, in which a small business would win a trial against the state. *I see some kind of state order behind this, meaning that the state needed to prove its business loyalty*, the businessman thinks.

In order to protect their interest most of the representatives of the business community prefer not to go to court, but to resort to extrajudicial means of protection of their interests, because the efficiency of this method is significantly higher compared to appealing to the courts.

Businessmen' arguments are confined to the fact that in disputes between business structures the court will take not an unbiased position, but rather a position imposed by financial interest. Accordingly, in cases of financial inflows (*who will pay more money to the court*) the judiciary may act quite unpredictably, and businessmen would like to avoid namely such unpredictability. As regard disputes between business structures and the state, the perspectives on the settlement of such disputes seem to businessmen to be even less predictable. Businessmen give examples of biggest financial empires which were depreciated or collapsed only because officials had decided so (in this respect they mentioned cases of "Arbat-prestizh" and "Evroseti") as "scary" and "bogeyman" stories. Businessmen avoided answering questions about extrajudicial proceedings, justifying this by the fact that some of their actions were illegal by nature and, hence, they would not speak about that.

Businessmen view the uncertainty of the situation from two angles. On the one hand, they have adapted to the existing state of affairs. They are used to bribing officials and to gaining, for money, co-operation in the implementation of their business processes. On the other hand, as Russian citizens businessmen are unhappy with the high degree of corruption in the governmental agencies. Of course, they would like to work in a different way, in particular, to be certain that they will not be affected by raider processes and that Russian court will be able to protect their property rights effectively. Businessmen think that today officials or their inner circle have their property rights protected, while ordinary businessmen, who have not entered the power circles, can protect their property with far less probability. From the point of view of businessmen, in today's reality there is nothing one can do to improve this situation.

In general, businessmen who have faced a trial, complain of the delay in moving forward a case, rudeness and lack of individual approach in the judiciary. The business community considers this an integral part of Russian courts. *Laws are written in so that it is proves difficult to understand them, and citizens are not capable to. In civil matters 99% of cases may be decided, in principle by a robot. The judge looks very robotic and not as a human being, who is trying to grasp the merits of an issue. He does not understand anything, he only carries out a certain package of standard procedures*, a businessman complains.

## **Jury trials: pros and cons**

The issue of efficiency of jury trials entailed serious dissent among the participants of the study. Some experts, including the representatives of the judicial community, are firmly convinced that jury trials are incapable of delivering fair verdicts, because they are too emotional. *I think justice should be done by professional judges, and jurors can think only in terms of some stereotypes*, a judge is convinced. Judges have observed that jurors, when engaged in judicial proceedings, as a rule, do not take a closer look at what is happening, they do not grasp the merits of a case, they do not get to the bottom of it, but they want to possibly come to a unanimous decision in order to "*finish quicker*". Experts understand the attitude of jurors. Considering the total lack of trust in the judiciary citizens do not wish to participate and to prove their civil engagement in the context of this system.

Experts also believe that jurors are often subject to pressure and this is another reason why jury trials can not balance the court's abuse of discretion. As an example experts cited the murder of a 9-year old Tajik girl in St. Petersburg, when the accused were acquitted namely by a jury trial. Expert proceed from the belief that in high-profile cases the court makes it clear for the jurors what will be right or wrong in terms of future decision (*the system of juror protection does not work in our country; jurors are subject to pressure from above just as to pressure from outside*).

All the above observations and deductions make these experts think that possibly in future jury trials will be in demand, but today jurors - even having been thoroughly selected and checked – can not administer justice because of low level of their spiritual and cultural development. Other experts (representatives of lawyers' community, human rights advocates and representatives of the mass media) claim that jury trial is the most effective form of administration of justice. They confirm their words by way of following theses:

- Jury trials protect most effectively the right and freedoms of citizens against unlawful and unjustified accusation.
- Jury trials have revealed serious defects in the pre-trial investigation and disclosed numerous procedural violations by investigators and prosecutors.
- Jury trial is a format which allows making the court and the judicial reasoning understandable for the population by the criteria of justice.
- Jury trial is one of the most important tools of the harmoniously working judiciary.
- The court gives everything a formal examination. While a jury is much more exigent with regard to facts submitted by the investigation.
- Verdicts delivered by jury trials are more fair verdicts.
- Jury trial is an element of humaneness of the judiciary.
- Judges are subject to professional deformation: a professional judge will never fully apply the presumption of innocence – this is a consequence of a longstanding work as a judge.
- Jury trial is a really adversary trial

These participants of the study believe that the society is absolutely ready for using the jury trial. A representative of the public recalls: *In Imperial Russia there were jury trials, in which jurors were peasants, who not only did not have education, but they did not know how to read and write! Yet, according to most major researchers that was the “golden age” of the adversarial procedure in criminal proceedings.* According to experts Russian society may be not ready for many things like: market economy, depreciation of the rouble, the crisis etc. For the society to be ready it is necessary to conduct legal advocacy. *If the state does not address this, the society will never be ready for anything. This is the task of the state to make society ready for this or that institute,* a human rights advocate is convinced.

A significant part of the respondents think that jury trials are one of few possibilities for the accused to mitigate a verdict. It is deemed that jurors are not interested in the prosecutorial inclination of a case, and this is why they deliver much more acquittals than judges. This category of experts sees jurors as people with clear views and clear souls, whereas judges are regarded as professionals who lost their senses to a significant extent, having left in their active only thinking and habit. Therefore the respondents were in favour to leave this form of administration of justice and to be guided not by its efficiency, but by its existence as a democratic value. The fact that citizens themselves are reluctant to join the composition of jurors suggests the insufficient legal and civil maturity of Russian people. To select 20 people as jurors it is necessary to send several thousands of invitations. Experts believe that it is important to persuade the citizens that they have rights and they should be taught to assert their rights.

Most experts have a negative attitude to the issue of narrowing down the competence of jury trials. They had a especially negative reaction towards the Law on the exclusion of the so-called crimes against the state from the jurisdiction of jury trials, recently signed by the President. Among these crimes are charges of terrorism, espionage, crimes of high treason and a number of other crimes, including the organisation of mass riots – in total 9 articles of the Criminal Code. *All these crimes have one common feature - they are all under the jurisdiction of the FSB,* a representative of human rights organisation stated. At the same time the critics of the jury trial perceive the narrowing down of the competence of jury trials with great understanding:

according to their opinion neither the governmental agencies nor the jurors themselves (generally speaking) are interested in keeping the authority of the jury trial.

Legal scholars deemed the question about the comparison of jurors with the commercial court assessors was not quite correct, because, according to them, they have different functions and objectives. *Commercial court assessors do not decide on the question “guilty or not guilty”, while jurors do, but at the same time they do not need legal knowledge*, a legal scholar explained.

## Juvenile Justice

The study has revealed that many experts believe that it would be reasonable to establish a juvenile justice system in Russia and this could take the burden from the courts of general jurisdiction. Representatives of the mass media, of the civil society and lawyers stand for this. They reason this by totally particular specific of juvenile cases: it is often necessary not to act from the point of view of the strict language of the law, but to talk more and to invite representatives of child welfare agencies. In these cases it is important to study the psychological image of one's personality and for this reason a separate court with highly specialized judges is required. *The procedure in general courts does not comply with the psycho-physiological possibilities of a minor to react correctly to what is happening to him. Pedagogical methods should be applied much more with regard to minors and it is necessary to use such methods as conciliation in a trial*, a representative of the lawyers' community is convinced. This group of respondents deems that in general the gradual establishment of specialised courts is one of directions for the improvement of the quality of the judiciary.

Representatives of the civil society, working with children, think that an integrated approach to the protection of children's rights and interests must be ensured in the framework of this justice system. In particular, the supporters of this idea insist on the differentiation of forms of punishment that are applied to a teenager, as well as on the creation of additional educational and correction facilities, where children would be able to realise and to correct their image of the world and not to enhance (as it is today happening, as a rule) their asocial beliefs.

However, among actual judges there is a prevailing opinion that it is absolutely unreasonable to specially create a court for the examination of cases of children and teenagers. They do not see any special need in this, as often in the courts there is a special judge who deals with such cases and according to judges the number of such cases is not that great. Apart from this, the establishment of a separate court will lead to enormous financial costs. One judge of a district court said: *First of all, we do not have enough judges to work in already formed courts. <...> If we create juvenile courts everywhere, having 83 oblast courts and approximately 35 thousands of district courts. (Pursuant to the law on the status of judges) in every district court there should be 3-4 judges and in every oblast court 6-7 judges. That is we will need approximately 120 thousands of judges in addition to what we have today. Given that today we have a shortage of tens of thousands of judges!*

Some respondents pointed out that today, on basis of experiment for the time being, there is a practice of establishment of juvenile justice system in Rostov Oblast.

Some respondents express the opinion that today the institute of protection of children rights is more or less developed. In particular, in all courts social protection agencies as well as tutorship and guardianship authorities represent children's interest, the Criminal Code provides for milder forms of punishment for children etc. Considering this, these experts approach the creation of the juvenile justice system by the principle “the best is the enemy of the good”.

# APPENDIX 1

## List of Interviews

### STUDY 1

No.	CITY	NAME	POSITION
<b>JUDGES, RETIRED JUDGES</b>			
1	<b>MOSCOW</b>	Lyudmila Ivanovna Bykovskaya	Judge of the Tverskoy District Court
2		Victor Nicolaevich Danilkin	Chairman of the Khamovnichesky District Court
3		Victor Martenianovich Zhuykov	Ex-Deputy of the Chairman of Supreme Court of the Russian Federation
4		Konovalova Natalya Vladimirovna	Chairman of the Tagansky District Court
5		Tamara Gheorghievna Morschakova	Retired Judge of the Constitutional Court. Head of the Judicial Authority and Organisation of Justice Chair, Higher School of Economics
6		Marina Victorovna Musimovich	Federal Judge (in civil matters) of the Zamoskvoretsky District Court
7		Tatyana Nicolaevna Neshatayeva	Judge of the Supreme Commercial Court
8		Vladimir Fyodorovich Nikitin	Chairman of the Babushkinsky District Court
9		Sergey Anatolyevich Pashin	Retired Judge of the Moscow City Court
10		Marina Alexeyevna Petrenko	Chairman of the Zyuzinsky District Court
11		Valentina Fyodorovna Tikhonova	Deputy Chairman of the Preobrazhensky District Court
12		Konstantin Yuryevich Trofimovich	Civil Judge of the Preobrazhensky District Court
13		Irina Anatolyevna Shalashova	Criminal Judge of the Ostankinsky District Court

14	<b>SAINT PETERSBURG</b>	Andrey Ivanovich Gusev	Federal Judge of the Sosnovoborsk City Court of Leningrad Oblast
15		Olga Olegovna Vishnyakova	Federal Judge, Deputy Chairman of the Vsevolozhsk City Court
16		Natalya Removna Togonkova	Federal Judge of the Vsevolozhsk City Court
17		Anna Alexeyevna Edwards	Federal Judge of the Vsevolozhsk City Court
18		Anatoly Alexandrovich Tyutin	Retired Judge of the Sosnovoborsk City Court
19	<b>YEKATERINBURG</b>	Alexandra Alexeyevna Sidorova	Justice of the peace (Revda)
20		Lyubov Petrovna Biketova	Federal Judge (Revda)
21		Tatyana Lvovna Zamarayeva	Federal Judge (Revda)
22		Anna Vladimirovna Kanova	Federal Judge (Revda)
<b>LAWYERS, DEFENCE LAWYERS, PROFESSORS</b>			
23	<b>MOSCOW</b>	Semen Lvovich Ariya	Defence Lawyer
24		Vladimir Grigoryevich Bessarabov	MGYUA [Moscow State Law Academy], Criminal Procedure Chair
25		Valery Vasilyevich Grebennikov	Defence Lawyer, Ex-Chairman of the State Duma Committee on Constitutional Legislation
26		Alexandr Lvovich Makovsky	Deputy Chairman of the Board of the Private Law Research Centre
27		Gasán Borisovich Mirzoyev	President of the Russian Lawyers Guild, Rector of the Russian Bar Academy
28		Elena Vladimirovna Nakhimova	Lawyer at the Law Office "Nakhimova & Partners"
29		Ghenrikh Pavlovich Padva	Senior Partner at the Law Office "Padva, Rosenberg & Partners"
30		Anna Ilyinichna Panicheva	Lawyer, lecturer at MGYUA
31		Ghenry Markovich Reznik	Chairman of the Moscow City Chamber of Lawyers
32		Evgeny Alfredovich Rubinshtein	Lawyer at the Moscow City Bar Association, Associate Professor at the Criminal Procedure Chair, MGYUA

33		Naum Borisovich Sonkin	Lawyer, Professor at the Advocacy and Human Rights Chair, Law School, International Law and Economics Institute
34	<b>ULIANOVSK</b>	Oleg Vasilyevich Belokurov	Candidate of Legal Science, Associate Professor at the Criminal Law and Criminology Chair, Ulianovsk State University
35		Grigory Victorovich Kalenov	Lawyer, chairman of the Centre for Protection of Consumer Rights
36	<b>VORONEZH</b>	Galina Yuryevna Arapova	Director, Senior Legal scholar at the Centre for Protection of the Mass Media Rights
37		Svetlana Igorevna Kuzevanova	Legal scholar at the Centre for Protection of the Mass Media Rights
38		Margarita Alexandrovna Ledovskikh	Legal scholar at the Centre for Protection of the Mass Media Rights
39		Stanislav Arnoldovich Ryvkin	Federal Union of Russian Lawyers, Voronezh Oblast Bar Association, Law Office "Ryvkin & Partners", Head of Office
40		Yury Nicolaevich Starilov	Professor, Doctor of Legal Science, Hon., Head of the Administrative and Municipal Law Chair, Law School, Voronezh State University
41	<b>SAINT PETERSBURG</b>	Alexey Zhuk	Hannes Snellman, Senior Associate, Attorney at Law
42		Alexey Semenovich Yevmenenko	Senior lecturer at the Institute of Foreign Economic Relations, Economics and Law. Teaches History of State and Law, Constitutional Law
43		Natalya Anatolyevna Lebedeva	Saint Petersburg City Bar Association
44		Victor Evgenyevich Mironov	TIM Consulting Group (Microsoft partners), Head of Legal Consulting Department

45		Robert Yuryevich Petrov	Leningrad Oblast Bar Association, Head of the Sosnovoborsk branch
46		Vadim Yuryevich Sukhov	Deputy Director, law firm "RIM"
47	<b>YEKATERINBURG</b>	Elena Fyodorovna Brekhova	OOO "Russkiye motory"
48		Lyudmila Nicolaevna Bukina	Civil lawyer, Chkalovsky Rayon, Yekaterinburg
49		Yury Sergeyeovich Karle	Lawyer, military unit №2831
50		Yuliya Anatolyevna Korotkikh	Professor at the Ural State Law Academy

### STUDY 2

No.	CITY	NAME	POSITION
<b>HUMAN RIGHTS ADVOCATES, NON-PROFIT ORGANISATIONS (NPOS)</b>			
1	<b>MOSCOW</b>	Lyudmila Mikhailovna Alexeyeva	Head of the Moscow Helsinki Group
2		Alexandr Alexandrovich Auzan	Head of the Institute of the National Project "Obschestvenny Dogovor"
3		Dmitry Vladimirovich Badovsky	Member of the Public Chamber of Russia
4		Alexandr Semenovich Brod	Member of the Public Chamber of Russia
5		Svetlana Alexeyevna Gannushkina	Chairman of the Civil Assistance Committee
6		Vladislav Valeryevich Grib	Member of the Public Chamber of Russia
7		Boris Andreyevich Zolotukhin	Lawyer, member of the Moscow Helsinki Group
8		Igor Alexandrovich Kalyapin	Chairman of the Committee Against Torture (Nizhny Novgorod)
9		Olga Nicolaevna Kostina	Member of the Public Chamber of Russia
10		Vyacheslav Ivanovich Lysakov	Leader of the Movement of Automobilists "Svoboda vybora"
11		Valentina Dmitryevna Melnikova	Head of the Committee of Soldiers' Mothers

12		Lev Alexandrovich Ponomaryov	Executive Director of the All-Russian Movement “Za prava cheloveka”
13	<b>VORONEZH</b>	Valentina Afanasyevna Badalova	Head of the Voronezh NPO “Zashita potrebiteley” (Consumers Union of Russia)
14		Vyacheslav Ilyich Bityutsky	Member of the International Board, Head of the Board of the Voronezh organisation “Memorial”
15		Victor Alexeyevich Davydkin	Human rights advocate, Voronezh United Democratic Centre
16		Gennady Yefimovich Pankov	Member of the Panel of the Voronezh Regional Branch of Russian People’s Democratic Union (RNDS)
17		Andrey Anatolyevich Rashevsky	Senior Advisor at the Public Chamber of the Russian Federation Commissioner for Human Rights in Voronezh Oblast
18		Ilya Vladimirovich Sivoldayev	Consultant at the Human Rights Community Liaison Office (specialisation – European Court of Human Rights)
19		<b>ULIANOVSK</b>	Marina Nicolaevna Bulantseva
20	<b>YEKATERINBURG</b>	Valery Ivanovich Basay	Chairman of the volunteer movement “Dorogamy dobra”
21		Lidya Mikhailovna Yeshkova	Chairman. Sverdlovsk Branch of Russian Children’s Fund
22		Galina Dmitryevna Korenets	Chairman of the Veterans’ Choirs of Chkalovsky Rayon
23		Svetlana Vladimirovna Marchenko	Deputy Chairman of the Committee of Soldiers’ Mothers
24		Elena Valentinovna Mokey	Yekaterinburg branch of “Memorial”
25		Vladimir Ivanovich Popov	Chairman of the Union of Human Rights Advocates, Sverdlovsk Oblast
26		Elena Alexeyevna Stepanova	Coordination Centre for the Protection of Human Rights
<b>SMALL AND MEDIUM BUSINESSES</b>			

27	<b>MOSCOW</b>	Andrey Nicolaevich Baluyev	Director of Moscow branch of "Avtoplyus"
28		Alexandr Vladimirovich Belyakov	Owner of OOO "Stroynavigator",
29		Igor Iosifovich Galperin	Owner of Vereysk Mechanical Plant
30		Tatyana Yuryevna Yeremenko	Chief Accountant of the company "Matrixagriteh"
31		Maxim Kiselyov	General Director of the Consulting Company "Discovery"
32		Yury Alexandrovich Mityanin	Legal scholar of the company "Gals-aero"
33		Oleg Vladimirovich Pozdnyakov	Head of Service Centre of the auto complex "Formula-7"
34		<b>ULIANOVSK</b>	Vadim Ivanovich Andreyev
35	<b>SAINT PETERSBURG</b>	Valery Alexandrovich Alexandrov	Owner of an vehicle company (car park)
36		Victor Vladimirovich Barkov	Owner of a custom tailoring shop
37		Olga Anatolyevna Goncharova	Owner, General Director of the private educational institution "Simba"
38		Evgeny Pavlovich Pyriaev	Owner of business, manufacturing and retail of electronic pieces
39		Anna Arkadyevna Slozina	Owner, commerce, real estate
40		Alexandr Yuryevich Shmidt	Owner of a grocery
41		<b>YEKATERINBURG</b>	Irina Anatolyevna Blyumen
42	Vadim Vyacheslavovich Neimyshev		Manager of IP, power engineering, cargo transportation
43	Alexandr Nicolaevich Samoylov		Manager of IP. Retail of electrical appliances
44	Irina Anatolyevna Serova		Manager of IP, clothing manufacture

JOURNALISTS			
45	<b>ULIANOVSK</b>	Sergey Olegovich Titov	Staff reporter for “Kommersant” newspaper in Ulianovsk Oblast
46	<b>VORONEZH</b>	Boris Ivanovich Vaulin	Head of Section on Social Problems and Legal Issues, “Kommuna” newspaper
47		Larisa Yuryevna Kartashova	Rossiyskaya Gazeta, reporter
48		Alexandr Anatolyevich Yagodkin	Novaya Gazeta in Voronezh, editor-in-chief, staff reporter in Chernozemye and Voronezh
49	<b>YEKATERINBURG</b>	Tatyana Borisovna Burova	Newspaper “Uralsky rabochy”, Legal Issues Section
50	<b>MOSCOW</b>	Olga Yuryevna Ivanova	“Oblastnaya gazeta”, Social Issues Section, journalist
51		Inessa Zemler	Reporter of “Eho Moskv”
52		Konstantin Aramovich Katanyan	Editor of the Law Section, “Politichesky zhurnal”
53		Anastasiya Kornea	Reporter of “Vedomosty” newspaper
54		Vladimir Perekrest	Reporter of “Izvestiya” newspaper

## APPENDIX 2

### Guide for interviews with professionals (judges, lawyers and scientists)

What are the main problems faced by the judiciary in Russia? Specify priorities (up to five) the state should guide by when carrying out its policy concerning the judiciary.

#### *Increased efficiency of the judiciary*

How can the independence of the judiciary be increased? Who attempts to influence to the greatest extent the decisions delivered by judges – is it the judicial management (upper courts, Chairmen of the courts), authorities of the executive power authorities of the legislative power, business structures, the mass media, public organisations, none of the above? What is necessary to be done to increase the independence of the court? Should the plenary assemblies of the superior courts be allowed to moving judges between different courts within the system (both horizontally and vertically) in order to protect them from pressure?

In his Address the President of Russia D.A. Medvedev mentioned the need to reduce the terms of the examination of civil cases and to establish a mechanism for addressing – within a reasonable time – the damage caused by violation of citizens' rights to full and timely implementation of courts decisions. What is today the situation with the right to *speedy* and fair trial and how successful is the work of the service of bailiffs in field of the enforcement of court decisions (note that the President has recently publicly criticised this service for lack of efficiency)? How important is the settlement of these problems and will it increase public trust in the judiciary? Will the adoption of a corresponding law change the situation to better or the most important is the improvement of practice? Will the adoption of this law manage to reduce the number of applications of Russian citizens to the European Court?

In his speech at the Congress of judges President D.A. Medvedev proposed the extension of the special competence of commercial courts, having included not only cases on insolvency and corporate disputes, but also disputes arising from tax and customs legal relation, financial market, investment and anti trust activity. How reasonable do you think this measure is, if yes, please specify why? What do you think about the issue of extension of competence of the courts related to the examination of complaints about the actions of the governmental agencies and officials, and about the compensation of the harm caused by their illegal actions?

How efficient do you think is the system of pre-trial resolution of disputes (pre-trial and conciliation procedures) in the field of economic relations? Do you think it should be extended to cover other categories of cases (arising from administrative and public legal relations) so that to “unload” the judiciary? What is required for its application – is it the adoption of new legislative acts or bylaws, the increase of the citizens' legal literacy, a fundamental change of their mentality, anything else?

#### *Personnel and material matters*

Do you think the level of education and qualification of Russian judges complies with today's tasks faced by the judiciary? Should the procedure of selection of candidates for judge

position be changed? Should it become more open? Do you think the current level of social guarantees for judges (remuneration, supplements for the qualification category, housing etc.)? Does this contribute to the high level of prestige of the profession of judge?

Is there a solution of the issue of salary increase for the personnel of judges and court apparatus and can it be solved in the foreseeable future? What level of salary can attract (or keep) promising specialists in this positions? What is the role of the career growth factor in their motivation and how does it compensate for the low level of salaries?

In relation to what the powers of judges are often early terminated in Russia? Is it related to the low quality of selection, personnel shortage or to other reasons? Do you deem reasonable to preserve the three-year preliminary period, after which a judge is appointed, or should the staff policy in this sphere be initially approached more rigorously?

Is it necessary to involve lawyers, corporate legal scholars and scientists more actively in the composition of the judicial community? Will this improve the authority and professionalism of judges or not? If such inclusion is reasonable, what impetuses can be used to attract such professionals in the composition of the judicial corps?

How authoritative the qualification collegiums are and can they play the role of a “filter”, screening off inappropriate applicants for the status of judge and contributing to cleaning up this community from members who have compromised themselves? Are they independent or do they play only a strictly instrumental role, obeying the instructions of the superiors.

#### *The court and civil society*

Do the representatives of the public participate actively in the work of the qualification collegiums, and do they have a real impact on the decision making?

Jury trials exist virtually on the whole territory of Russia (except for Chechnya). How effective is this form of court proceedings compared to the examination of a case by a professional judge (judges), does it facilitate the delivery of more fair verdicts? Do you agree with the opinion that Russian society is not yet ready for jury trials (because citizens are not sufficiently responsible when making a decision) or this opinion is imposed by corporate interests? What is your attitude to the issue of narrowing down of the competence of jury trials and of the exclusion of a significant number of cases from their jurisdiction? Can you compare the level of competence of jurors with the analogical level of commercial court assessors (how successful is the functioning of the institute of commercial court assessors)?

Does the publicity of court proceedings contribute to the improvement of the work of the courts? Is the principle of the openness in court proceedings observed, given that, if desired, the hearing of a case may be “closed” from the unauthorised people? How reasonable is the Law “On Providing Access to Information Regarding the Activity of the Courts in the Russian Federation” (which stipulates the establishment of the system guaranteeing general access to judicial acts, their posting on the Internet, ensures the availability of information about the progress of cases and applications in the court, including information about the time and place of case examination, introduces the position of press officers in oblast courts). Shall these measures increase the authority of the judiciary? What other forms of increased openness of courts may be undertaken, also by using modern technologies –the instalment of the system of “economic justice” in commercial courts, the creation of Internet-sites for the courts for posting detailed information about their work and other. Is it necessary to change the relations between the judiciary and the mass media and in this respect what is required to enhance the objectivity of

journalists' materials on legal topics (improve the journalists' legal literacy, enhance the openness of the courts or other)?

How can be increased the availability of legal services for the poorest categories of citizens? Precisely what services can these be – legal aid, legal advice, assistance in the enforcement of court decisions, other. What is the obstacle on the way to a more equitable solution of this issue?

#### *Different types of courts*

How successful are the magistrate courts in Russia, what are the main problems they face (the workload of courts, qualification of judges, the authority of the court, insufficient influence of judges on the court apparatus, other)? In December, the Congress of Judges, for the purpose of diminishing the workload of the magistrate courts proposed to attribute a significant number of criminal cases and cases of administrative offence to the jurisdiction of district courts (to shift them to the federal level), as well as to simplify the forms and procedure of the court proceedings, also in criminal cases. What do you think about this initiative?

Do you deem reasonable the establishment of the juvenile justice system (special courts for judicial protection of interests of children and teenagers) in Russia? Why do you think it has not been operational until now in Russia?

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### **Guide for interviews with representatives of civil society, of small and medium business and with court journalists**

#### *General questions*

What are the main problems faced by the judiciary in Russia? Specify priorities (up to five) the state should guide by when carrying out its policy concerning the judiciary.

How authoritative is the judiciary in the citizens' eyes? Can people "seek the truth" in the courts (and, if successful, during the enforcement of court decisions)? How can be explained the great number of Russian citizens' applications to the European Court of Human Rights in Strasbourg? What is required to do so that the citizens could find the truth at home and not abroad?

How to increase the independence of the judiciary. Who is trying to influence the decision of judges to the fullest extent – is it the judicial management (upper courts, chairmen of courts), agencies of the executive power, agencies of the legislative power, business structures, the mass media, public organisations, none of the above? What needs to be done to increase the independence of the court? Have you or your acquaintances ever faced such negative facts in the judicial fields as corruption, delays and rudeness. In your opinion, are these typical of the Russian court or are these only some exceptions?

In his Address the President of Russia D.A. Medvedev mentioned the need to reduce the duration of the examination of civil cases and to set a mechanism to compensate – within the reasonable period of time – for the harm caused through the violation of citizens' rights to the full and timely enforcement of court decisions. How important is the solution of these problems,

will this increase the public trust in the judiciary? Will the adoption of a corresponding law change the situation to better or the most important is the improvement of practice?

### *Questions for the representatives of civil society*

Is it necessary to involve lawyers, corporate legal scholars and scientists more actively in the composition of the judicial community? Will this improve the authority and professionalism of judges or not? If such inclusion is reasonable, what impetuses can be used to attract such professionals in the composition of the judicial corps?

What do you think about the issue of extension of the competence of courts related to the examination of complaints against the actions of governmental agencies and officials and to the compensation of the harm caused by their illegal actions?

Jury trials exist virtually on the whole territory of Russia (except for Chechnya). How effective is this form of court proceedings compared to the examination of a case by a professional judge (judges), does it facilitate the delivery of more fair verdicts? Do you agree with the opinion that Russian society is not yet ready for jury trials (because citizens are not sufficiently responsible when making a decision) or this opinion is imposed by corporate interests? What is your attitude towards the narrowing down of the competence of jury trials and the exclusion of a significant number of cases from their jurisdiction.

Does the publicity of court proceedings contribute to the improvement of the work of the courts? Is the principle of the openness in court proceedings observed, given that, if desired, the hearing of a case may be “closed” from the unauthorised people? How reasonable is the Law “On Providing Access to Information Regarding the Activity of the Courts in the Russian Federation” (which stipulates the establishment of the system guaranteeing general access to judicial acts, their posting on the Internet, ensures the availability of information about the progress of cases and applications in the court, including information about the time and place of case examination, introduces the position of press officers in oblast courts). Will these measures increase the authority of the judiciary? What other forms of increased openness of courts may be undertaken, also by using modern technologies – the instalment of the system of “economic justice” in commercial courts, the creation of Internet-sites for the courts for posting detailed information about their work and other. Is it necessary to change the relations between the judiciary and the mass media and in this respect what is required to enhance the objectivity of journalists’ materials on legal topics (improve the journalists’ legal literacy, enhance the openness of the courts or other)?

How structures of civil society can have influence on the judiciary, also by way of mechanisms of public control? Is such influence reasonable, considering the principle of independence of the court also from public organisations?

Is there informal discrimination against different categories of population with regard to access to justice – on basis of social status, nationality or other – in Russia? How is it possible to increase the availability of legal services to the poorest categories of citizens? Precisely what services can these be – legal aid, legal advice, assistance in the enforcement of court decisions, other. What is the obstacle on the way to a more equitable solution of this issue? How public organisations can help to increase the availability of such services? Do you know of any positive experience of the structures of public organisations in this sphere (creation of free legal advice agencies, other forms of legal aid for the population)?

### *Questions for the representatives of the business community*

Do you think that the state holds a completely impartial position in disputes between the state and business structures (or private persons)? If no, what is required to change the situation? How effectively the Russian court protects property rights?

Have you personally (or your acquaintances) ever faced situations when the court could not protect effectively one's legitimate rights and interests? Why did this happen (because of lack of competence, corruption, pressuring the court)? Have you resorted to extrajudicial means (unlike pre-trial ones, they have a strictly informal nature) of protection of your interests? If yes, how successful they proved?

In his speech at the Congress of judges President D.A. Medvedev proposed the extension of the special competence of commercial courts, having included not only cases on insolvency and corporate disputes, but also disputes arising from tax and customs legal relation, financial market, investment and anti trust activity. How reasonable do you think this measure is, if yes, please specify why? What do you think about the issue of extension of competence of the courts related to the examination of complaints about the actions of the governmental agencies and officials, and about the compensation of the harm caused by their illegal actions?

Should the system of pre-trial disputes resolution (pre-trial and conciliation procedures) that is currently applied in the sphere of economic relations also cover other categories of cases in order to "unload" the judiciary? What is required for its application – is it the adoption of new legislative acts or bylaws, the increase of the citizens' legal literacy, the fundamental change of their mentality, or other?

Do you think there is sufficient information about the activity of the courts? How reasonable is the Law "On Providing Access to Information Regarding the Activity of the Courts in the Russian Federation" (which stipulates the establishment of the system guaranteeing general access to judicial acts, their posting on the Internet, ensures the availability of information about the progress of cases and applications in the court, including information about the time and place of case examination, introduces the position of press officers in oblast courts). Will these measures increase the authority of the judiciary? What other forms of increased openness of courts may be undertaken, also by using modern technologies – the instalment of the system of "economic justice" in commercial courts, the creation of Internet-sites for the courts for posting detailed information about their work and other.