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## The Russian Constitution and the Specialization of Judges and Courts: The Current Reforms of the Judiciary in Russia. The Celebration of the Russian Judicial Reforms of 1864

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The development of social relations—progressive or otherwise—brings with it the need for proper and timely legal regulation. The goal of the latter, surely, must be to ensure that the acts of subjects of the law are not unduly hindered as they seek to embrace their values, defend their legal interests, etc. This legal regulation should be accomplished with the aid of a systematic selection of specific tools and devices. It is precisely the way in which these are (or not) effectively applied upon which much depends, having in mind in particular the stable and qualitative development of civil intercourse. Accordingly, each of the stages in influencing social relations is important since—at each stage—a balance needs to be struck between that which is real, that which is to be seen in the life of the law’s subjects and, on the other hand that which is enshrined in legal norms.

Influencing social relations is exercised not only by legal means *per se* but, also, by other legal phenomena such as legal consciousness, legal culture, legal principles, etc. To our minds, it is a generally accepted premise that the vast majority of people choose not to engage in conduct which is unlawful not so much because of legal means, methods, and the devices at the disposal of law-enforcement agencies but, rather, because of legal culture which presupposes respect for the law. Form is given to legal culture—however difficult it may be to measure this phenomenon—by governmental acts which are directed towards one or another goal; but it also comes from social structures, mass media, from the acts of groups of workers, etc. There is little with which to argue in the proposition that the realization of legal norms in practice in accordance with the letter—and as well as with the spirit—of the law is a precondition for a positive approach to the law, to the growth of legal consciousness and legal culture.

Keeping in mind that the subjects of law often (or is it always?) have differing and even contradictory interests, a basic role of law in the formation of legal culture is played by the judicial system. Of vital importance in guaranteeing the legal order (*pravovoi poriadok*) of a country is the degree to which its judicial system is fair and efficient. The proper administration of justice in resolving a legal conflict among two or more parties—rendering judicial acts of quality, *i.e.*, those which are grounded in law and in which the motivation is clear and logical, judicial acts directed at the restoration of rights and interests which have been violated or which are in dispute—supports the true exercise of rights and the fulfillment of duties of those parties joined in (or affected by) legal relations (acts or inaction, lawful or unlawful). Thus, both the quality of the judicial system at any one moment—and its gradual development into the future—represents an important milestone in the development of state and society.

In Russia, we are living in an era of wide-sweeping changes in civil law and civil-procedure law.<sup>1</sup> Some of the reasons for these changes can be seen in the social phenomena of contemporary global society; the processes of inevitable convergence of different countries, peoples and cultures. The harmonization and the coordination (or is it: “convergence”?) of legal systems and, also, of legal norms in the area of civil-procedure in particular, form part of the trend in transforming the order of civil procedure throughout the world. Yet because cultures often are quite diverse, this process—while it is not only inevitable but necessary—can be extremely complex.

The Tiumen’ State University has established the Siberian Legal Forum. Its mission is to be a discussion platform for debating contemporary problems and trends in the development of law, to exchange experiences and to foster the establishment and maintenance of a wide range of contacts among scholars and practitioners in Siberia, other regions of Russia and, also, from near and farther abroad.

It has been with the goals of seeking ways to improve the judicial system in Russia and norms of civil-procedural legislation, to support a broad network of scholars and practitioners—both within the Russian Federation and, also, abroad—in the field of civil-procedure law and access to justice that the Tiumen’ State University, the Commercial (*Arbitrazh*) Court of the West-Siberian Circuit, the Tiumen’ Regional (*Oblast’*) Court and the *Russian Law Journal* hosted the First Siberian Forum in 2014.

<sup>1</sup> As we write these words, we are reminded of what often is reputed to be a Chinese proverb (albeit one filled with irony): “May you live in interesting times!” In fact, while there may be several sources for this proverb, one is to be found in the opening remarks of the international-law-lawyer and later US Congressman, Frederic R. Coudert, delivered at the first session of the spring 1939 convocation of the Academy of Political Science. “The Preservation of Democracy: America’s Preparedness”, 18(3) *Proceedings of the Academy of Political Science* (1939), 267ff.

The 2014 amendments to the Russian Constitution<sup>2</sup> reflecting the recent judicial reform in Russia—the merger of the RF Higher Commercial Court (*Vysshi arbitrazhnyi sud*) with the RF Supreme Court—has served as the “food for thought” at, and directed the choice of the theme of, these first Siberian Legal Forum.

One of the aims of the Legal Forum has been to facilitate “brainstorming sessions” among leading scholars, attorneys and other legal professionals—as well as members of the judiciary; to enhance cooperation among leading Russian thinkers and their colleagues from near-and-farther-abroad who are active in the field of civil procedure, for example, in examining the dissemination of modern-day civil-procedure doctrines in the academic world as well as in the world of practice, to gently nudge those who are engaged in scholarship in the field—in Russia and abroad—to continue their research and to encourage them to disseminate as widely as possible the results thereof; to contribute, where possible, to further study of civil-procedure law; to exchange information about accessing legislation, court practice and literature in the field; to stimulate the further study in Siberia of dispute resolution; to organize further international conferences and to create an up-to-date regional platform for inter-cultural dialogue and for the publications which should arise therefrom.

The first Siberian Legal Forum has been devoted to the 150th anniversary of the Great Russian Judicial Reform of 1864 of Alexander II—the official date of the celebration of which is 20 November 2014. With this in mind, one of the discussion topics at the Siberian Legal Forum was devoted to: “The specialization of courts and judges: world-wide practice and the Russian experience”. It goes without saying that each country has its own judicial system and decides for itself how questions of the specialization of judges and courts will be decided. Yet, to a great degree, this is a common issue as well as a much-debated question in numerous jurisdictions; one upon which much depends in assessing the quality of justice. The current forms in Russia encompass those in the fields of civil- and civil-procedure law. In all of this, the question comes to the fore: how rational is that in which we are now engaged, how well are we renewing ideas and institutions?

Professor Loïc Cadiet, president of the International Association of Procedural Law,<sup>3</sup> greeted the conference participants with his thoughts:

“Discussing fundamental subject matters such as specialization of courts and judges will only lead to the deeper understanding of functioning principles of the legal system. Forums such as this provide a wealth of potential for deep legal researching. With deliberate effort and strong partnership we can bring out the best in our legal systems, as we discuss the state of our development now and create the better future.”

The Chief Justice of the RF Higher Commercial (*Arbitrazh*) Court (retired), Veniamin Iakovlev—who now is Adviser to the President of the Russian Federation, a

<sup>2</sup> Federal Law of the Russian Federation “O popravke k Konstitutsii Rossiiskoi Federatsii ‘O Verkhovnom Sude Rossiiskoi Federatsii i prokurature Rossiiskoi Federatsii’” (5 February 2014) No.2-FKZ, *Rossiiskaia gazeta* (7 February 2014) No.6299; available at <<http://www.rg.ru/2014/02/07/popravka-dok.html>>.

<sup>3</sup> See <<http://www.iapl.org/>>.

correspondent member of the Russian Academy of Sciences and a holder of the order “Honored Lawyer of the Russian Federation”—spoke of questions of the administration of justice within the commercial sector in Russia. Justice Mikhail Kleandrov of the Russian Constitutional Court—also a correspondent member of the Russian Academy of Sciences and Professor of Law—sees the absence of a body bringing together the judicial branch of power as one of the basic reasons accounting for systemic shortcomings in the work of the Russian judiciary. He went on to underscore his view that—despite such bodies having been established in several jurisdictions abroad, often grounded in the Constitution of those countries, which functions with notable success—in Russia in principle this could not be a judicial body of any level within the Russian system.

The chairperson of the Commercial (*Arbitrazh*) Court of the West-Siberian Circuit (based in Tiumen’), Vladislav Ivanov, spoke of a fundamental problem which he sees in the Russian judicial system at this stage in its development; *i.e.*, the lack of uniformity in judicial practice between the commercial (*arbitrazh*) courts and the courts of general jurisdiction in resolving specific categories of disputes. His firm belief is that there must be interaction between the courts of general jurisdiction and the commercial courts not only at the level of the Russian Supreme Court (which now, as a result of the new Russian judicial reform, is the single highest instance court of the courts of general jurisdiction as well as of the commercial courts [*arbitrazhnye sudy*] in Russia) but, also, at the level of lower courts. Judge Ivanov referred to several successful examples of such interaction in the experience of the *Arbitrazh* Court of the West-Siberian Circuit. These include: (A) holding meetings of a scientific-advisory board at which representatives of the Russian Supreme Court have been in attendance together with judges from the courts of general jurisdiction and *arbitrazh* courts as well as scholars and other practitioners; and (B) summarizing and analyzing judicial practice.

A third member of the judiciary at the Forum—Viacheslav Antropov, Deputy Chairperson of the Tiumen’ Regional Court—took a step back in history and considered some of the most important provisions of the Judicial Reforms of 1864 and the influence which they had upon the independence and the humaneness of the judicial branch in Russia.

Valerii Fal’kov, Rector of the Tiumen’ State University (and a graduate of the Tiumen’ Institute of State and Law), remarked how science is international and how inappropriate it is for a scholarly community to keep closed unto itself. It is crucial to remain up-to-date; to familiarize oneself with experience in other jurisdictions—near and far—so as to be able to appreciate where one can find the “cutting edges”. In this spirit, one of the sessions of the Siberian Legal Forum was devoted to models of the specialization of courts and judges in foreign jurisdictions.

Professor Elisabetta Silvestri of the University of Pavia—and Director of the University’s Center for Conflict Resolution—delivered a plea to those attending the Legal Lectures for more judicial specialization which would emphasize elements

traditionally seen as representing advantages of specialized courts. In particular, she focused on two issues: what precisely do we mean by judicial specialization and which criteria should be used to determine the category of disputes which, optimally, should be delegated to the attention of specialized judges? While Professor C.H. (Remco) van Rhee—Professor of European Legal History and Comparative Civil Procedure at Maastricht University and Program Director of the “Foundations and Principles of Civil Procedure in Europe” of the *Ius Commune* Research School—discussed specialization of court in The Netherlands, Professor Alan Uzelac (Faculty of Law, University of Zagreb) spoke critically of judicial specialization. He acknowledged that judicial specialization is a distinct trend in the number of jurisdictions; however, he also expressed the view that some of this can be seen as excessive enthusiasm which needs to be curbed and that attempts to promote the specialization of judges, court structures and procedures carefully need to be balanced against the possible negative impact which specialization could have—both at the general level and, also, at the level of what some argue are concrete gains related to administration of justice. Stefaan Voet (Institute for Procedural Law, University of Ghent) spoke of the comprehensive Belgian judicial reforms of 2014 which he characterized as a “missed opportunity to create a large ‘unified’ district court in which all first instance courts are merged”.

The Siberian Legal Forum also was enriched by contributions made by speakers from the People’s Republic of China and the Republic of South Africa. Professor Julia Fu (Beijing University Law School) considered the history of the specialization of courts in the PRC since the 1990s while Professor Daniel van Loggerenberg (University of Pretoria) argued that:

“[...] discussing fundamental subject matters such as specialization of courts and judges will only lead to the deeper understanding of functioning principles of the legal system. Forums such as this provide a wealth of potential for deep legal researching. With deliberate effort and strong partnership we can bring out the best in our legal systems, as we discuss the state of our development now and create the better future.”

The closing session of the Legal Forum was devoted to Russian experiences in the area of judicial specialization. Speakers included Professor Gennadii Chebotarev (President of the Tiumen’ State University and Chair of the Department of Constitutional and Municipal Law of the Institute of State and Law of Tiumen’ State University) highlighted the constitutional bases of the judiciary in Russia, while Professor Lidiia Terekhova (Chair of the Department of Civil- and Commercial Law at Omsk State University) spoke of the origins of the specialization of judges and courts in Russia. Three members of the judiciary also participated in this closing session: Professor Maxim Mateikovich (a judge with the Tiumen’ Regional Court) touched upon a number of issues involved in ensuring uniform practice in applying criminal law; Professor Tatiana Otcheskaia (a judge at the *Arbitrazh* Court of the West-Siberian Circuit) highlighted the constitutional guarantees in the economic sector protecting the rights of those engaging in commercial ac-

tivity who seek “their day in court” in Russia; and Valerii Gudym (also a judge at the *Arbitrazh* Court of the West-Siberian Circuit) who spoke of the perspectives developing the specialization of judges in the present-day Russian judicial system.

In considering the presentations and discussions and questions which were raised during the course of the First Siberian Legal Forum, a “red thread” which wound its way through the lecture days was whether specialization is a blessing or curse—especially for judges? Without a doubt, the answer which one gives to this question will not only depend upon the form of the specialization: internal which presupposes assigning disputes to judges based on their qualifications; or external which presupposes creating specialized courts which are designed to deal with specific categories of disputes.

There is no question but that of the specialization of judges and courts has its positive moments: the deeper and more professional consideration of a dispute, a reduction of the time and effort in hearing disputes using this approach, etc. To a certain degree, such specialization is not only important but, also, unavoidable in the light of the mushrooming size of the legal-information-cloud, the constant “fine tuning” of legislation, the way which law is both deepened and expanded as social, economic and other developments proceed at what seem to be ever-increasing tempos. Being able to properly deal with all of this “on one’s own” clearly is problematic, and properly resolving increasingly complex disputes unavoidably will involve an understanding of numerous details and experience in dealing with such disputes so as to adequately render justice to the disputants in a particular controversy.

However, one shies away from absolute specialization. Every decision rendered by a court in a specific controversy needs to be promulgated in a careful and appropriately balanced fashion. Failure to pay proper attention to this fundamental premise surely would result in contradictory judicial decisions among specialized courts, disputes about jurisdiction, etc. which—to say the least—would not augur well for the realization of the constitutional rights of natural and legal persons in accessing justice and in protecting their lawful rights and interests. In addition, one needs to keep in mind the need for judicial services (the number of cases which potentially would be heard by a specialized court) as well as geographic factors (the size of the country, the percentage of the total population in a particular administrative subdivision, the degree to which a particular territory readily can be accessed, etc.) economic considerations (the level of investment required to establish and support specialized courts, to professionally train judges and other personnel, to properly recruit staff, etc.) as well as other potential indicia.

This will call for rigorous research into issues of the specialization of courts and judges, for further attention being paid to both the negative as well as the positive aspects involved in this process, and for consideration of trends in the field outside Russia as well as within the Russian Federation. At the end of the

day, this cannot but lead to the enrichment of scholarship, of the judiciary and of judicial practice.



## Images of the First Siberian Legal Forum Tiumen', Russia, 2014



In his presentation to the Siberian Legal Forum on “Justice in the Commercial Sector in Russia”, Professor Veniamin Iakovlev, Adviser to the President of the Russian Federation, Corresponding Member of the Russian Academy of Sciences, and holder of the order “Honored Lawyer of the Russian Federation”, set the tone for much of the discussion at the Forum: “Each person should be engaged with her own cause. [...] Specialization is the means by which to raise the quality of justice.” In speaking of the delineation of the jurisdiction of courts, he observed that it is imperative for the unity of the legal system to form the starting point.

Anatolii Suchinskikh, Chairperson of the Tiumen' *Oblast'* Court: “Recent years have seen no small number of convocations devoted to various branches of law, but we decided that something needed to be done which would be periodic in nature. It is important to interact not only at a ‘round table’ but, also, over a cup of coffee: experts should share their opinions, to be able to prepare their research projects which later are embodied in publications.”

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The Rector of the Tiumen' State University, Valerii Fal'kov, who also is a Candidate of Science in law, in speaking of the choice of the theme of the First Siberian Legal Forum, remarked that: "To a large degree, the Great Judicial Reform of 1864 laid the basis for the judicial system of that era in Russian history but also has influenced no small part of the contemporary structure thereof. [...] The mission of the Legal Forum is to bring together the intellectual prowess of scholars and practitioners in Siberia, to nudge scholarly innovation in Russia as well as abroad and to create a modern-day regional platform for debating and discussing issues of interest and importance and for sharing experience among thinkers from Russia and from near and farther abroad."



Many of those attending the Siberian Legal Forum were from the judicial community representing the majority of regions of Siberia. Shown here: Viktor Ogai (Chairperson of the Altai Krai Commercial (*Arbitrazh*) Court).



Shown here: Anatolii Suchinskikh (right), Chairperson of the Tiumen' *Oblast'* Court, and Andrei Rutsinskii (left), a federal inspector for the Tiumen' *Oblast'* within the administration of the RF Presidential Representative in the Urals Federal Circuit.



The First Siberian Legal Forum also welcomed representatives of the business community. Shown here: Eduard Bakiev, General Director of the Tiumen' Exhibition Center Corporation.



During the First Siberian Legal Forum, a separate session was held devoted to foreign models for specialized courts and judges at which colleagues from near and far abroad spoke of legislation and experience in their jurisdictions. These included those who know both of scholarship and of practice from Italy, Croatia, Belgium, The Netherlands, the People's Republic of China and the Republic of South Africa—all of whom are members of the International Association of Procedural Law. Shown here: Professor Daniël van Loggerenberg (left), University of Pretoria (South Africa) and Professor Remco van Rhee (right), University of Maastricht (The Netherlands).



The First Siberian Legal Forum was held in the auditorium of the Commercial (*Arbitrazh*) Court of the West-Siberian Circuit (located in Tiumen'). The subjects of the Russian Federation within its circuit are: the Altai Republic, Altai *Krai*, Kemerovo *Oblast'*, Novosibirsk *Oblast'*, Omsk *Oblast'*, Tiumen' *Oblast'*, Khanty-Mansi Autonomous *Okrug-Iurga*, and the Iamalo-Nenets Autonomous *Okrug*). Two commercial (*arbitrazh*) appellate courts are within the West-Siberian Circuit's jurisdiction: the Seventh Commercial Appeals Court (based in Tomsk) and the Eighth Commercial Appeals Court (based in Omsk).